

**TO: Honorable Mayor and City Council**

**FROM: City Administrator Ron Johnson**

**SUBJECT: Cable Franchise**

**DATE: August 31, 2016**

**BACKGROUND**

At the August 3 Council meeting, City Council approved a motion to Provide Notice of Council's Intent to Consider Issuance of Cable Franchise that included the setting of a public hearing with respect to the application(s).

Applications were received from Hiawatha Broadband Communications, Inc. (HBC) and Frontier Communications of Minnesota, Inc. and are included in the packet for review.

The public hearing will allow the applicants to present their plans, allow the incumbent (Mediacom) to provide comments and allow the public to provide comment.

Subsequent to closing the public hearing, City Council will consider a recommendation to direct staff (including consulting attorney Bob Vose, Kennedy & Graven) to review applications, report on applicants' qualifications, and negotiate franchise terms.

**REQUESTED COUNCIL ACTION**

Approve a motion to direct staff (including consulting attorney Bob Vose, Kennedy & Graven) to review applications, report on applicants' qualifications, and negotiate franchise terms.

Attachment(s): HBC and Frontier Communications of MN applications

**Kennedy**

**&**

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**CHARTERED**

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## **MEMORANDUM**

Date: September 1, 2016  
To: Ron Johnson, City Administrator, City of Cannon Falls  
From: Bob Vose  
Re: Franchise Applications

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Hiawatha Broadband Corporation (HBC) recently approached the City about obtaining a franchise to provide cable service. Near the same time, we learned that Frontier was approaching some greater-metro cities for franchises such as Burnsville, Farmington, Lakeville, and Rosemount. Frontier indicated that they may apply for a franchise in Cannon Falls. These were welcome developments as franchise renewal negotiations with Mediacom have been stalled for some time.

### **Public Hearing**

Minnesota law establishes a process for considering issuance of cable franchises. As required, the City published Notice of Intent to consider issuance of franchises. HBC and Frontier filed timely and complete applications and the required fees.

The City will next hold a statutorily-required public hearing to consider the applications on September 6th. The public hearing will give both companies an opportunity to summarize their applications and cable plans. Mediacom and the public will have an opportunity to comment. Burnsville and Lakeville have completed their franchise negotiations with Frontier and will be considering issuance of franchises the same night. I am representing Burnsville and have been asked to attend that meeting to explain the final negotiated franchise.

Of note, Minnesota has a “level playing field law,” Minn. Stat. § 238.08, requiring that grant of “an additional franchise for cable service for an area included in an existing franchise” must not be “on terms and conditions more favorable or less burdensome” than those in the existing franchise regarding area served, PEG provisions and franchise fees. State law also requires substantial build-out of cable service within five (5) years of receipt of an initial franchise.

The HBC and Frontier applications address service coverage plans in somewhat different ways. HBC intends to provide full coverage. Frontier indicates that its expansion “should be driven by market success, and not a contractual requirement for ubiquitous coverage.” In negotiations with

other cities, however, Frontier has agreed to service availability requirements consistent with state law. This issue might be discussed at the hearing.

### **Process Going Forward**

After the public hearing is closed, we will more thoroughly review the application, consider public input, and, if so directed, begin negotiations. Upon completion, a report regarding the companies' applications will be presented to the council along with the negotiated franchises.

This franchising process is "quasi-judicial." That means the city council will act as a neutral and independent decision-maker concerning the applications and any opposition that may be presented by Mediacom or the public. *In re Application of Dakota Telecommunications Group*, 590 N.W.2d 644, 647-8 (Minn. App. 1999). Accordingly, only staff and legal counsel should engage in direct communications with the applicants. City council members should not do so before rendering a decision.

Any franchise that is issued must include a statement that the applicant's financial, technical, and legal qualifications were considered and approved. Minn. Stat. § 238.081, subd. 4. The applications include information addressing these qualifications. However, the need for a detailed review is diminished where a phone company seeks a franchise. Both companies already have Minnesota Public Utilities Commission approval, and both have constructed facilities in the City's public rights-of-ways.

### **Recommendation**

At the conclusion of the upcoming hearing, the council should direct staff and legal counsel to negotiate franchise terms and prepare a report concerning the applicants' qualifications and any other legal issues that may be raised.