

TO: Honorable Mayor and City Council

FROM: City Administrator Ron Johnson

**SUBJECT: Provide Notice of Intent to Consider Issuance of Cable Franchise;
Approve Legal Services Proposal from Kennedy & Graven**

DATE: July 28, 2016

BACKGROUND

Discussion has taken place at several prior City Council meetings regarding the need to provide competition by adding at least one additional cable television franchise in the city. Interest has been expressed by a cable television provider to submit an application.

Competitive cable franchising in Minnesota is governed by state law. The process starts by publishing a Notice of Intent to Consider Issuance of Cable Franchise (proposed notice attached). Also attached is a corresponding form of Application Instructions.

Approval of this Notice also approves setting a public hearing with respect to application(s). This hearing will afford the public and franchise applicant(s) reasonable notice and a reasonable opportunity to proceed. Notice of the public hearing would be published on 8/11/16 and 8/18/16.

If the Notice of Intent is approved, the city will need legal counsel to assist us through the competitive franchise process. Bob Vose, Kennedy & Graven, submitted the attached proposal for consideration and approval. Mr. Vose has been assisting us with the Mediacom renewal process.

The applicant(s) must submit an application fee of \$7,500 to offset the city's costs associated with processing the application(s).

REQUESTED COUNCIL ACTION

- 1) Approve a motion to Provide Notice of Council's Intent to Consider Issuance of Cable Franchise
- 2) Approve the Kennedy & Graven proposal to provide legal services to assist with the competitive cable franchising process

Attachment(s): Notice of Intent; Application Instructions; Legal Services Proposal

CITY OF CANNON FALLS

NOTICE OF INTENT TO CONSIDER ISSUANCE OF FRANCHISE

Notice is hereby given on behalf of the City of Cannon Falls (“City”) of its intent to consider issuance of a competitive franchise. This notice is given in accordance with Minnesota law.

The application requirements are set forth in Minnesota Statutes, Section 238.081, subd. 4. In addition:

1. Applications in response to this Notice must be submitted to the City by 4:00 p.m., August 29, 2016.
2. Applications must be in writing, notarized, and consistent with the application requirements. Applicants must submit an original and two copies of the application. A copy of the application must be mailed or delivered to Robert J.V. Vose, Esq., Kennedy & Graven, 470 US Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402.
3. Each application shall be submitted along with an application fee of \$7,500.00 in the form of a certified check made payable to the City. Applicants will be required to reimburse any expenses not covered by the application fee.
4. Applicants are requested to be present at a public hearing before the City beginning at 6:30 p.m., September 6, 2016.
5. The minimum system design and services to be offered are generally consistent with those offered by the incumbent cable operator, Mediacom Minnesota.
6. Upon review of the application(s) and completion of the public hearing, the City will make a recommendation regarding award of franchises. Such recommendation shall be based on applicable law and the record including the application, information provided by the applicant, and other relevant information received by the City including the results of any negotiations with applicant(s) and any information submitted by the incumbent company.
7. In no event will submission of a conforming application entitle any applicant to grant of a franchise. The City expressly reserves the right to reject both conforming and non-conforming applications.
8. Any successful applicant(s) will be required to accept the franchise granted within thirty (30) days after adoption.

9. Any questions concerning applications should be directed to Robert J.V. Vose, Esq., Kennedy & Graven, 470 US Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402; telephone (612)337-9275; e-mail: rvose@kennedy-graven.com

Date: August 4, 2016.

Published in: Cannon Falls Beacon on August 11, 2016 and August 18, 2016.
An Affidavit of Publication is required for each publication.

**CITY OF CANNON FALLS, MINNESOTA
CABLE FRANCHISE
APPLICATION INSTRUCTIONS**

Applicants for a cable franchise must submit the following information to the City on or before 4:00 p.m., August 29, 2016. Submission of this information will constitute application for a cable franchise.

- (1) Plans for channel capacity, including both the total number of channels capable of being delivered and actually to be delivered upon system activation;
- (2) A statement of the television and radio broadcast signals for which permission to carry has been obtained or will be requested from the Federal Communications Commission;
- (3) In the case of a telephone provider, a copy of the MPUC certificate of authority;
- (4) A description of the proposed system design and planned operations, including at least the following items:
 - a. the location of the headend facilities from which programming will be received;
 - b. an explanation of the ownership of the facilities comprising the video system;
 - c. a map identifying the proposed initial service area(s) in the City;
 - d. a proposed schedule for expansion of service beyond the initial service area or description of the proposed policy for such expansion;
 - e. the schedule for activating two-way capacity; i.e. capacity to send video signals “up stream”;
 - f. the number of channels and services to be made available for community access broadcasting, and a proposal for providing community access programming;
 - g. a general description of any non-video services such as telephone service, high speed internet or data transmission services to be provided in the City.
- (5) A proposal for funding community access programming facilities and/or staff;
- (6) The terms and conditions under which services will be provided to institutions and identification of any plans for providing free or reduced price video or data transmission services or capacity or other “in-kind” services to governmental, educational, and other institutional entities;

- (7) A schedule of proposed service rates and the proposed policy regarding charges for unusual or difficult service connections;
- (8) A schedule for constructing and activating the system including the sequence in which video service will be activated in various parts of the City;
- (9) A statement indicating the applicant's qualifications and experience in the video services field, if any;
- (10) Identification of and contact information for the municipalities in which the applicant either owns or operates a video system, directly or indirectly, or holds video franchises;
- (11) Plans for financing the proposed system, including significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital;
- (12) A statement detailing the corporate organization of the applicant including the names of officers and directors, and information identifying all affiliated companies or businesses;
- (13) A notation and explanation of omissions or other variations with respect to the application; and
- (14) An application fee totaling \$7,500.00 to offset the City's costs associated with processing applications. Any portion of the application fee which remains after payment of all the City's costs will be refunded.

All applications must be notarized and must include detailed responses to the above.

Negotiation of Franchise Terms. The City expects to discuss and negotiate franchise terms and conditions with a successful applicant. The City reserves the right to seek franchise terms and conditions or other commitments that meet or exceed the plans contemplated in an application.

Additional Information. The City may request such additional information as it deems necessary. In determining whether to issue a franchise, the City will consider the application and additional relevant information. Additional factors the City may consider include the qualifications of applicant(s), the level and quality and nature of services proposed by the applicant, the needs and interests of the community and institutions as identified by the City, and information regarding industry trends, state of the art technologies, services and other related information.

Public Hearing on Applications. A public hearing with respect to application(s) will be scheduled at least seven days before the City Council considers adoption of a franchise ordinance. The hearing will afford the public and franchise applicant(s) reasonable notice and a reasonable opportunity to be heard.

Existing Franchise. Applicants are advised that Mediacom Minnesota currently provides cable

television service in the City pursuant to an expired cable franchise. The City and Mediacom are engaged in renewal negotiations. The City reserves the right to impose additional or more burdensome terms and conditions in any franchises adopted as a result of this application process.

Award of Franchise. A franchise may, in the City's sole discretion, be awarded by ordinance.

Any questions regarding this application information may be directed to Robert J.V. Vose, Esq., Kennedy & Graven, 470 US Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402; telephone (612)337-9275; e-mail: rvose@kennedy-graven.com