

TO: MAYOR AND CITY COUNCIL
FROM: MIKE GESME, PEG ACCESS COORDINATOR
SUBJECT: IDENTIFYING CABLE-RELATED NEEDS
DATE: AUGUST 19, 2014

BACKGROUND

Over the last two years, staff has been assessing Mediacom's compliance with the current franchise agreement, and identifying the City's needs for the next franchise. We have conducted audits of Mediacom's payments, held a public forum, gathered comments, and worked with vendors to estimate costs for updating our broadcast equipment. This resolution outlines those findings and establishes the City's needs. This will allow the cable attorney to begin working with Mediacom to draft the new franchise agreement. We expect to have a final draft for your consideration before the current agreement expires in May. The Cable Commission has reviewed this resolution and recommends approval.

STAFF RECOMMENDATION

Staff recommends the Council adopt the attached resolution identifying past franchise compliance and performance problems and future community cable-related needs and interests.

REQUESTED COUNCIL ACTION

I respectfully request a motion to approve the resolution.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA**

RESOLUTION NUMBER 2092

**IDENTIFYING PAST FRANCHISE COMPLIANCE
AND PERFORMANCE PROBLEMS AND FUTURE
COMMUNITY CABLE-RELATED NEEDS AND INTERESTS**

WHEREAS, Mediacom Minnesota LLC (“Mediacom”) operates the local cable system serving the City.

WHEREAS, the City granted a cable franchise to Mediacom in 2003 that expires on May 9, 2015.

WHEREAS, by letter to the City dated June 4, 2012, Mediacom requested renewal of the franchise, offered to proceed in the “informal process” contemplated by applicable federal law, and submitted a proposed franchise.

WHEREAS, by letter to Mediacom dated September 17, 2012, the City agreed to proceed with renewal in the “informal process,” indicated that the City intended to negotiate based on the current franchise, and rejected Mediacom’s proposed franchise.

WHEREAS, in relation to renewal, the City retained a qualified accountant to audit Mediacom’s franchise and PEG fee payments from 2007-2009.

WHEREAS, the audit concluded that Mediacom underpaid \$6473.00 which Mediacom admitted and paid in full.

WHEREAS, the City subsequently audited Mediacom’s payments from 2004-2006 and 2010-2011.

WHEREAS, the audit concluded that Mediacom underpaid \$8544 which Mediacom admitted in part and disputed in part, and ultimately paid \$7,101.

WHEREAS, the remaining \$1,443 (plus accruing interest) remains in dispute.

WHEREAS, on October 22, 2013, the City conducted a public hearing to consider Mediacom’s franchise compliance, past performance, and begin identification of future cable-related community needs.

WHEREAS, at the hearing, the City received oral and written comments from numerous residents regarding Mediacom.

WHEREAS, although Mediacom was given notice and invited to attend, Mediacom did not attend the public hearing or otherwise provide any comments.

WHEREAS, in relation to renewal, the City solicited quotes from qualified vendors to upgrade the video, audio and cable-related telecommunications equipment serving the city council chambers, and a quote from EPA Audio Visual, Inc. for \$180,000 plus a 10% contingency is attached hereto (“EPA quote”).

WHEREAS, based on community input expressing a variety of complaints regarding the quality of Mediacom’s cable service and customer service, and based on recent franchise fee audits and information known to council members and staff, the City has reached conclusions regarding Mediacom’s past franchise compliance and performance.

WHEREAS, based on the foregoing information, and based on the EPA quote and other quotes from qualified vendors, the City has reached conclusions regarding the community’s future cable-related needs and interests.

WHEREAS, the purpose of this resolution is to identify community needs and interests to guide franchise renewal negotiations with Mediacom.

NOW THEREFORE BE IT RESOLVED THAT the following are the community’s identified future cable-related needs and interests:

1. **Form of Franchise.** Mediacom provided a draft franchise with its renewal requests which the company indicated constituted its “informal proposal.” Mediacom’s proposal would modify most provisions in the current franchises.

The current franchise reflects the community cable-related needs and interests identified prior to the issuance of the franchise in 2003. This franchise was acceptable to Mediacom. The draft franchise provided by Mediacom does not reflect the community’s current needs and interests. It will be most efficient to incorporate modifications to the current franchise to reflect changes in the community’s needs and interests, rather than using Mediacom’s draft.

2. **Franchise Fee.** Mediacom currently pays a franchise fee equal to 5% of the gross revenues derived from cable services. The City wishes to continue receiving such fee. Further, the recent audit of Mediacom’s past franchise fee calculations and payments indicates repeated underpayments. Finally, the current franchise imposes restrictions on the City’s use of franchise fees that are not required by law.

Any renewal franchise must provide for Mediacom’s submission of more detailed franchise fee payment calculations, and provide for interest at an appropriate rate on underpayment amounts. Further, any renewal must ensure that when cable

services are bundled with telephone or internet access services, any discount is fairly apportioned so that cable revenues are accurately accounted and the franchise fee amount is appropriately calculated. Finally, the City must be able to use franchise fees in any lawful manner.

3. Community Programming.

A. PEG Channels. The current franchise required Mediacom to initially make one (1) video channel available for public, educational or governmental (PEG) programming. The City has programmed channel 12 for years. The franchise also gave the City the right to request an additional channel at any time. By letter of October 30, 2013, the City requested the additional channel which was provided several months later. Finally, the franchise recognizes the City's statutory right to additional channels under certain circumstances.

Both channels are in use. The City must retain the current rights to PEG channels. In addition, the City must have a right to have one or more PEG channels carried in high definition ("HD") in coordination with Mediacom's conversion to an all-digital system, and a right to the benefit of any further system or technological improvements on the PEG channels.

B. Funding. The current franchise required payment of a \$25,000 capital grant for PEG equipment, and requires Mediacom to pay a PEG Fee of \$1.25 per customer, per month, in support of PEG capital costs. The PEG Fee may be increased up to every 2 years by CPI.

The City concludes that the EPA quote provides a reasonable estimate of the cost (\$180,000.00) for needed PEG equipment replacements and upgrades. Mediacom must provide a corresponding capital grant with the terms of payment of such grant to be negotiated. The City also must retain the current PEG Fee arrangement.

C. Live PEG Programming Sites. The current franchise requires Mediacom to provide return capacity (i.e. live video programming capacity) at City Hall, the High School and John Burch Park, with the City having a right to add 3 additional specified sites. The City currently originates live programming from City Hall, the High School and John Burch Park.

The live origination capacity must be continued, but Mediacom will be required to provide whatever system equipment is necessary to originate live programming simultaneously on both current PEG channels (and any additional channels may be added in the future). The City may also further clarify the specific locations for the live origination capacity at the 3 sites which are not yet connected.

D. Free Services. The current franchise requires the provision of a connection and free cable services to specified public institutions. The City requires the continuation of free services at:

- City Hall / Police Department (same building)
- Public Safety
- Public Works
- Library
- Pool
- School District Facilities (3 buildings)

All tiers of service with public interest programming must be provided.

The City may elect to receive free service at multiple tvs/monitors/reception devices in each location. Mediacom must provide the equipment required to receive such service, at no cost, on each reception device.

4. Rights-of-Way/Undergrounding. The current franchise requires any newly constructed facilities to be installed underground where other utilities are underground both otherwise defers right-of-way usage issues to the applicable City ordinances. This arrangement must be continued.

5. Customer Service. The current franchise adopts the FCC's cable customer service standards. The City is aware of various customer service complaints. A renewal franchise must permit the City to adopt additional customer service requirements to address specific recurrent customer complaints.

6. Franchise Term. The City seeks a 10 year franchise term.

7. System and Services. The current franchise requires a 860 MHz system offering at least 81 channels. This is well below the industry standard. A renewal franchise must require continuation. In addition, the franchise must address the conversion to a digital platform and provision of channels in HD.

8. Service Area. The current franchise requires system extension and service availability wherever there are at least 30 homes per mile of cable needed to serve those homes. The system and cable services should be extended to areas with a lower density of homes. A renewal franchise should require extensions at no additional cost to the requesting customer wherever there are 15 homes per mile of cable needed, and require extension to every requesting customer in lower density areas if the customer agrees to pay a "cost in aid of construction" charge.

9. Competition.

Any renewal franchise must not restrict or inhibit the City from granting future competitive franchises except to the extent required by law. In particular, the franchise must not impose restrictions beyond those contained in Minnesota Statutes, Section 238.08.

BE IT RESOLVED FURTHER THAT the foregoing issues have been identified for the completion of proceedings to renew Mediacom's cable franchise.

BE IT RESOLVED FURTHER THAT the City reserves the right to revise this resolution in the event the parties resort to the formal renewal process.

Approved this 19th day of August, 2014.

ATTEST:

Lyman M. Robinson, Mayor

Ronald S. Johnson, City Administrator