

Kennedy

&

Graven

CHARTERED

470 US Bank Plaza
200 South Sixth Street
Minneapolis MN 55402

Robert J.V. Vose
(612) 337-9275 telephone
(612) 337-9310 fax
rvose@kennedy-graven.com

MEMORANDUM

DATE: December 4, 2017
TO: City of Cannon Falls
FROM: Bob Vose
RE: HBC Cable Franchise Transfer (Merger) Application

Earlier this year, Hiawatha Broadband Communications, Inc. received a cable franchise from the City. Hiawatha subsequently entered an Agreement and Plan of Merger with Schurz Communications, Inc. Under that Agreement, Hiawatha would merge with Ten Thousand Lakes Broadband, Inc., a wholly owned subsidiary of Schurz.

On October 13, 2017, Hiawatha filed an “FCC Form 394” requesting City consent to this transaction. Federal law affords 120 days to review the request. Such review is to focus on the legal, technical and financial qualifications of the entity resulting from the merger. The Form 394 included certain information related to these issues.

The Form 394 demonstrates that Schurz operates cable and telecommunications companies in several markets and is legally and technically qualified. However, a heavily redacted version of the merger agreement was provided that did not fully describe the proposed transaction. The Form 394 also provided little financial information about the merged company. On November 2, 2017, Hiawatha provided a less redacted version of the agreement under a non-disclosure agreement. More recently, confidential financial information was provided, including:

- Proof of a significant revolving credit facility available to Schurz to fund the transaction and Hiawatha Broadband operations;
- Schurz’s unaudited financial statements for the most recent calendar quarter, and;
- Schurz’s pro-forma financial projections through 2019 which contemplate the consummation of the transaction.

The information received shows that the corporate parent, Schurz, is a relatively “larger” company than Hiawatha Broadband. While the city has not engaged a financial advisor, we have identified no reason to conclude that the merger will diminish the franchise-holder’s financial capacity or standing.

We recommend Resolution 2317 conditionally approving the request. The Resolution requires the parent company, Schurz, to ensure its subsidiary comply with the franchise.

**CITY OF CANNON FALLS
GOODHUE COUNTY, MINNESOTA
RESOLUTION NUMBER 2317**

**CONDITIONALLY APPROVING
TRANSFER OF CONTROL OVER CABLE FRANCHISEE**

WHEREAS, Hiawatha Broadband Communications, Inc. (“Hiawatha Broadband”) is the holder of a franchise (the “Franchise”), authorizing the delivery of cable service in the City of Cannon Falls (the “City”) and operation and maintenance of a cable television system therein (the “System”); and

WHEREAS, on September 30, 2017, Hiawatha Broadband and Schurz Communications, Inc. (“Schurz”), entered into an Agreement and Plan of Merger (the “Agreement”), pursuant to which Ten Thousand Lakes Broadband, Inc., a wholly owned subsidiary of Schurz will be merged with Hiawatha Broadband resulting in Hiawatha Broadband becoming a wholly-owned subsidiary of Schurz (the “Transaction”); and

WHEREAS, on or about October 13, 2017, Hiawatha Broadband filed an FCC Form 394 with the City seeking approval of the Transaction; and

WHEREAS, the FCC Form 394 included certain required information including a heavily redacted version of the Agreement; and

WHEREAS, on November 2, 2017, Hiawatha Broadband provided, in response to the City attorney’s request, a less redacted version of the Agreement pursuant to a non-disclosure agreement; and

WHEREAS, on November 30, 2017, Hiawatha Broadband provided additional confidential information to provide a better understanding of the Transaction including:

1. Proof of a significant revolving credit facility available to Schurz to fund the Transaction and Hiawatha Broadband operations;
2. Schurz’s unaudited financial statements for the most recent calendar quarter, and;
3. Schurz’s pro-forma financial projections through 2019 which contemplate the consummation of the Transaction.

WHEREAS, federal law affords the City 120 days to review and act on the Transaction; and

WHEREAS, no specific concerns regarding the Transaction have been identified.

NOW, THEREFORE, BE IT RESOLVED BY the City of Cannon Falls City Council:

1. The foregoing recitals are incorporated herein by reference.

2. The City consents to the Transaction subject to the conditions herein.
3. Hiawatha Broadband shall notify the City, in writing, of completion of the Transaction within ten (10) days thereof. Such notice shall include a certification conforming to the Form 394, Section V, Part II(c), stating that Schurz Communications, Inc.:

Will use its best efforts to comply with the terms of the franchise and applicable state laws or local ordinances and related regulations, and to effect changes, as promptly as practicable, in the operation of the system, if any changes are necessary to cure any violations thereof or defaults thereunder presently in effect or ongoing.

4. The Franchise remains valid and in full force and effect. Upon closing of the Transaction, Hiawatha Broadband shall remain bound by the terms and conditions of the Franchise.
5. Hiawatha Broadband or Schurz may: (a) restructure debt or change the ownership interests among existing equity participants in Schurz; (b) pledge or grant a security interest to lenders in Schurz's assets, including, but not limited to, the Franchise; and (c) sell equity interests in Schurz or any of Schurz's affiliates.
6. This Resolution shall be effective upon adoption. Violation of this Resolution shall, upon written notice to Hiawatha Broadband or Schurz, render this consent null and void

Resolution adopted this 19th day of December, 2017.

Lyman M. Robinson, Mayor

ATTEST:

Ronald S. Johnson, City Administrator