

FORMAL NEEDS ASSESSMENT REPORT

**Northern Dakota County Cable Communications Commission
5845 Blaine Avenue
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A. EXECUTIVE SUMMARY

The Northern Dakota County Cable Communications Commission (“NDC4”) is a commission which negotiates, administers and enforces cable television franchises for the cities of Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul, Minnesota (“Member Cities”). The NDC4 was formed in 1982 and presently obtains its authority from the Member Cities under an Amended Joint Powers Cooperative Agreement (“JPA”).¹

On or about January 17, 2000, the NDC4 and its Member Cities granted nearly identical nonexclusive cable franchise agreements (hereinafter collectively the “Franchise”) which are now held by Comcast of St. Paul, Inc. (“Comcast”). By letters dated July 27, 2012 and August 30, 2012² Comcast requested renewal of the Franchise. The JPA authorizes the NDC4 to process Comcast’s renewal request on behalf of the Member Cities in accordance with the requirements of the Cable Act³, including both the informal renewal process⁴ and the formal renewal process.⁵

In 2013 and 2014 the NDC4 conducted a detailed and comprehensive needs assessment process for the purpose of (A) identifying the future cable-related community needs and interests of the NDC4 and its Member Cities, and (B) reviewing the performance of Comcast under the Franchise. The documents, reports and related information gathered and assembled by the NDC4 as part of the formal renewal process are hereinafter collectively referred to as the “Needs Assessment.”⁶

Since 2014 the NDC4 staff has been engaged with Comcast in informal franchise renewal negotiations in hopes of arriving at a renewed franchise. In June of 2014, Comcast submitted FCC Form 394 requesting authority to transfer ownership of the cable system serving the NDC4 and the Member Cities; however, the request was terminated in April 2015.

In February 2015 the NDC4 Member Cities received a request for a cable franchise from CenturyLink. The NDC4 processed CenturyLink’s request for a franchise and in March 2016 each NDC4 Member City granted a franchise to CenturyLink.

In addition to the Needs Assessment, the NDC4 has developed specific renewal requirements consistent with the Cable Act and Minnesota state law. As contemplated by the Cable Act, the NDC4 has prepared a Request for Formal Renewal Proposal (“RFRP”)⁷ which requires that Comcast submit a proposal demonstrating how Comcast will satisfy the NDC4’s future cable-related needs and interests in any renewed franchise. In the RFRP, Comcast is required to explain why Comcast believes it should be entitled to renewal of the Franchise. The RFRP

¹ See Exhibit A - Amended Joint Powers Cooperative Agreement of the Northern Dakota County Cable Communications Commission.

² See Exhibit B – Comcast’s July 27, 2012 and August 30, 2012 renewal request letters.

³ Communications Act of 1934, as amended.

⁴ See 47 U.S.C. § 546 (h).

⁵ See 47 U.S.C. § 546 (a)-(g).

⁶ See Exhibits C & D - NDC4 retained expert consultants including CBG Communications, Inc. and The Buske Group to prepare portions of the Needs Assessment.

⁷ See Exhibit E - Request for Formal Renewal Proposal.

further requires that Comcast provide certain information that the NDC4 will use in evaluating any renewal proposal including legal, technical and financial qualifications.

The NDC4 hereby concludes that the documents, reports and related information contained in Exhibits C-D, attached hereto and incorporated by reference, are accurate and constitute the future cable-related community needs and interests of the NDC4 and its Member Cities. In connection with the issuance of this report, the NDC4 has:

1. Adopted the findings of this Needs Assessment and the documents, reports and related information contained in Exhibits C-D; and
2. Authorized the issuance of the RFRP as attached as Exhibit E hereto with a deadline for response of July 16, 2018.

B. SUMMARY OF COMMUNITY CABLE-RELATED NEEDS AND INTERESTS

1. As part of the renewal process, the NDC4 requested the following studies be performed.

(a) *Telephone Survey.* A telephone survey regarding cable related needs and interests, administered to 400 cable subscribers drawn randomly from active residential telephone numbers. The telephone survey is attached hereto as Exhibit C.

(b) *Focus Group Workshops and On-line Survey.* Information was collected from 120 people who attended the focus group workshops and the 591 questionnaires that were completed on-line or at the focus group workshops. The information collected identified definite needs and interests. The report is attached hereto as Exhibit C.

(c) *Public, Educational and Governmental (“PEG”) Review.* A review of the existing PEG access programming equipment, facilities and activities and face-to-face interviews with representatives of educational institutions and organizations helped to identify needs and interests. The report is attached hereto as Exhibit C.

(d) *Institutional Network (“I-Net”) Technical Review and Needs Assessment.* This review included discussions with I-Net users including the NDC4 staff and others who oversee the I-Net, such as educational and local government users. Also Comcast completed a Request for Information (“RFI”) regarding the I-Net operational information. Responses to an on-line I-Net user survey were also reviewed. The report is attached hereto as Exhibit D.

(a) Summary of Major Findings. *Telephone Survey.*

(i) Generally, the telephone survey respondents indicated that they are satisfied with Comcast regarding quality and service. Almost 90% rated the quality of the picture and sound as “good” or “very good.” About three-fourths rated the number and variety of channels and the helpfulness

of Comcast's customer service representatives as "good" or "very good." About 70% rated the ability of Comcast to respond to a service call within the promised time period as "good" or "very good." Only 14% said that the rates charged by Comcast for cable TV service were "good" or "very good" (38.8% rated this item as "poor" or "very poor").

(ii) When asked how satisfied they are, overall, with the Comcast cable TV service, about three-fourths of the respondents said that they are either "very satisfied" (25.5%) or "somewhat satisfied" (47.8%).

(iii) About 45% of all respondents said that they pay extra to receive Comcast's high definition ("HD") channels. About one-third (33.2%) of the HD subscribers said they "rarely" or "never" watch non-HD channels.

(iv) Nearly half (48.3%) of all respondents said they most often use Comcast's onscreen guide to find programming information, far more than any other method.

(v) About 46% subscribe to Comcast's Internet service, in addition to cable TV.

(vi) Over half of all respondents said they think it is either "very important" (21.8%) or "important" (34%) that Comcast provide a service location in Inver Grove Heights or somewhere in the NDC4 Member City service area.

(vii) The telephone survey respondents also answered a series of questions regarding the programming and services of Town Square Television ("TST"). Nearly half (47.8%) of all cable subscribers have watched a program on a channel delivered by TST. Of these viewers:

a. During the past month: 44.5% said they had watched Channel 14 at least once, 35.1% had watched Channel 20 at least once, 34% had watched Channels 18 or 19 at least once, 27.2% had watched Channels 15 or 16 at least once, and 10% had watched Channel 21 at least once.

b. About three-fourths said they had watched City Council or other meetings, well over half had watched "Game of the Week," a little under half had watched School Music/Drama Performances and "Insight 7," and a little under 40% had watched "Girl Talk." Three seasonal event programs tested ("Community Parks Connection," High School or College Graduations, and Candidate Information or Election Results) had also been watched by over half.

c. About half (50.3%) said the picture and sound quality on the TST channels is equal to the picture and sound quality of the

other channels on the cable system. About one-third (34%) said it is not.

(viii) A little under three-fourths of all telephone survey respondents said it is either “very important” (32.3%) or “important” (38.8%) to have local cable TV channels that feature programs about the NDC4’s Member City residents, organizations, schools, government, events and issues.

(ix) When all cable subscribers were asked how much of their monthly cable bill should be used to support the development of local cable TV programs, **46.3%** indicated \$2.00 or more. This compares very favorably to their perceived value of four commercial channels: 33.5% indicated \$2.00 per month or more for ESPN; 32.0% for USA Network; 27.8% for Fox News; and 18.3% for MTV.

(x) Less than one-fourth (22.3%) of all subscribers know that they or the organizations they are involved with can provide or produce programs and show them on TST channels. About 5% provided, helped to produce or appeared as a guest on a program shown on a TST channel.

(b) *Focus Group Workshops and On-line Survey.*

(i) Over half (56.8%) of the focus group and online questionnaire respondents said they subscribe to the Comcast cable TV service. Of this group, 60.4% pay extra to receive HD channels and 27.7% of these HD subscribers said that they rarely or never watch channels that are not delivered in HD.

(ii) When Comcast subscribers were asked to indicate which one source they used most often to find information about programming on their cable TV channels, the most frequently indicated source (61%) was Comcast’s on-screen program guide, which was indicated about four times as often as the next most popular source.

(iii) When the Comcast subscriber-respondents were asked to indicate their “overall” level of satisfaction with Comcast, over two-thirds of them indicated that they were either “Very Satisfied” or “Somewhat Satisfied.”

(iv) Over 80% of Comcast subscribers answered “Very Good” or “Good” when asked to indicate their level of satisfaction with the (1) quality of the picture and sound, and (2) the reliability of the cable TV service. Services with the most “Very Poor” or “Poor” ratings were (1) rates charged by Comcast for cable TV service [50.5%], (2) ability to quickly speak to a customer service representative when you call Comcast [21.8%], (3) ease of getting problems repaired or resolved by Comcast [19.4%], and (4) ease of getting services installed or changed by Comcast [16.9%].

(v) About three-fourths of the Comcast subscriber-respondents said that they had tried to contact Comcast by telephone during the past year. Of these respondents, 82.4% of them indicated that their issue was not resolved using the Comcast automated telephone response system, without talking to a person. When these individuals were asked how long they would estimate that they waited to speak to a customer service representative, 73.5% indicated that they had to wait one minute or longer, or were never connected.

(vi) Of the 58.8% of Comcast subscriber-respondents who said they had gone to the Comcast office in Inver Grove Heights or other nearby office during the past year, 87.2% said that having an office in Inver Grove Heights or somewhere in the NDC4 Member City service area is “Very Important” or “Important” to them.

(vii) Negative comments outnumbered positive/neutral comments by about three to one. Common criticisms were too high fees and having to pay for never watched channels.

(viii) The respondents who do not subscribe to Comcast’s cable TV service in the NDC4 service area most frequently indicated that “cable TV service is too expensive,” followed by “I switched to a satellite TV service” and “I’m not interested – I don’t watch TV enough to make it worthwhile.”

(ix) 80.5% of all respondents indicated they were aware of the channels and programming delivered by TST. Of the “aware of TST” respondents:

a. 45% said they watched TST Community Channel 14 at least once per month. 86-92% of those who had watched Channel 14 said they “strongly agree” or “agree” that it provides: (1) worthwhile community programming; (2) valuable information; and (3) programs that are interesting to watch.

b. 24.2% said they watched Public Access Channel 15 and Multifaith Access Channel 16 at least once per month. 72-80% of those who had watched said they “strongly agree” or “agree” that they provide: (1) worthwhile community programming; (2) valuable information; and (3) programs that are interesting to watch.

c. 38.4% said they watched Government Channels 18 & 19 at least once per month. 86-90% of those who had watched these channels said they “strongly agree” or “agree” that they provide: (1) worthwhile local government programming; (2) valuable information; and (3) programs that are interesting to watch.

d. 21.6% said they watched Education Channel 20 at least once per month. 79-83% of those who had watched Channel 20 said they “strongly agree” or “agree” that it provides: (1) worthwhile educational programming; (2) valuable information; and (3) programs that are interesting to watch.

e. 26.6% said they watched TST Channel 21 at least once per month.

f. The most frequently mentioned method that these respondents said they used to find out about the programs they want to watch on the TST channels was “channel surfing” (43.7%), followed by “www.townsquare.tv website” (35%).

g. Disregarding the content of programs, 49.9% said the picture and sound quality of the channels delivered by TST, as compared to the other cable channels that they watch, was “about the same”; 22.6% said “lower quality.”

h. Over one-third (37.4%) said they had watched TST programs on the townsquare.tv website (of these respondents, 29% watched them on a mobile device). About one-fourth (24.1%) were not aware of the on-line option.

i. The highest indicated TST programs these respondents said they had watched at least once per month were “City Council or other Local Government Meetings” (39.1%), “Insight 7” (25.8%), and “Game of the Week” (21.8%).

j. When asked if they had watched four programs that appear on the channels quarterly or annually, “Parades, Coronations, & Festivals” had been seen by 60.6%, “Candidate Information or Election Results” by 58.3%, “High School or College Graduations” by 44%, and “Community Parks Connection” by 36.4%.

(x) When Comcast subscribers were asked to indicate the amount of their monthly cable bill that should be used to support the development of local cable programming and services in the NDC4, nearly half (48%) indicated two dollars or more.

(xi) When Comcast subscribers were asked a similar question regarding the amount of their monthly cable bill that should be used to pay for four cable programming services (ESPN, Fox News Channel, USA Network and MTV), the percentages of those who indicated \$2.00 or more for each of these services were as follows:

a. ESPN – 18.8%

- b. USA Network – 18.3%
- c. Fox News Channel – 17.1%
- d. MTV – 7.4%

(xii) When all of the survey/questionnaire respondents were asked to indicate how important they think it is to have cable TV channels that feature programs about local residents, organizations, schools, government, events and issues of interest to the NDC4, very high percentages of them indicated that this was either “very important” (55.7%) or “important” (33.3%).

(xiii) About half (51.7%) of all survey/questionnaire respondents indicated that it was either “Very Important” or “Important” to have local cable TV channels or content including programs in languages other than English for the NDC4 Member City residents.

(xiv) Over two-thirds (67.6%) of all survey/questionnaire respondents knew that they (or the organizations they are involved with) can produce programs to show on a TST channel and on the Internet.

(xv) 43% of all survey/questionnaire respondents said that they had previously provided or participated in the production of a program, or appeared as a guest on a TST program. Of these 230 respondents:

a. The most common replies when asked about the “impact” of their programs was being recognized in public by viewers (34.7%). Over one-fourth of these respondents indicated that viewers and supporters said they attended an event that was promoted in their program (27.1%), or that they got requests from viewers and supporters for more information (25.8%).

b. Over two-thirds said that the TST equipment was “always” or “usually” available when they wanted to produce a program, and 87.8% said the typical condition of the TST equipment was “excellent” or “good.”

c. 86.7% said the quantity and technical capability of the TST equipment met their current needs (“high definition equipment” was the most often mentioned need).

d. Nearly 90% said it was very important or important to have the ability to transmit programming live from locations throughout the NDC4.

e. When asked to rate the quality of various TST services, the most “excellent” or “good” ratings were given to production

equipment training services (76.2%) and playback of programs on cable TV (71%). The service with the fewest “excellent” or “good” ratings was program promotion assistance (57.5%).

(xvi) All survey/questionnaire respondents were invited to provide comments about the programming and services offered by TST. Of the 150 respondents who replied, positive/neutral comments outnumbered negative comments by nearly 12 to 1.

(xvii) All survey/questionnaire respondents were provided a list of several media-related resources and services, and were asked if they would like to use or participate in any of them if offered in the future. About 60% or more of them answered “Yes” or “Maybe” to “free access to computers and the Internet,” “training in the use of computers and software,” “advanced media production training,” and “training in the use of your own home camera and/or editing software.”

(xviii) When all survey/questionnaire respondents were asked how interested they were in seeing certain types of programs, leading responses were “local news and information” (71.4%), “live coverage of local events (sports, concerts, etc.)” (68%), “community festivals, neighborhood events” (67.5%), “programs about local history, arts and artists” (67%), “City government/public agency meetings” (64%), “program schedules for the TST channels on Comcast’s on-screen program guide” (61.9%), “City government informational programs” (60.7%), and “local sports and recreational activities” (60.7%).

During the brainstorming portion of the focus group sessions, participants identified the following community needs, interests, and concerns:

(i) When asked to identify the key issues facing them, their neighbors, community organizations, local government, and schools in the next 10 years, most often mentioned were concerns relating to:

a. Technology, Telecommunications and Media (e.g., access to technology; affordability of Internet service; cable TV service is vital to people with challenges; digital divide; impact of e-commerce; net neutrality concerns; no local news coverage; social media impact; sufficient back-up storage capacity)

b. Economic Development, Jobs, Cost of Living, Taxes, Poverty, Housing (e.g., affordable housing; lack of jobs; deteriorating infrastructure; economic development; growth/development in Inver Grove; income-related concerns; poverty; property taxes are high; sustainable tax base)

c. Communication Problems, Collaboration, Networking (e.g., collaboration of city services where possible; communicating

with diverse new populations; recruiting and retaining volunteers for community groups; not enough time) Health, Public Safety and Government-Related Concerns (e.g., access to medical services; crime prevention; delivery of public safety services cost effectively; fire safety; recreational resources need to be maintained and grow)

d. Diversity, Demographics, Immigration, and Age-Related Concerns (e.g., aging population; changing demographics; geriatric monitoring of people at home; issues regarding youth; people moving into the area [immigration])

e. Education and Arts-Related Concerns (e.g., appreciation of and growth/ support of public art; educational challenges; engaging people's artistic sides; financing education and other public services)

f. Transportation (e.g., expanded public transit throughout area; expanding trail system; people need transportation information)

(ii) When asked what makes it difficult for community organizations, local government departments, or schools to effectively communicate with their constituencies and the residents of the NDC4 Member Cities, the leading areas identified were:

a. Lack of time, funding, resources, communication skills, collaboration;

b. Communications media and technology concerns;

c. Audience-related issues, information overload, etc.;

d. PEG Access-related issues;

e. Language, cultural, age-related, geographic and other barriers; and

f. Comcast-related issues.

(iii) When asked how they could use the cable system, PEG Access channels, the community media center (TST) and the I-Net, over 180 suggestions of program content, technology, and other applications were identified. Included among them were aging-related issues; Bible trivia; calendar of events; church services for shut-ins; citizen journalism; civic events; concerts; cooking programs; driving tips; educational programs; election programs/debates; ESL programs; graduation coverage; history of our area; how to manage your money; how to start a business; job

opportunities; local news and information; more public/community meetings; political forums; youth film festival; TST program listings on Comcast's electronic program guide; ability to see programs from neighboring communities; channel for seniors; distribution of PEG programs to other media; maintain the I-Net; keep truck available for production of events; upgrade all PEG equipment to HD, and whatever develops after that; on-demand for PEG programs; Secondary Audio Program (SAP) capability in PEG channels; technology to make it easier to do live remotes.

(iv) When asked what would make it easier for their organization to use cable or PEG Access channels and a community media center, the top categories of need were:

a. PEG Access Staff, Assistance, Policies, Funding, Services, Training, Collaboration (e.g., better promotion of PEG content; classes on lighting, audio, advanced training; coordination of people with technical skills to people/groups with program ideas, evolution of TST to a CMC; grant program; incentives for kids to participate at TST; more staff; mentoring);

b. Cable Company's Infrastructure, System Design, Services, Policies, etc. (e.g., a la carte channel choices; clear indication by Comcast of available service packages that are not publicized by Comcast (e.g., lowest cost packages); CSRs that we can understand; free cable drops to public buildings, schools, etc.; more affordable rates for service from Comcast; VOD for PEG programs);

c. PEG Access Programming, Distribution, Bandwidth, Channels (e.g., a senior channel; ability to go live from locations that are not near the I-Net; content available on-demand; direct upload/transfer of finished programs from my computer to TST; TST programs on the Internet, in a searchable format); and

d. PEG Access Facilities and Equipment (e.g., equipment to go live from schools with an automated remote system; HD equipment (portable, studio, and transmission); updated council chambers equipment (school board rooms, too).

(c) *Public, Educational and Governmental ("PEG") Review.*

(i) The NDC4 retained The Buske Group to identify current and future community cable-related needs and interests in a well-organized and statistically valid process that would document and support requirements to be included in a model cable television franchise. The results of The Buske Group report are contained in the attached

Community Needs Ascertainment (“Needs Report”). The Needs Report is instructive to the NDC4 and its designated access entity TST in strategic planning for a community cable TV facility that meets the needs and interests of the community in a cost-effective manner.

(ii) The multiple information-gathering tools that were used (multiple format surveys, focus groups, questionnaires, and an independent telephone survey) happened in 2014, and the Needs Report is dated September 2014.

(iii) While Comcast may argue that the data is old or outdated, the NDC4 concludes that much of the information gathered from viewers, community members, Comcast subscribers, and local leaders continues to be instructive, relevant, and supports items that are needed over the next franchise term. There are repeated themes demonstrating important needs for technical, financial, or consumer-related language that are include in the Model Cable Television Franchise Ordinance.

(iv) Since the Needs Report covers generally a span of “ten to fifteen years” into the future, much of the information has been used in the NDC4’s strategic planning exercises and built into the NDC4’s priorities for the present and future. While specifics such as which particular pieces of equipment needed to be updated, or what programs/channels were being watched, may have changed since 2014, the NDC4 concludes that the Needs Report supports the technical and financial needs that must be fulfilled in the renewed franchise. The Needs Report presents themes that have continued to be demonstrated since 2014.

(v) Starting on page 30, the Needs Report, summarizes four questions that were discussed in multiple focus group meetings. Note that Question #1 was framed in the term of “... in the Next Ten Years?” Since participants were thinking big picture over the next decade, the common issues, challenges, ideas, and solutions are still relevant in supporting the needs and interests of the NDC4 and its Member Cities today.

(vi) Viewership, Awareness, Value of PEG and Local Community Media Center

a. Community residents and organizations are invested and engaged in the local programming that TST produces as a local media center providing vital local original information and entertainment content. The turnout and participation in The Buske Group activities as shared in the Needs Report supports that statement. Ongoing facility statistics and growing viewership analytics also support that statement.

b. The Buske Group summarized in its Needs Report a high level of participation by the community in the focus group workshops, surveys, and questionnaires that were used. After the Needs Report was published, the NDC4 moved forward with strategic planning activities to activate some of the ideas in the Needs Report, even as informal franchise renewal negotiations were not yet complete with Comcast.

c. Since the Needs Report was published, the NDC4 has increased usage of social media sites and improved its ability to televise live programming with its mobile truck from multiple locations. The NDC4 updated its city meeting streaming technology to make it more mobile friendly. In the summer of 2017 the NDC4 and TST published an upgraded web site with more mobile- and device-friendly features. All of the TST analytics continue to grow, and TST statistics support that while TST and the NDC4 may be challenged with limited marketing / advertising resources, efforts are gradually increasing the viewership and awareness of TST programming. One major piece of evidence was the 30th Anniversary TST Open House that was held in October 2017, resulting in over 500 people participating in the event. TST has thousands of cable TV viewers, and at times its videos are being seen by tens or hundreds of thousands when posted online.

d. Page 21 highlighted that in the 2014 questionnaire a very high percentage of respondents said that local channels and services were “very important” or “important.” The NDC4 concludes that with increased use of social media, decreases in metro-area broadcast resources and loss of local newspaper outlets, this answer would be even higher in 2018.

e. Page 26 covers some of TST’s most highly viewed program genres. Even with these high results reported for interest in local news, live local events and sports, city government / public meetings, etc., TST and the NDC4 maintain that interest has increased since 2014. Since that time TST has improved its live mobile truck capabilities, added more government meetings, and added more information on its web site and social media platforms. Combine that with the recent arrival of TST channels and programming lineups on Comcast’s EPG guide (addressed in more detail below) and TST now has obtained a greatly increased awareness and interest among the residents of the Member Cities in TST content.

(vii) High Definition (“HD”)

a. Starting on page 7 of the Needs Report, and supported many times throughout the Needs Report, is the growing trend for HD television viewership. In 2014 the report showed that 60% of Comcast subscribers paid extra to receive HD channels, and of those, over 25% said that they rarely or never watched non-HD channels. Comcast has stated to the NDC4 anecdotally in informal negotiating sessions that this percentage has grown since then and continues to grow. This emphasizes the urgency for PEG channels to be available in HD. While the competing franchised cable TV operator serving the NDC4 provides all seven of the PEG channels simulcast in both SD and HD, the NDC4 and TST have yet to have even one (1) PEG channel carried in HD with Comcast.

b. In an effort to acknowledge that Comcast's cable distribution technology is different from its competitor, and to meet what the NDC4 believes to be the maximum number of HD PEG channels that other local franchising authorities in the Twin Cities have obtained, the NDC4 has determined, as set forth in the Model Cable Television Franchise Ordinance, criteria which gives back one SD PEG channel for use by Comcast, and accepts a maximum of three HD PEG channels until such time as ALL cable channels are HD.

c. The NDC4 is also concerned about the ability to simulcast in both SD and HD. The NDC4 has a sizable percentage of subscribers who still subscribe to the basic one SD tier of cable service, which is still available at an affordable price for residents with limited income or still owning older television equipment. With the recent experience of some TPT Twin Cities Public Television channels being available in HD-only, we learned that the NDC4 does not want its lowest income residents to be cut off from viewing the PEG channels. Providing PEG channels in both SD and HD until such time as SD is no longer available is a high priority.

(viii) PEG Channels and Channel Placement. Many of the issues and challenges from the focus groups that are summarized starting on Page 30 of the Needs Report illustrate the importance of keeping the PEG channels together in consecutive order, keeping them on the lowest, most affordable tier of service and adjacent to other basic broadcast and cable channels, and not allowing them to be separated or moved around without the NDC4's approval. Because the NDC4 is already at a disadvantage with limited marketing and advertising budgets, this is a high priority in the renewal process.

(ix) Electronic Programming Guide ("EPG").

a. The NDC4's current Franchise has a requirement for program channel information to be included on Comcast's EPG, and the NDC4 just recently was able to implement this requirement with the staffing, software, and upload capability allowing TST and the NDC4 to provide the weekly channel schedules to the third party EPG provider contracted with Comcast. The Needs Report, starting on page 8 and referenced many times throughout the Needs Report, reinforces the importance of Comcast subscribers finding TST PEG information on the EPG. It is by far the number one tool that subscribers use in deciding what to watch. The NDC4 is confident that if another telephone survey is conducted after only a few months, with PEG channels and programs now finally presented in the same format and with the same detail as all other cable channels, viewership and awareness statistics for PEG programming will rise dramatically.

b. In fact, all of the results reported in the 2014 Needs Report should be understood to be gathered after a 29-year period of NDC4 and TST PEG channels being disadvantaged by NOT being presented on the EPG, and therefore not available for surfing, viewing, recording, or searching, on a level playing field with all other Comcast channels.

c. Utilization of the EPG for PEG programming content is very important to be retained in the NDC4's renewed franchise.

(x) Cable Television Rates and PEG Financial Support.

a. The theme of cable TV prices or rates appears a few times throughout the Needs Report. While mostly in reference to cable subscriber satisfaction with Comcast, the topic is also relevant to cable franchise renewal as it relates to requiring PEG financial support. During our informal conversations Comcast has shared their concern for not increasing the "below the line" (or additional fees) portion of the bill. Comcast points out that today's video market is competitive, and they wish to keep their prices as low as possible.

b. The Needs Report shares that while high prices are one of a few items where Comcast did not receive majority "very good" and "good" ratings from questionnaire respondents, nearly one-half of the respondents indicated an amount of their monthly cable bill that should be used to support local PEG channels and programs that was significantly higher than values assigned in a similar question about commercial channels ESPN, USA Network, Fox News, and MTV.

c. Furthermore, when the Needs Report was published in 2014, two newly-developing “below the line fees” of Comcast and other video providers were not yet as prominent in the minds of subscribers as they are today. A few years ago the industry introduced new sources of revenue in the form of a “Broadcast Fee” and a “Sports Fee” that are added onto subscribers’ bills. While they were introduced at modest levels of \$1.00 or \$1.50 per month, they have since exploded to the present where all the NDC4 Comcast subscribers pay \$7.00 per month Broadcast TV Fee (even on the \$10.51 Limited Basic tier) and most subscribers pay \$5.00 per month Regional Sports Fee.

d. The NDC4’s experience in speaking with Comcast subscribers over the years is that if subscribers are asking about the PEG Fee that is on their bill, they are pleased to learn that the funds are directed locally to the NDC4 and TST PEG facility and used locally for the production of local programming and channels, and they have no complaints.

e. In order to mitigate the trend of Comcast gradually losing subscribers to competing media/video options, the NDC4 must convert the current monthly, per subscriber PEG fee to a percentage of gross revenues similar to the Franchise Fee. This is consistent with several other recent Twin City franchise renewals completed by Comcast in the City of St. Paul, MN, North Suburban Cable Commission and the City of Eagan, MN.

(xi) Keeping up With Technology Trends

a. Starting on page 21 and many times throughout the Needs Report examples are cited of community needs for advancing and evolving technology. In other words, the NDC4/TST PEG facility, programming, and channels cannot remain the PEG operation of 1985. Comcast may argue that PEG costs, especially for things like electronics and video production hardware, decrease over time. But in fact, as technology advances and older communications tools and methods are replaced with new, the NDC4 is constantly challenged with new and changing costs. Just a few items that were not yet contemplated, or have advanced rapidly since the 2014 Needs Report was published include:

- Possible requirement for closed captioning of PEG programming
- Possible need to provide audio or visual titles in alternative languages
- Media storage and distribution- costs for in-house central storage, cloud storage, and back-up

redundancy protection, plus the exponential growth in size of digital media files

- Cyber security - growing needs for hardware, software, and licensed security products
- Changes in production process - industry trends toward licensing and service contract models, as opposed to one-time capital purchasing models - impacts things like editing computers and software, graphics and music libraries, and live presentation of government meetings

(xii) Consumer Protection. Both the questionnaire and the telephone survey used by The Buske Group in developing the Needs Report asked questions of Comcast subscribers about their satisfaction and consumer experience with Comcast. While Comcast generally received good ratings, there are a couple of specific areas where requirements in the franchise are needed to allow the NDC4 and its Member Cities to continue protecting local cable subscribers.

(xiii) Customer Service Reports. By collecting regular customer service statistical reports from Comcast the NDC4 is able observe trends, measure them against complaint call volume at the NDC4 office, communicate with Comcast staff and ask questions early, helping to proactively address issues and catch issues locally that may not be readily observed at a Twin Cities-wide level. Continuing to receive these regular customer service reports and enforce the FCC customer service standards is another priority for the franchise renewal.

(xiv) Escalated Complaints Team. One ongoing challenge is the ability to get a good customer service representative on the phone who can easily answer a subscriber's questions and get their problems resolved. The NDC4 has been able to assist Comcast subscribers by documenting their complaints, forwarding them in writing to a Comcast Escalated Complaints Department that is empowered to promptly resolve subscriber problems, and follow up with confirmation that issues are resolved to the subscribers' satisfaction. This service benefits both Comcast and the community, by acting as a liaison between customers and a large corporation to help retain subscribers, solve problems for residents, and retain viewers of our local community programming on Comcast channels.

(xv) Local Comcast store/office in Inver Grove Heights.

- a. As referenced throughout the Needs Report, especially on pages 11, 41, and in the conclusions on page 80, the NDC4 commissioners identified retaining the local Inver Grove Heights Comcast store location as a major priority for franchise renewal. After Comcast closed its St. Paul store that was located in its

headquarters at 10 River Road Plaza, the Inver Grove Heights store became a busy location for many area residents who did not want to drive to Richfield, Woodbury, or Highland Park as the next closest stores. While Comcast reminds us that they have many online and automated electronic services now, and they do provide equipment shipping via UPS Stores, we find that lower income, less tech-savvy, subscribers who do not have digital access, or subscribers who may have communications challenges or disabilities, are the most likely to need a personal visit to the store to get a billing problem explained, pay a bill with cash and get a receipt, or swap out a piece of equipment. These customers often report to us that they could not get their issue resolved over the phone, but they were very pleased with the help they received in person at the store. Unfortunately, these same subscribers often have transportation challenges in going long distances to visit the Comcast store. This is why it is so important for the NDC4 to retain a local store in the franchise area of the seven (7) Member Cities.

b. However, while the Franchise was being extended multiple times between 2015 and the current expiration of July 31, 2018, Comcast gave notice and vacated its Inver Grove Heights location, opening a new location in Eagan that technically meets the existing Franchise requirements because it is located in Dakota County, but not located within the seven Member Cities of the NDC4 franchise area. To ensure that the store does not move even further away in the future, the NDC4 finds that there is a need that the Comcast store location be located in Dakota County and within 10 miles of the NDC4 Cable Commission office.

(xvi) PEG Access Operations, Facilities and Equipment.

a. Starting on page 43 of the Needs Report the PEG needs and interests of the NDC4 Member Cities are described and addressed. Even after four years, the general overview of the facility, its mission, programming, and channels is still accurate. One addition is that the seven access channels are now televised on both Comcast and CenturyLink cable systems. The NDC4 has retained the same channel numbers and general programming categories on the seven channels, and now more than ever it is important for the NDC4 planning and marketing efforts to be consistent.

b. Starting on page 46 of the Needs Report the description of the NDC4 and TST facilities, funding structures, and operational statistics have not changed drastically since 2014. Most of the equipment replacement projects identified and photographed have not yet happened. As detailed in the bullet points on page 70,

many items that were 10+ years old in 2014 are now 14+ years old. One capital project that has taken place is the HD upgrade to truck equipment (cameras and control/switching gear, but not the truck chassis itself or the truck generator). It should not be assumed that the dollar value of this projects can be deducted from the total PEG capital support to be provided by Comcast in the next ten-year cycle, however, as the equipment replacement cycle throughout the facility has now advanced by four more years, so items that were relatively new in 2014 have now come close to their (for example) five-year replacement span, and must be replaced again soon.

c. Referencing the ten-year equipment replacement phases mentioned on page 89 of the Needs Report, the needs and projects remain the same whether the ten-year cycle ran from 2015 to 2025, or now has been delayed to 2018-2028. The only change is that a couple of items that were replaced between 2014 and 2017 will now become obsolete in 2017, 2019 or 2027 depending upon whether they had a three-, five-, or 10-year lifespan. The NDC4 finds that there should be no reduction in needed PEG financial support due to three (3) years of franchise extensions (2015-2018) , while much of the PEG equipment is 10- to 14- years old and ready to be replaced.

d. Specifically on pages 89-91 of the Needs Report, the equipment inventory details items i. through ix., the majority of these projects remain on the needs list. Two exceptions are part of item iv., the camera/control equipment for the truck was upgraded to HD in 2017, but not the truck chassis itself (2002 vehicle) or the generator. Under item vi. one pilot/test system for replacing the current Final Cut Pro 7 edit suites with Adobe Premiere Creative Cloud is being tested now before full replacements of the other suites is decided. The NDC4 has discovered that the computers, software, and storage will be more expensive than originally anticipated. In fact, the cost for each edit room is approximately doubled from \$10,000 to \$20,000 each.

(xvii) Conclusion. In a review of the Needs Report pages 73-94 RECOMMENDATIONS REGARDING COMMUNITY CABLE-RELATED NEEDS AND INTERESTS, the NDC4 finds that the recommendations remain relevant and accurately reflect the priorities that are included as requirements in the Model Cable Television Franchise Ordinance.

(d) *I-Net Technical Review and Needs Assessment.*

(i) The Franchise granted to Comcast by the Member Cities of the NDC4 had an original term of April 1, 2000, to March 31, 2015. Comcast

followed federal rules for cable renewal by requesting a renewal in 2012. The NDC4 implemented steps to prepare for renewal, including contracting with consulting experts to develop reports regarding the community's cable-related needs and interests. One such report is the above-referenced I-Net Technical Review and Needs Assessment Report ("CBG Report") attached as Exhibit D relating to the Institutional Network ("I-Net").

(ii) As summarized in the introduction of the CBG Report on pages 1-2, the consultants used a number of methods to review and analyze the community's needs and interests and to provide findings, conclusions, and recommendations concerning the I-Net. These experts were working with a time period of the "current" Franchise term of 2000 to 2015, and assuming that the "future" term would be 10 to 15 years between 2015 and 2030 (Minnesota State law limits a cable franchise term to a maximum of 15 years).

(iii) As mentioned in the study methodology section of the CBG Report pages 2-3, surveys, focus group meetings, and information from Comcast were gathered in the fourth quarter of 2013, with the final report dated February 2014.

(iv) Due to several circumstances during the three-year renewal period 2012 to 2015, the Franchise has been extended multiple times. Reasons for extensions included a proposed corporate transfer of ownership initiated by Comcast and the application and eventual grant by the NDC4 of a competing cable franchise to CenturyLink. The current Franchise extension expires July 31, 2018. Given the passage of time, the NDC4 is now providing updates and changes relevant to the CBG Report that have occurred since 2014, including insights into the current community needs and interests for the I-Net.

(v) As stated throughout the CBG Report, I-Net Users rely upon the I-Net as a critical fiber network providing necessary connectivity for data, voice, video, and Internet connections used by Member City (including police, fire, parks, public works, and administrative departments), school, and county sites.

(vi) As reported in the CBG Report, I-Net Users have been pleased with the reliability, connectivity, design, management, and value provided by the I-Net. I-Net Users have continued needs for the I-Net to provide critical communications infrastructure. However, as the Franchise was extended multiple times between 2015 and April 2018, the I-Net Users also have a need for certainty in planning for their ongoing critical connectivity.

(vii) Since 2015 several I-Net Users have embarked upon alternative arrangements and joined alternative partnerships for fiber connectivity. Specifically, the NDC4 understands that some of the three public school districts have made arrangements for fiber connectivity with a public educational cooperative known as TIES (Technology Information and Educational Services). The four largest Member Cities (Inver Grove Heights, Mendota Heights, South St. Paul, and West St. Paul) are part of a recently-formed cooperative between Dakota County and eleven (11) cities in Dakota County, discussing a public fiber network that may provide critical fiber connections to its members. There may also be some I-Net Users that have made arrangements for leased fiber or other connections to provide them with the certainty that they need as they await the renewal of the Comcast/NDC4 Franchise.

(viii) However, as the NDC4 has continued to negotiate with Comcast in the informal franchise renewal process, and has continued to present various I-Net services proposals from Comcast to the I-Net Users to gauge the ability of Comcast's various proposals to meet the ongoing needs and interests of the Users, it has continued to be clear that the I-Net Users value the dark fiber network that the I-Net Users invested in (by reimbursing Comcast for construction costs plus 12% markup) and remain very interested in utilizing this fiber as either their primary (main) connection for all or some of their sites, or in utilizing this fiber as an important secondary (back-up/redundancy) network for all or some of their sites.

(ix) In the first several years of informal franchise renewal negotiations (2012 through 2017) Comcast made clear its strong position that it would "not" continue to provide dark fiber I-Net connections in a renewed franchise. While the NDC4 retained its position that language in the current Franchise requires the I-Net to continue through any renewal or transfer of ownership of the Franchise, this position was disputed by Comcast. Comcast presented several informal proposals that involved "managed services" with monthly service costs (not dark fiber) and/or cable-modem (internet-driven) connections. I-Net Users responded that these types of services will not meet the needs of the I-Net Users, including the public school districts, the cities, libraries, and other public sites. It wasn't until September of 2017 that Comcast first presented an informal franchise renewal proposal that would have allowed the continued use of the existing dark fiber I-Net.

(x) Unfortunately, by September of 2017 many of the I-Net Users had been compelled to investigate, and in some cases implement, alternative dark fiber connections for their critical communications needs, because of their need for planning and certainty as referenced earlier in this document. Again, even with some of these alternative connections in mind, I-Net Users have expressed the need and the value of being able to

continue using the existing NDC4 dark fiber I-Net (for which they reimbursed Comcast's costs plus a 12% markup) as either a primary (main) connection for all or some of their sites, or as an important secondary (back-up/redundancy) network for all or some of their sites.

(xi) Because of the passage of time and some I-Net Users' needs to pursue alternative connections, the NDC4 has written into the Model Cable Television Franchise Ordinance, a process to review the sites and confirm with I-Net Users which fibers are in use and which may be available for Comcast to re-capture and re-purpose. It is also possible that some I-Net User sites (listed on pages 4-5 of the CBG Report) have closed or moved. The Model Cable Television Franchise Ordinance contemplates updating the site list in the first 90 days of the renewed franchise.

(xii) While the CBG Report mentions needs for design changes, updates, or additional I-Net User locations, the proposed Model Cable Television Franchise Ordinance does not include the addition of new sites or any requirement for the construction of new fiber. The NDC4 has limited the continued use of the NDC4 I-Net fiber to the current existing sites.

(xiii) On page 10 the CBG Report references network management. While the entities mentioned as managing the I-Net ring (State of Minnesota and MN.IT) were accurate at that time, again due to the passage of time since the CBG Report was drafted, some I-Net Users are now also working with public cooperative organizations such as TIES, LOGIS, and a newly forming Dakota County fiber network cooperative. St. Paul Pioneer Press stories in December 2017 and January 2018 reported structural changes at TIES that may or may not impact the NDC4 educational I-Net Users needs and interests in the NDC4 I-Net fiber. The Model Cable Television Franchise Ordinance will allow the NDC4 to identify which I-Net User sites need to continue using the NDC4 I-Net fiber during the first 90 days of the renewed franchise.

(xiv) Page 10 and page 22 reference possible scaling or upgrading of the equipment at star locations and on the ring. While the CBG Report sites current capacity of 1 Gbps on the ring (backbone) and 100 Mbps connections at star locations, it is possible that some of this equipment has already been upgraded or will be upgraded in the near future. The nature of the dark fiber allows I-Net Users to determine and implement upgrades as needed.

(xv) In reference to the findings in the technical review as reported on pages 10-11, the NDC4 assumes that Comcast's ongoing maintenance costs of the fiber itself have been minimal, and the NDC4 has written into the Model Cable Television Franchise Ordinance the opportunity for

Comcast to document its reasonable, ongoing maintenance costs for those strands of the network that are being used by I-Net Users, and to be reimbursed by the I-Net Users for ongoing maintenance costs.

(xvi) In summarizing findings from focus group discussions with I-Net Users pages 12-21, the CBG Report mentions the affordability of the existing I-Net. It is important to emphasize that the I-Net Users reimbursed Comcast in the first five years of the I-Net project (during the term of the current franchise) for the actual cost of building the NDC4 I-Net fiber. I-Net Users paid to Comcast an amount of approximately \$20,000 per site, plus a 12% markup, and for those I-Net Users who financed the cost with monthly payments over five years, an 8% interest rate. Comcast received a total reimbursement of well over \$800,000 toward the costs of constructing the I-Net fiber which was included in Comcast's network upgrade construction at the time. I-Net Users paid this per-site construction reimbursement cost with the knowledge that there would be no monthly usage fees (as agreed upon in the franchise by Comcast), and that the Franchise included language allowing the usage of the I-Net to continue through any renewal of the Franchise. See Section 7.4 of the current franchise: "*The I-Net shall be for the exclusive use of the City, the Commission and I-Net Users throughout the term of the Franchise, or any renewal or extension thereof.*" Emphasis added.

(xvii) In reference to future needs and interests, such as possible enhancements mentioned on page 14-21 of the CBG Report, again some of these specifics have evolved since 2013-14 when the CBG Report was completed. The NDC4 anticipates that specific details will be determined in the first 90 days after the renewed franchise is adopted, and that the emphasis will be on continuing use of existing fiber for those I-Net User sites that choose to continue, some as their primary (main) fiber connections and some as important secondary (back-up/redundancy) connections. The NDC4 is not contemplating requiring Comcast to add new fiber sites to this existing I-Net.

(xviii) As a follow-up to a finding on pages 15 and 20 of the CBG Report regarding affordability, the NDC4 stresses that while the existing NDC4 I-Net has been cost effective as the I-Net Users paid up front to reimburse construction costs, all of the I-Net Users also bore all of the associated costs of any dark fiber network, including scalable electronics to carry their signals on the fiber, as well as network management, content, ISP, voice, video, security, and related costs that are included with any institution's critical network infrastructure for both LAN and WAN connections. In the NDC4's ongoing conversations with I-Net Users reviewing several proposals for other offerings from Comcast (such as managed services or cable-modem connections), the NDC4 I-Net Users continue to require a dark-fiber model, allowing them to control not only the traffic that travels on the dedicated I-Net fibers, but also the costs

associated with the network. I-Net Users reiterated the importance of network security and their need for separation (on dedicated strands of fiber) for affordably and securely transporting sensitive public safety information and files such as patrol car video or real-time server backups.

(xix) Pages 31-32 of the CBG Report refer to needs for ring reconfiguration. While the NDC4 does not intend to require Comcast to construct major new fiber installations, there are a couple of sites that were originally configured as star locations (due to preferences of the I-Net Users at that time), but had available ring fiber that could be used to reconfigure a star site to a ring site. South St. Paul City Hall is one such example. Again, I-Net Users will be asked to identify their specific site needs within the current I-Net in the first 90 days of the renewed franchise.

(xx) Pages 32-33 of the CBG Report reference the need for dedicated point-to-point connections for high capacity video origination sites. As mentioned in #10 page 32, the NDC4 and TST continue to need the NDC4 I-Net fibers that are used for video origination.

(xxi) In reference to the conclusions and recommendations on pages 30 to 34 of the CBG Report, the general themes of the report remain relevant and accurate to-date. The one most important take-away is that the NDC4 I-Net Users need a dark fiber network to serve their vital connectivity requirements, with the scalability, reliability, and cost-effectiveness that they have experienced since the NDC4 I-Net was developed. The I-Net Users need to continue using the Comcast dedicated dark fiber I-Net with a modest, affordable monthly maintenance cost only, and once they have the certainty of another 10-year franchise term, they will be able to plan and implement their ongoing use of the fiber accordingly.

(xxii) For any I-Net User sites that are no longer in need of the I-Net fiber, these sites will be identified, and Comcast will be allowed to re-capture/ re-use those strands of fiber despite the fact that the construction costs for such fiber was paid for by the I-Net Users.

(xxiii) The I-Net Users spent a considerable sum to reimburse Comcast for its cost of constructing the fiber, and must have continued use of this fiber so that public funds can be cost-effectively used toward continued high-quality, high-capacity, high-security connectivity via investments in upgraded electronics and network equipment.

C. BACKGROUND AND PURPOSES OF THIS REPORT

1. Why renewal is important and why this report is being submitted.

Cable systems operate pursuant to franchises issued by franchising authorities. In Minnesota the franchising authorities are local governments, counties and cities. A

franchise authorizes a cable operator to provide cable service, and to occupy public rights-of-way for that purpose. The Franchise sets out the terms and conditions under which cable service is to be provided. The Franchise currently held by Comcast in the NDC4 franchise area was granted for a term of 15 years. The term of the Franchise was originally set to expire in March 2015, but the term was extended by mutual agreement of Comcast, the NDC4 and its Member Cities to provide sufficient time to complete the renewal process under the Cable Act.

When a franchise is about to expire, a franchising authority has an opportunity to review the performance of the cable operator, and ensure that the cable operator will meet the cable-related needs and interests of the community for the future. The opportunity is rare because franchises are issued for periods of years - typically 10-15 years. In this case the current franchise was effective in 2000 and has now been in place for 18 years.

This report, together with its exhibits, identifies the future cable-related needs and interests of the community. Based on this information, the NDC4 and its Member Cities may ultimately determine whether Comcast is entitled to renew its Franchise in accordance with the procedure of the Cable Act.

Cable systems once served merely to retransmit broadcast television signals. They have now, however, become “a dominant nationwide video medium,”⁸ with many companies having rebuilt their systems with expanded capacity to meet the growing demands for voice, video and broadband services desired by subscribers. In fact, even though the broadcast networks’ audience share had steadily declined, the cable industry now has 52 million U.S. cable television subscribers.⁹ The development of these capacity rich cable systems has the potential to significantly change the way people live, work, and interact with each other by providing users access to vast quantities of information, services and entertainment in a variety of forms. As a result, a local government has a compelling interest in ensuring that a cable system is adequately designed and constructed to help satisfy the community’s cable-related needs and interests; that quality cable service is provided and that cable services are available to all. These interests are reflected in federal, state and local law.¹⁰

The foregoing interests are particularly strong because, in order to operate, cable systems must occupy scarce and valuable public property - property that the public effectively pays to acquire and maintain. Comcast’s cables are on poles and underground in rights-of-way throughout the Member Cities. The NDC4 and its Member Cities act as trustee of the public’s interest in this property, and they have a compelling interest in ensuring that cable operators use this public property in a way that benefits the entire community. This means, among other things, that the NDC4 must ensure that public property is used in optimal ways, and that the public receives fair compensation - in the form of franchise fees and other conditions - for the use of its public property to provide cable service. As

⁸H. Rep. No. 862, 102d Cong. 2d Sess. at 50, *reprinted in* 1992 U.S.C.C.A.N. 1231, 1232 (1992).

⁹<https://www.ncta.com/chart/cables-customer-base> - 2017 data.

¹⁰For federal law, *see, e.g.*, 47 U.S.C. §§ 544 (requiring facilities and equipment); § 546(c)(1)(D) (satisfying community’s cable-related needs and interests); § 543 (ensuring reasonable rates), § 541(a)(3) (anti-redlining), § 531 (access channels).

a matter of law, these interests and others are protected, in part, through the franchising process.

Many in the community no doubt want the NDC4 simply to put the Franchise up for competitive bid and then award franchises to the best cable operator. That, however, is not an option under the Cable Act.¹¹ Comcast was granted a Franchise from the NDC4 and its Member Cities and thus the NDC4 and its Member Cities must follow the requirements of the Cable Act when considering the renewal of that Franchise.

2. *The Cable Franchise Renewal Process.*

In 1984, the federal government passed a law that was intended to provide cable operators with a fair opportunity to obtain renewal. To that end, the 1984 federal law - the Cable Act - establishes two possible ways a community can respond to a request for franchise renewal: informal renewal negotiations¹² and the statutory formal renewal process.¹³

Under the informal process, Congress contemplated that a franchising authority and a cable operator will meet informally and attempt to resolve franchise issues through negotiation. If the issues are resolved a franchising authority can, after providing the public with an opportunity for comment, adopt a renewal franchise. An informal proposal can be rejected at any time. In the present case the NDC4 and Comcast have engaged in good faith informal negotiations since 2014, having met face to face over a dozen times. Unfortunately, the NDC4 and Comcast have been unable to reach an informal agreement.

Alternatively, either the cable operator or a franchising authority can invoke the more formal renewal procedures set out at 47 U.S.C. § 546(a)-(g). These “formal” procedures give a cable operator the opportunity for a fair hearing on its renewal proposal. At the same time, the procedures ensure that a franchising authority can deny renewal if a cable operator has performed poorly in the past, or is not qualified, or is not willing make a reasonable proposal to meet the community’s needs and interests for the future. Under the formal process, a community is given authority to define the needs and interests of the community. It is up to the cable operator to then submit a proposal that is reasonable to meet the community’s cable-related needs and interests taking into account the costs of meeting those needs and interests - the focus is the entire community not just the individual subscriber currently receiving service.

The legislative history of the 1984 Cable Act explains:

The ability of a local government entity to require particular cable facilities (and to enforce requirements in the franchise to provide those facilities) is essential if

¹¹47 U.S.C. § 521 et. seq.

¹² See 47 U.S.C. § 546 (h).

¹³ See 47 U.S.C. § 546 (a)-(g).

*cable systems are to be tailored to the needs of each community [and the legislation] explicitly grants this power to the franchising authority.*¹⁴

More specifically, the formal renewal process under the Cable Act is a four-stage process.

In the first stage, a franchising authority must conduct a proceeding to identify future, cable-related needs and interests of the community, and to review the past performance of the cable operator serving the community.¹⁵

Once that proceeding is complete, a franchising authority may issue a Request for Formal Renewal Proposals (“RFRP”). Because each renewal proposal is evaluated on its own merits, this RFRP cannot simply be a competitive bidding document.¹⁶ The Cable Act specifically allows a franchising authority to establish certain requirements in an RFRP. In particular, a franchising authority may:

- (a) require “that channel capacity be designated for public, educational or government use, and channel capacity on institutional networks be designated for educational or governmental use, and may require rules and procedures for the use of channel capacity designated....”¹⁷
- (b) “establish requirements for facilities and equipment. . .”¹⁸
- (c) require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support;¹⁹
- (d) require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service;²⁰
- (e) establish requirements for system upgrades to ensure that the community has adequate infrastructure.²¹

The Cable Act also states that “A franchising authority may establish and enforce customer service requirements of the cable operator, and construction schedules and other construction-related requirements, including construction-related performance

¹⁴1984 House Report at 26, 1984 U.S.C.C.A.N. at 4663. Congress intended that: “the franchise process takes place at the local level where [local] officials have the best understanding of local communications needs and can require cable operators to tailor the cable system to meet those needs.” 1984 House Report at 24, 1984 U.S.C.C.A.N. at 4661. However, the Cable Act does not give local government unlimited authority to impose conditions on cable operators. For example, it limits local authority to require an operator to carry a specific programming service.

¹⁵47 U.S.C. § 546(a).

¹⁶47 U.S.C. § 546(b).

¹⁷47 U.S.C. §531(b).

¹⁸47 U.S.C. §544. The legislative history explains that this includes requirements for institutional networks, studios, equipment for public, educational and government use, two-way networks.

¹⁹47 U.S.C. § 541 (a) (3).

²⁰47 U.S.C. § 541 (a) (4)

²¹47 U.S.C. § 546(b) (2).

requirements, of the cable operator.”²² The NDC4 believes that this language permits the NDC4 to establish these requirements unilaterally in a cable television franchise ordinance, along with various other requirements established pursuant to the NDC4’s police and other governmental powers.

In the next stage of the renewal process, Comcast must submit a renewal proposal in response to the NDC4’s RFRP. “Any such proposal shall contain such material as the franchising authority may require.”²³ If Comcast submits a timely and proper response,²⁴ the NDC4 has four (4) months to evaluate the proposal, and decide whether to grant renewal based on the proposal or to preliminarily deny renewal.²⁵

Finally, if franchise renewal is preliminarily denied, and Comcast desires it, the NDC4 must commence an administrative proceeding. The four issues that are considered at that proceeding are whether:

- (a) Comcast has substantially complied with the material terms of the existing franchise and with applicable law;
- (b) the quality of Comcast’s service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
- (c) Comcast has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in Comcast’s proposal; and
- (d) Comcast’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.²⁶

This report is submitted to discharge one of the NDC4’s important responsibilities under the Cable Act. With the submission of this report, the NDC4 hereby concludes step one of the formal process. This report reviews the past performance of Comcast and identifies the future cable-related needs and interests of the NDC4 and its Member Cities.

Consistent with the Cable Act, this report identifies needs and interests, and the accompanying RFRP identifies the requirements that must be satisfied in a proposal, in accordance with the Cable Act sections quoted above. In addition to restating some of the key points of this report, the RFRP identifies a “Model Cable Television Franchise Ordinance” that satisfies the requirements that the NDC4 recommends should be established.

²² 47 U.S.C. § 552

²³ Id.

²⁴ The proposal must be submitted by a deadline established by NDC4. If Comcast fails to do so, then its rights are ended.

²⁵ 47 U.S.C. § 546(c).

²⁶ Id.

While this report identifies needs and interests broadly, not every need and interest identified has been translated into a requirement that is included in the RFRP. That is because the federal law includes some limitations on what may be required in an RFRP.

3. *How the assessment was conducted, and how the NDC4 arrived at its conclusions regarding cable-related needs and interests.*

As described herein, NDC4 retained experts to assist in the conduct of the needs assessment required under the Cable Act. Specifically, NDC4 retained CBG Communications, Inc. and The Buske Group. The reports generated by those experts are attached to hereto. NDC4 has noted changes to those reports resulting from the passage of time early in this document.

D. IDENTIFICATION OF FUTURE CABLE-RELATED NEEDS AND INTERESTS

1. *Developments in the Industry.*

The cable industry is changing dramatically. What was once an industry primarily focused on delivering television signals to the home is developing into an industry that is providing a critical voice, video and broadband services that are changing the way the people receive information, shop and communicate. Cable now delivers a wide variety of two-way cable services through modern, upgraded cable systems. Cable services will increasingly be showcased through the continued advancement of other significant technological advances, such as further digital compression, interactive video, and “ultra” high-definition television.

The potential impact of an advanced cable system on a community cannot be underestimated. New programming services are developing every year. According to the FCC’s report on competition in the delivery of video programming, in 1993, there were approximately 100 national cable video networks; by 2006, there were well over 560.²⁷ In 2012 there were 900+ TV Networks according to the National Cable and Telecommunications Association (NCTA).²⁸ The FCC’s 2012 report on competition in the delivery of video programming estimates this number at 800.²⁹

However, in order to fully achieve the promise of cable technology, companies such as Comcast must upgrade their networks, to increase capacity, reliability, and responsiveness. This typically requires a system rebuild to take advantage of “fiber optic” technology, which is “an ideal medium for transmitting vast amounts of information – data, graphics, and even video – at high speed.”³⁰

There are several reasons why development of the next generation of cable systems ultimately depends on development of fiber-based cable systems. Traditional all-coaxial

²⁷See Thirteenth Annual Report - Annual Assessment of the Status of Competition in the Delivery of Video Programming, released January, 16, 2009, paragraph 20.

²⁸<https://www.ncta.com/cables-story>

²⁹See Fourteenth Annual Report - Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, released July 20, 2012, paragraph 43.

³⁰NCTA “High Speed Internet Access via Cable,”www.ncta.com/broadband.

cable systems have the capacity to transmit large amounts of information, but fiber optic technology provides much greater useable capacity or “bandwidth” and as equipment improves, the difference in the capabilities of the two types of systems will become even more dramatic.

Based upon information made available by Comcast, the Comcast cable system serving the Member Cities has a total of 750 MHz of bandwidth, and uses a design technology called *hybrid fiber coax* or HFC. HFC uses fiber optic cable to distribute signals from the headend to hubs, and then to nodes distributed throughout the area. From those nodes, coaxial cable carries the signals to the homes in the area. When compared to *trunk and feeder*, the previous design technology, HFC has higher channel capacity, higher picture quality, higher reliability and lower maintenance cost.

The next level of technical capacity would be a “Fiber To The Premises” (FTTP) design, which replaces the coaxial cable drops from the neighborhood nodes to subscribers with significantly higher capacity fiber optic cable. This design is what Verizon’s much-hyped “FIOS” (Fiber Optic Service) is based on. In the long run of more than five years, many industry experts expect that the cable industry will experience consumer pressure to expand bandwidth as more digital video programming is available and as individuals continue to expand their uses of computers to include more functions that require higher upstream capacity, such as gaming, online video and video-conferencing. The logical step, then, would be to move to a FTTP design.

In addition to being upgraded to incorporate fiber, the cable industry is concluding that systems need to be two-way activated. Two-way activation is required for providers to be able to readily offer many advanced, interactive television services – services in which the set top interacts with a server.³¹ Cable companies are deploying interactive television services which rely on two-way activation, including Interactive Program Guides; Personal Video Recorders; which provide advanced features on the cable set-top box; Video on Demand; Enhanced TV Services which allow consumers to obtain more information about programs and commercials they are watching, for example; access to the Internet over the television set; and locally-oriented interactive sites which “offer customers information which is not available on the Internet but which provides an “Internet-like” interactive experience.”

Interactive television provides a unique opportunity for PEG providers to better serve the community as well. In fact, because of the very nature of PEG – public access allows viewers to actively participate in creating programming, government access allows for increased citizen involvement and participation in government; and educational access involves participation by students in learning – PEG and interactive television “complement each other because both focus on a specialized interactive community of specific interests in a specific geographic area.”³² One application is the interactive council meeting, which allows viewers at home to participate in Council meetings by

³¹Ellis, Leslie, “In-Band, Out-of-Band, Whatever it Takes,” Multichannel News, May 28, 2001.

³²Afflerbach, Andrew, “Interactive PEG: A Technical Strategy for Implementation”, Community Media Review, the Journal of the Alliance for Community Media, Winter 2000.

text, voice, or video link, depending on technical capabilities. There are several other applications, such as GIS mapping services and enhanced interactive distance learning, as well as enhanced interactive service for government information that is not available on the web. Interactive television functionality can be provided for television channels and if the technology is present on the system then PEG programmers can utilize the technology to enhance the services they provide to their communities.

Moreover, franchising authorities in many communities are taking advantage of the advances in technology to require cable operators to provide “institutional networks”³³ and to devote significant two-way capacity for PEG use of the system. These requirements can include requirements, for example, for linking schools, libraries and government agencies together, and providing links to the Internet. The goal is not simply to allow these agencies to communicate more effectively internally (or with one another). The goal is to obtain the resources required to provide better services to the public. The potential benefits of advanced networks to communities are widely recognized, particularly when connected to other communications networks, such as the Internet.

Of course, not every system will go “high-tech” -- at least not immediately. For some small systems situated in rural, isolated locations, for example, the cost of providing a high-capacity connection to every customer may be prohibitive. But, general industry trends suggest that there are needs and interests in having (1) high-capacity, reliable, high quality, fiber-based (or equivalent) cable systems, with activated, interactive capabilities; (2) a system that includes an I-Net and that devotes a significant amount of capacity for PEG use; (3) a system interconnected to other telecommunications systems, including other local cable systems and the Internet. Further, because of the importance of these systems, a community would be remiss if it did not ensure that all of its citizens have an opportunity to take advantage of system benefits.

2. *The Needs Assessment.*

The NDC4’s work in ascertaining cable-related needs and interests confirms these points. Indeed, the Needs Assessment confirms that there is a great need and interest in having advanced cable systems providing service throughout this community.

(a) The community.

The Member Cities’ have a collective population of approximately 90,000, encompassing approximately 36,000 households.³⁴ Of those, an estimated 20,000 subscribe to Comcast cable television services.

(b) Cable-related needs and interests.

³³Institutional networks are communications networks constructed by cable operators to provide service primarily to non-residential customers.

³⁴Based on US Census data, <http://quickfacts.census.gov/qfd/states/41000.html>

The Needs Assessment Reports prepared by CBG Communications, Inc. and The Buske Group attached hereto as Exhibits C-D, identify the NDC4's and its Member Cities' future cable-related needs and interests.

(c) Miscellaneous.

Under the Cable Act, there are a number of areas where a community must establish requirements in an RFRP; a number of places where requirements cannot be established; and some areas where the community may act unilaterally. In this case, we propose to establish requirements in an RFRP, as contemplated by the Cable Act. To this end, we have developed a Model Cable Television Franchise Ordinance which establishes certain contractual obligations Comcast would be required to assume. The provisions that are included in the Model Cable Television Franchise Ordinance are justified by the NDC4's needs and interests, although certain requirements are not subject to the Cable Act's "needs and interests" test (the requirements involve an exercise of the NDC4 and its Member Cities' basic police and governmental powers). Among other things, the NDC4 and its Member Cities conclude:

(i) The NDC4 is concerned that a long franchise term of fifteen (15) years may not serve the public interest, both because the system may become outdated, and because PEG and I-Net requirements may need to be revisited. Changes in law could also require that some obligations be changed. Also, because the Cable Act protects a cable operator against unfair franchise denial, a shorter term may be more reasonable. The NDC4 recommends that the Member Cities grant a term of 10 years if all the needs and interests identified in this report are adequately met.

(ii) The option of charging up to a 5% franchise fee should be included in any renewed franchise. A franchise fee is a standard part of the "rent" that is charged to cable operators for use of the Member Cities' valuable public rights-of-way. By charging rent, the Member Cities ensure that the cable operator pays a fair amount to use the rights-of-way. The franchise should establish a broad definition of gross revenues which ensures that the cable operator pays the franchise fee based on all revenue which each Member City is entitled to collect the franchise fee on.

(iii) A franchise should include provisions that ensure that the cable operator will comply with its obligations, and which ensure that each Member City bears no cost as a result of the use of the rights-of-way by the cable operator.

(iv) A franchise should ensure that the cable operator will use the rights-of-way in a manner that minimizes the risk of damage and undue interference with public and private property. The franchise should ensure that the cable operator's use is secondary, and therefore should be clear that no property rights or any other implied rights are being granted. The

franchise should be subject to conditions that ensure the goals of each Member City can be satisfied without undue public burden. The franchise must require the operator's compliance with all local code requirements.

(v) A franchise should ensure that a cable operator will not discriminate against potential subscribers, employees or subcontractors on any unlawful ground.

(vi) The system should be required to provide good customer service in accordance with the franchise based on the objective standards and polices of the Federal Communications Commission. Rates shall be subject to regulation to the extent not prohibited by law.

(vii) The NDC4 should have the tools to monitor and enforce franchise requirements. A franchise should provide those tools, and should require a cable operator to comply with such requirements, including those with which a cable operator disagrees, unless and until the cable operator has obtained relief in a court of competent jurisdiction.

(viii) A franchise is personal in nature and based on an assessment of the unique financial, legal, and technical qualifications of the individual cable operator, along with that cable operator's history of performance. Thus, the franchise should ensure that no one may succeed the Comcast's rights, by any means, without the Member Cities' permission.

(ix) Comcast should be subject to the ongoing exercise of each Member Cities' police, regulatory and other powers. Each Member City needs the ability to respond to changing circumstances over time.

E. FRANCHISE CONDITIONS AND OTHER REGULATORY ISSUES

A renewal franchise must contain provisions that ensure franchise requirements are properly implemented. The franchise must also protect the Member Cities and their citizens, including cable subscribers, from unreasonable business practices and allow the Member Cities to manage their public rights-of-way fairly and effectively.³⁵ Ultimately, the conditions of a franchise serve paramount public needs and interests. The NDC4 can establish certain franchise conditions unilaterally.

Key provisions of the franchise, in addition to PEG requirements and I-Net obligations discussed *infra*, are discussed below.³⁶ The discussion is not intended to be comprehensive, though it does provide the rationale for the provisions discussed.

1. Grant of Franchise

³⁵ Local law may also address these issues.

³⁶ Unless otherwise defined herein, capitalized terms in this section are used as defined in the franchise agreement.

The Cable Act authorizes the Member Cities to award one or more franchises for the provision of cable service within the boundaries of the Member Cities.³⁷ The Model Cable Television Franchise Ordinance is authorized by the Cable Act, and allows Comcast to occupy or use the Member Cities' rights-of-way to provide cable service.

The NDC4 understands that Comcast may provide other, non-cable services to its customers. The Cable Act does not apply to telecommunications services Comcast may provide to its customers. Comcast is not required under the Cable Act to obtain a Cable Act franchise for the provision of telecommunications services. And the NDC4 and the Member Cities cannot utilize their authority under the Cable Act to prohibit, limit, restrict, or condition Comcast's provision of telecommunications service.³⁸

The NDC4 and its Member Cities can, however, require appropriate compensation for the use of the public rights-of-way for the provision of telecommunications service and are authorized to manage their public-rights-of-way through non-franchise means.³⁹ Therefore, consistent with the separation of cable and telecommunications regulatory authority under federal law, the franchise only authorizes the occupation or use of the Member Cities' public rights-of-way for the provision of cable service and to provide such other services as are required to meet Comcast's PEG and I-Net obligations. Comcast may have the right and authority to provide other services over its system in the Member Cities: those services are not governed by the franchise.

2. *Nonexclusive*

The NDC4 has the authority under the Cable Act to issue multiple franchises for the provision of cable services.⁴⁰ The NDC4 and the Member Cities reserve that right and may grant additional cable franchises during the term of the franchise with Comcast in accordance with applicable state and federal law. The nonexclusive provisions allow the NDC4 and the Member Cities to continually monitor the needs of their constituents and react by authorizing additional providers if doing so is in citizens' best interest. There is no public policy reason to further limit the authority of the NDC4 or the member Cities by including so-called "level playing field" provisions in the franchise as often advocated for by incumbent operators. Minnesota state law already addresses those terms and conditions which must be generally consistent when granting a competitive franchise.⁴¹

The right-of-way is public property belonging to all of the citizens of the Member Cities.⁴² The NDC4 and its Member Cities therefore have the obligation to manage the

³⁷ 47 U.S.C. § 541(a)(1).

³⁸ See 47 U.S.C. § 541(b)(3).

³⁹ 47 U.S.C. § 253(c) (recognizing state and local governments' right to manage the public rights-of-way and to require fair and reasonable compensation).

⁴⁰ 47 U.S.C. § 541(a)(1).

⁴¹ Minn. Stat. § 238.08 subd. 1

⁴² See Hague v. Committee for Industrial Organization, 307 U.S. 496, 515 (1939) ("Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public....").

rights-of-way for the public benefit.⁴³ Congress has expressly provided for such regulation.⁴⁴

The Franchise includes provisions directly related to the obligations of the NDC4 and the Member Cities to manage the rights-of-way for the benefit of the public. For example, Comcast's use of the rights-of-way is not to interfere with the use by others. In order to make sure rights-of-way are used efficiently, Comcast shall utilize existing facilities to the extent technically and economically feasible. Comcast will not be permitted to use a right-of-way if such use undermines the purpose of the right-of-way or present or future use of the right-of-way.

3. *Term.*

The length of a franchise is primarily a function of allowing the cable operator sufficient opportunity to earn a return on its required investment, while ensuring that (a) the cable operator's performance will be evaluated within a reasonable period of time, so that the cable operator has incentives to maintain its performance at a high level, to ensure that its franchise can be renewed; and (b) to allow the community to reevaluate franchise requirements, in light of changes in technology. Several recent franchises have been granted for terms of 10-15 years. The NDC4 has determined that a 10 year franchise is appropriate given the needs and interests identified.

4. *Compliance with Applicable Laws and City Code.*

The Member Cities have the legal authority to utilize police and other powers to secure and promote the public health, safety, and general welfare of their residents. These powers include appropriate regulation of the public right-of-way.⁴⁵ The Member Cities have an ongoing duty to their citizens to continually secure and promote the public health, safety, and general welfare and therefore must retain regulatory flexibility. Accordingly, any renewal franchise must preserve the Member Cities' police powers and regulatory flexibility. That being said, a franchise does provide that right-of-way regulations will not exceed what is permitted under federal law.

5. *Rules of Grantee.*

The Member Cities, through the franchise, agree to allow Comcast access to valuable public property, namely the public rights-of-way. In exchange for such access, the Member Cities expect Comcast to fulfill its obligations under the franchise and comply with applicable laws. Thus, while Comcast is allowed to develop rules that apply to its provision of cable service, those rules must be consistent with applicable laws.

6. *Territorial Area, Annexation and Extensions*

⁴³ See Illinois Central R. Co. v. Illinois, 146 U.S. 387, 452-53 (1892).

⁴⁴ 47 U.S.C. § 253(c).

⁴⁵ 47 U.S.C. § 253(c).

The franchise is granted for the corporate boundaries of each Member City. Those boundaries may change over time pursuant to Minnesota law.⁴⁶ Any additional territory annexed into a Member City shall immediately be subject to the franchise. Individuals and businesses located in annexed areas are entitled to the same levels of protection and service from the Member Cities as are the citizens and businesses located in the other parts of the Member Cities. Comcast therefore will be required to extend its cable system into annexed areas on the same terms and conditions as apply to the current boundaries of each Member City.

The Member Cities acknowledge that expanding the cable system involves capital investment that must be recovered through additional subscriptions. But, the Member Cities also have a duty to make sure citizens have reasonably equal access to services throughout the jurisdiction of each Member City. The density provisions regarding line extension reasonably balance Comcast's financial interests with the Member Cities' interest in fair and reasonable treatment for all citizens.

7. *Home Wiring*

The franchise clarifies subscribers are able to control the wiring within their properties. The Member Cities have made a determination that it is in the best interests of their citizens for there to be multiple providers of cable services in the Member Cities to provide competitive choice. In order to effectuate that decision, Comcast is required to cooperate with other providers, consistent with Minnesota Law.⁴⁷

8. *Reports and Records; Periodic Evaluation.*

The franchise is subject to provisions regarding books, records, inspections, reports, maps and similar requirements. These materials are critical to the effective enforcement of the franchise and the monitoring of Comcast's fulfillment of its obligations to the citizens of the Member Cities. As part of that monitoring effort, the franchise requires Comcast to periodically meet with the NDC4 to assess issues that are of importance to the Member Cities and their citizens. These meetings are important vehicles for communications between the NDC4 and Comcast and allow both parties to capture the benefits of the franchise.

9. *Customer Service Provisions.*

The Cable Act directs the FCC to adopt minimum customer service standards.⁴⁸ The Member Cities are expressly authorized by the Cable Act to establish and enforce customer service requirements,⁴⁹ and are expressly authorized by FCC regulations to enforce the FCC's customer service standards.⁵⁰ Importantly, however, the Member

⁴⁶ Minn. Stat. §§ 414.031-414.033.

⁴⁷ Minn. Stat. § 238.25.

⁴⁸ 47 U.S.C. § 552(b). These standards are identified in 47 C.F.R. §§ 76.309, 76.1603-1604.

⁴⁹ 47 U.S.C. § 552(a)(1).

⁵⁰ 47 C.F.R. § 76.309(a).

Cities are allowed to adopt additional or more stringent standards.⁵¹ The service provisions of the franchise are consistent with federal service standards and the Member Cities' obligation to secure and promote the public health, safety, and general welfare of their residents. Finally, Comcast must keep records that will allow the Member Cities to assess and evaluate Comcast's compliance with its statutory, regulatory and franchise service obligations.

Federal law provides that the Member Cities may regulate cable rates under certain conditions.⁵² While those conditions may not be currently satisfied, the franchise is appropriately flexible to allow the Member Cities to exercise their regulatory powers under the conditions provided by federal law.

10. *Franchise Fees.*

The franchise fees required under the franchise compensate the citizens of the Member Cities for Comcast's use of the public Rights-of-Way.⁵³ Federal law caps franchise fees at 5% of gross revenues,⁵⁴ regardless of the actual value derived from the use of the public rights-of-way. The franchise fee provided for in the franchise is appropriately set at the federal cap of 5%. The public rights-of-way of the Member Cities are valuable *public* property that is to be utilized for the benefit of the public.⁵⁵ It is therefore entirely appropriate for the Member Cities to charge the maximum amount allowed by law. Setting the franchise fee at something less than the maximum amount allowed under federal law would only increase the difference between the amount of compensation provided to the citizens of the Member Cities for Comcast's use of the public rights-of-way and the true value derived from the rights granted by the franchise – value that the citizens of the Member Cities cannot realize due to federal limitations on franchise fees.

The NDC4's experience suggests that the franchise fee definition should be clear, broad and consistent with the federal law. Experience also shows the NDC4 should be able to review all of Comcast's financial data in order to verify appropriate amounts have been remitted.

11. *Financial and Insurance Provisions*

The Member Cities are willing to allow Comcast access to and use of the public rights-of-way upon the terms identified in the franchise. In addition to being compensated for that access and use, the citizens of the Member Cities should also be protected from any costs associated with Comcast's access or use of the public rights-of-way or with Comcast's failure to fulfill its obligations under the franchise. Costs associated with Comcast's access or use of the public rights-of-way can arise in a variety of ways. For example, in accessing the right-of-way, Comcast could cause damage to public and private property. Comcast's construction activities could create hazards that may lead to

⁵¹ 47 C.F.R. § 76.309(b).

⁵² 47 C.F.R. § 76.905.

⁵³ *See, e.g.,* City of Dallas v. F.C.C., 118 F.3d 393 (5th Cir. 1997).

⁵⁴ 47 U.S.C. § 542(b).

⁵⁵ *Supra*, notes 42 and 43.

lawsuits. The Member Cities and their citizens should not be at risk for costs stemming from Comcast's activities in the right-of-way. The contractual provisions provided in the franchise address these risks, as do the insurance and other financial provisions: each is a key protection for the citizens of the Member Cities.

The Member Cities will continue to access and use the public rights-of-way during the term of the franchise. Access and use by the Member Cities will be consistent with their duty to secure and promote the public health, safety, and general welfare of their citizens. The Member Cities cannot compromise in their continued ability to access and use of the public rights-of-way, including subjecting themselves to liability for potential damage to Comcast's property.

Finally, the performance guarantees (letters of credit and bonds) provided for in the franchise ensure Comcast performs its obligations under the franchise. The financial provisions also provide for an efficient means of addressing any issues without the need of pursuing expensive litigation.

12. *Sale, Abandonment, Transfer and Revocation*

The financial protections discussed above may not be sufficient if Comcast were to materially violate its obligations under the franchise. In such circumstances, the Member Cities must also be able to revoke the franchise. The franchise includes appropriate protections for Comcast before this more serious remedy is triggered.

The Member Cities' constituents have cable-related needs that are to be satisfied by provision of cable service pursuant to the franchise. If Comcast were to seek to abandon its system (or any part thereof), the Member Cities need adequate notice so as to have time to assess the impact of that decision on constituents and their needs. Further, such abandonment must be accomplished consistent with Minnesota law⁵⁶ and in no way impose costs on the Member Cities or result in the diminution of value of the public rights-of-way. Thus, the franchise provides for the forced removal of facilities (consistent with Minnesota law) or the transfer of ownership to the Member Cities should Comcast not comply with removal requests.

The NDC4 and the Member Cities are granting a renewal franchise to Comcast because they have made an assessment that Comcast is able to satisfy the NDC4's cable-related needs and interests, as described in the franchise. Any transfer of the franchise, fundamental corporate change to Comcast, or change in the controlling interest in Comcast would necessarily alter that assessment, as there is no way for the NDC4 and the Member Cities to be assured that any transferee or a post-reorganization Comcast would have the same ability to satisfy the NDC4's cable-related needs and interests, as described in the franchise. The NDC4 and the Member Cities must have the opportunity to review a transfer, to determine the likely impact on the performance of franchise requirements and the community, and to grant, grant with conditions or deny the transfer based on the reasonably predicted impact. For similar reasons, the term "transfer" should

⁵⁶ Minn. R. Ch. 7819.

be broadly construed to include transactions they may result in the transfer of all or a portion of the cable operator's interests in the cable system or the franchise, change in the control of the franchise itself, or similar results, however achieved.

A change of control, as well as a change in the actual holder of the franchise can have consequences for the NDC4, the Member Cities and their constituents. The consequences could be positive, increasing the financial resources available to provide Cable Services to the NDC4 and the Member Cities. But a transfer could be negative, leaving the franchise in the hands of an entity ill-prepared to meet the franchise obligations. Once effective, the NDC4, the Member Cities and their constituents are entitled to the benefits of the franchise's contractual benefits: the transfer provisions of the franchise help insure those benefits are delivered. Finally, the transfer provisions of the franchise are consistent with applicable standards of state and federal law.

13. *Relationship of Remedies.*

The remedies available under the renewal franchise should not be exclusive. The public's compensation for harm suffered should be as complete as possible; therefore, remedies should be available singly or in combination.

14. *Non-Discrimination.*

Federal law expressly provides for provisions prohibiting discrimination among subscribers or persons requesting service and protecting subscriber privacy.⁵⁷ Federal law also establishes general EEO requirements for cable.⁵⁸ These provisions not only establish federal standards, but also permit establishment of additional local requirements. Companies using public property like rights-of-way and obtaining the sorts of benefits from the public that are being provided through the franchise should be subject to the general rules of the Member Cities regarding non-discrimination, to ensure that the public property is being used so as to harm citizens.

⁵⁷See 47 U.S.C. §§ 541(a)(3), 543(e), 551.

⁵⁸See 47 C.F.R. §§ 76.71-79.

EXHIBIT A
JOINT POWERS COOPERATIVE AGREEMENT (“JPA”)

AMENDED JOINT AND COOPERATIVE AGREEMENT
NORTHERN DAKOTA COUNTY
CABLE COMMUNICATIONS COMMISSION

The parties to this Agreement are governmental units of the State of Minnesota. This Agreement supersedes any prior Agreement between the parties covering the establishment of a Cable Communications Commission and is made pursuant to Minnesota Statutes §238.08 and §471.59, as amended.

I. PURPOSE

The general purpose of this Agreement is to establish an organization to monitor the operations and activities of cable communications and related communications matters, provide coordination of administration, enforcement and renewal of the franchises of the Members, and to conduct such other activities authorized herein as may be necessary to protect the interests of the Members and its citizens with respect to the delivery of cable communications and related communications matters.

II. NAME

The name of the organization is the Northern Dakota County Cable Communications Commission.

III. DEFINITIONS

SECTION 1. Definitions. For purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word

“shall” is mandatory and “may” is permissive. Words not defined shall be given their common and ordinary meaning.

SECTION 2. **“Board of Directors”** or **“Board”** means the governing body of the Commission.

SECTION 3. **“Commission”** means the organization created pursuant to this Agreement.

SECTION 4. **“City”** or **“Cities”** or **“Municipalities”** means any City or township.

SECTION 5. **“Director”** means a person appointed by a Member City Council to be one of its representatives on the Commission.

SECTION 6. **“Member”** or **“Member Municipality”** means a municipality which enters into this Agreement and is, at the time involved, a Member in good standing.

SECTION 7. **“Eligible Member”** means a municipality within the Cable Service Territory that may, if it so acts, adopt this Agreement and become a part of this Commission.

SECTION 8. **“Weighted Vote”** means a voting procedure whereby each Member is entitled to cast a number of votes as it corresponds to Appendix A of this Agreement.

IV. ELIGIBLE MEMBERS

The Municipalities of Inver Grove Heights, Lilydale, Mendota, Mendota Heights, South St. Paul, Sunfish Lake, and West St. Paul are eligible for Membership in the Commission. Other Municipalities desiring to become Members may be admitted by an affirmative vote of at least two-thirds (2/3) of the total eligible Weighted Votes of the Commission and the payment by that municipality of such contribution as determined by the Commission to be applicable at the time the Member is approved.

V. ASSOCIATE MEMBERS

SECTION 1. **Application.** A governmental unit or subdivision thereof or any school district or educational institution desiring to become an associate Member may do so in the manner applicable to becoming a Member, except as otherwise provided in this Article. The Commission may reject an application for associate Membership by a governmental unit or its subdivision.

SECTION 2. **Associate Director.** An associate Member may appoint an associate Director to the Commission, but this individual shall not have voting power, shall not be eligible to serve as an officer, and shall not be counted for quorum purposes.

SECTION 3. **Charges.** The Commission may establish the charges to be paid by associate Members. Such charges are to be in an amount sufficient to offset any expenses incurred by the Commission relating to the associate Member.

SECTION 4. **Withdrawal.** An associate Member may discontinue its association with the Commission at any time by giving thirty (30) days written notice of its withdrawal to the Secretary of the Commission. Withdrawal shall not relieve that associate Member from its obligation to pay any charges which it has incurred up to the time of withdrawal.

VI. DIRECTORS

SECTION 1. **Qualifications/Appointment.** The City Council of each Member shall be entitled to appoint by resolution two (2) Directors, at least one of whom shall be a member of the Council of that municipality and the other a qualified voter residing within the municipality. If a Director is a City Council member when appointed but subsequently ceases to be a City Council member prior to the expiration of the Director's term, the Member shall have the option to either allow said Director to serve out the remainder of their appointed term or appoint a sitting

member of its City Council to serve out the remainder of the Director's term. When the council of a Member appoints its Directors, it shall give notice of their appointments to the Commission. Notices shall include the name and mailing address of the Director which shall be deemed to be the official name and address of that Director for the purpose of giving any notice required under this Agreement.

SECTION 2. Term. Each Director shall be appointed for a term of two (2) years. A Director shall serve at the pleasure of his or her City Council.

SECTION 3. Voting. There shall be no voting by proxy. All votes must be cast in person at Commission meetings by the Director or Directors. Each Director shall be entitled to one (1) vote. A Director shall not be eligible to vote on behalf of his or her Member Municipality during the time that said municipality is in default on any contribution or payment to the Commission.

SECTION 4. Voting on Special Items. When voting on special items, Weighted Voting will be used. For purposes of this section, special items are defined to be: 1) admission of new Member municipality; 2) approval of any needs assessment report relating to the renewal of a franchise under 47 USC §546; 3) approval of a draft franchise ordinance to be recommended to Members; and 4) any amendment of the By-Laws. Each Director of each Member City shall be entitled to cast one-half (1/2) of the Weighted Votes of that Member City on the special items. In the absence of one Director of a Member City from a meeting or the abstention of one Director from voting, the Director of that Member City that is present may cast all of the Weighted Votes of that Member City on special items. Abstentions by both Directors from a Member shall not be considered authorized votes cast.

SECTION 5. **Compensation.** Directors shall serve without compensation from the Commission, but this shall not prevent a Member from compensating its Directors if compensation by that Member is otherwise authorized by law.

SECTION 6. **Absences.** If a Director of a Member has four (4) consecutive absences from full Commission meetings, the Member shall be notified in writing.

VII. OFFICERS

SECTION 1. **Number/Election.** The officers of the Commission shall consist of a Chair, a Vice Chair, a Secretary, and a Treasurer, all of whom shall be elected at the annual meeting of the Commission held in February of each year. New officers shall take office at the adjournment of the annual meeting of the Commission at which they are elected. Only Directors of the Commission are eligible to serve as officers.

SECTION 2. **Chair/Vice Chair.** The Chair shall preside at all meetings of the Commission and Executive Committee and shall perform all duties incident to the office of Chair, and such other duties as may be delegated by the Commission. The Vice Chair shall act as Chair in the absence of the Chair.

SECTION 3. **Secretary.** The Secretary shall be responsible for keeping a record of all of the proceedings of the Commission and Executive Committee. The Secretary shall send written notice and material pertaining to agenda items and meeting minutes to each Director, and the most current draft of the last meeting minutes and proposed next meeting agenda to each City administrator, at least five (5) days prior to the meetings.

SECTION 4. **Treasurer.** The Treasurer shall have custody of the Commission's funds, shall pay its bills, shall keep its financial records, and generally conduct the financial affairs of the Commission and such other matters as shall be delegated by the Commission. Orders,

checks, and drafts of the Commission shall require two (2) signatures consisting of either the Treasurer and Chair of the Commission, or one of them and any one (1) other Executive Committee officer. In conducting the Commission's financial affairs, the Treasurer shall, at all times, act in accordance with generally accepted accounting principles. The Treasurer shall post a fidelity bond or other insurance in an amount approved by the Commission. The Commission shall bear the cost of the bond or insurance.

SECTION 5. Executive Committee. There shall be an Executive Committee which shall consist of the four (4) officers and one (1) other Director elected by the Commission. To the extent specifically delegated by the By-Laws or resolution of the Commission, the Executive Committee shall have the authority to manage the business of the Commission during intervals between meetings of the Commission, but at all times is subject to the control and direction of the Commission. The Executive Committee shall meet at the call of the Chair or upon the call of two (2) Directors of the Executive Committee. The date and place of the meetings shall be fixed by the person or persons calling it. At least forty-eight (48) hours in advance written notice, deposited in the mail, of that meeting shall be given to all Members of the Executive Committee by the person or persons calling the meeting, however, notice may be waived by any or all Members who actually attend the meetings or who have given written waiver of such notice for a specified meeting. A permanent record of all regular and special Executive Committee meetings shall be kept.

VIII. MEETINGS

SECTION 1. By-Laws. The Commission shall adopt By-Laws, consistent with the provisions of this Agreement, governing its procedures including time, place, notice

requirements, and frequency of its regular meetings, the procedure for calling special meetings and other matters as are required by this Agreement.

SECTION 2. By-Law Amendments. The Commission may amend the By-Laws from time to time. Amendments to the By-Laws may be adopted by the affirmative vote of a majority of the total Weighted Votes present at the meeting and voting. The Commission shall take no action to amend the By-Laws without ten (10) days prior written notice to each Director. An amendment to the By-Laws shall be filed with each Member and said By-Laws shall not be effective as amended until the seventeenth (17th) day following the filing of said amendment with the Members. An amended By-Law shall be deemed to have been filed on the day said By-Law is either delivered to the City offices of the Member or deposited in a United States mailbox in an envelope addressed to the City offices of the Member.

SECTION 3. Voting/Quorum. The presence of seven (7) Directors shall constitute a quorum of the Commission and a majority of Directors appointed to the Executive Committee shall constitute a quorum for a meeting of the Executive Committee. No business shall be conducted without a quorum. Unless otherwise provided in this Agreement, no action shall be taken unless a quorum is present and the action is voted for by a majority of the total votes cast by the Directors present and voting at the Commission meeting, or by a majority of the Executive Committee present and voting at its meetings, except that in both instances, less than a majority may adjourn a meeting.

IX. POWERS, RIGHTS, AND DUTIES OF THE COMMISSION

SECTION 1. Franchising Authority. The Member Municipalities shall retain their franchising authority to the extent that such authority is not delegated to the Commission in this Agreement.

SECTION 2. **Authority.** The Commission shall study cable communications and related communications matters, administer renewal proceedings, draft a franchise ordinance, and recommend that each City Council represented on the Commission grant a standard franchise ordinance as drafted by the Commission. The Commission shall be the entity responsible for the ongoing administration and enforcement of the franchises.

The Commission may do all things reasonably necessary and proper to the implementation of its powers and duties, including those powers set forth in this Article. As part of this process, the Commission shall seek input from all Member Municipalities and communicate the progress of the Commission to each Member City on a regular basis.

SECTION 3. **Needs Assessment.** The Commission, at its discretion, shall compile, make publicly available, and approve a Needs Assessment Report relating to the renewal of a franchise under 47 USC§546. The approval of the Needs Assessment Report shall be by at least a two-thirds (2/3) vote of the total Weighted Votes present at the meeting and voting. Votes shall be taken until the Needs Assessment Report is properly approved or until the meeting is adjourned, in which case the Commission may schedule and hold additional meetings to approve the Needs Assessment Report.

SECTION 4. **Grant of Competitive Franchises.** The Commission shall consider the grant of competitive franchises to qualified applicants in accordance with local, state and federal law. The Commission shall conduct the franchise procedure required pursuant to Minn. Stat. § 238.081 including the public hearing required pursuant to Minn. Stat. § 238.081 subd. 6. The Commission shall thereafter recommend a draft franchise ordinance for consideration by each Member City Council.

SECTION 5. Adoption of Recommended Franchise Ordinance. The Commission shall prepare, adopt, and recommend a sample ordinance granting a qualified cable communications company a non-exclusive cable communications franchise (hereinafter “franchise ordinance”) to construct, maintain, operate, or manage a cable communications system encompassing all of the territory of the Members. The adoption of the recommended franchise ordinance shall be after a public hearing by an affirmative vote of at least two-thirds (2/3) of the total eligible Weighted Votes. Votes shall be taken until the recommended franchise ordinance is so adopted or until the hearing is adjourned, in which case the Commission may schedule and hold additional meetings to adopt the recommended franchise ordinance. In the event the franchise ordinance is not adopted, the Commission may promptly resume the franchising process at any point in the process as determined by the Commission.

SECTION 6. Administration/Enforcement. The Commission shall administer and enforce the cable communications franchise ordinance or it may delegate the franchise ordinance enforcement and administration to its Members, for which service the Commission shall pay or reimburse its Members.

SECTION 7. Rates. To the extent allowable under federal and state law, the Commission shall review and approve or disapprove changes in rates charged by the cable communications company.

SECTION 8. Contracts. The Commission may make such contracts as are reasonably necessary to accomplish the purposes of the Commission, including, but not limited to, a contract to transfer responsibility for the provision of public access from the cable operator to any other entity, within its sole discretion.

SECTION 9. **Consultants.** The Commission may retain the services of technical consultants and legal counsel to advise it in accomplishing the purposes of the Commission. The Commission shall issue a request for proposals (RFP) for attorney services commencing January 1, 2001, and every two years thereafter; provided, however, the Commission's legal counsel shall serve at the pleasure of the Commission.

SECTION 10. **Advisory Committee.** The Commission may appoint an advisory committee to make recommendations to it on cable communications. The duties of such committee shall be set forth by the Commission.

SECTION 11. **Gifts/Grants.** The Commission may accept gifts, apply for and use grants and may enter into agreements required in connection therewith, and may hold, use, and dispose of money or property received as a gift or grant in accordance with the terms thereof.

SECTION 12. **Legislative Activities.** The Commission may submit written comments on rules, regulations, or legislation regarding cable communications proposed by or before the Federal Communications Commission, other regulatory agencies, the Minnesota Legislature, or any other state or federal body. The Commission may also direct its representatives to appear and testify on cable communications before any governmental body.

SECTION 13. **Investigation.** With the approval of a majority of the Commission, Directors may be authorized to investigate the operation of cable communications systems in other cities in Minnesota or elsewhere, and the expenses of traveling and subsistence of Directors in making any such investigation shall be borne by the Commission.

SECTION 14. **Other Actions.** The Commission may exercise any other power necessary and incidental to the implementation of its powers and duties as set forth in Article I.

SECTION 15. **Other Laws and Regulations.** This Agreement, all Commission activities, and any franchise ordinance adopted or franchise granted by the Member Municipalities shall be subject to all local, state, and federal laws and regulations.

SECTION 16. **Conflict Resolution.** In the event of an unresolvable dispute between a Member Municipality and the grantee of any franchise granted pursuant to this Agreement, the Commission shall act as an appeal Board and use its best efforts to assist in the resolution of the dispute.

SECTION 17. **Publication/Effective Date.** The franchise ordinance recommended by the Commission shall be sent to the Member Municipalities for their adoption. The recommended franchise ordinance, if adopted, shall be executed and published according to the requirements of each Member Municipality.

X. FINANCIAL MATTERS

SECTION 1. **Fiscal Year.** The fiscal year of the Commission is the calendar year.

SECTION 2. **Budget Process.** Each year the Commission shall prepare an annual budget which shall be approved by the Member Cities. The Commission's annual operating expenses, including the percentage of franchise fees required to be paid to the Member Cities, shall not exceed the franchise fees and other revenues collected by the Commission. However, any revenues obtained from ordinance amendments, variances, or other extraordinary items, shall not be considered part of the annual budget unless approved by the Commission. Franchise fees received by the Commission during the budget period which are in excess of the amount needed to fund the annual budget shall be redistributed to the existing Member Cities that are in good standing. The amount to be distributed to the Member City shall be determined according to the percentage of total franchise fees generated in the Member City on a pro-rata basis. The annual

budget shall be submitted to the Member City Councils on or before August 1 of each year. No budget shall become effective unless approved by resolution of at least six-sevenths (6/7) of the Member City Councils. The proposed budget must be approved by each Member City Council within forty-five (45) days after its submission to the Member Municipalities. A Municipality having an objection to the Commission's proposed budget shall submit any such objection in writing to the Commission within the forty-five (45) day period, and failure to do so shall be deemed a positive vote for the proposed budget.

SECTION 3. Expenditures. The Commission may expend its funds as it deems necessary and appropriate pursuant to this Agreement. Orders, checks, and drafts of the Commission shall require two signatures consisting of either the Treasurer and Chair of the Commission, or one of them and any one other Executive Committee Member.

SECTION 4. Annual Audit. The Commission's financial books and records shall be audited on or before May 1, or at such other times as the Commission may direct, by an independent auditor designated and approved by the Commission. The result of the audit shall be reported to the Members. The Commission's books and records shall be available for and open to examination by the Members and the general public at reasonable times.

SECTION 5. Franchise Fees. The franchise ordinance adopted by the Member Municipalities shall provide that the Commission shall collect all franchise fees paid by the cable communications company. Twenty-five percent (25%) of the franchise fees received by the Commission from cable operators shall be paid by the Commission to the Member Municipalities based on their total number of cable subscribers, except that the payment in the year 2000 will be based on a fifteen percent (15%) contribution for the first quarter and a twenty-five percent (25%) contribution for the remaining three (3) quarters of the year. The above

distributions to the Member Municipalities shall be made on an annual basis within sixty (60) calendar days of the fourth (4th) quarter franchise fee payment made by the cable company to the Commission and based upon cable company subscriber numbers determined each December. Should one or more Members withdraw from the Commission the remaining Members shall consider whether this Section 5 should be revised.

SECTION 6. Annual Report. The Commission shall submit to the City Council of each Member an Annual Report. This report shall contain the results of the annual audit, a summary of the past year's activities, and a discussion of the Commission's plans for the coming year. The report shall be submitted to the City Council of each Member on or before August 1 of each year.

XI. WITHDRAWAL

SECTION 1. Withdrawal. Members have the option to withdraw from the Commission on December 31, 2005, December 31, 2010, or December 31, 2015. Should any Member withdraw from the Commission hereinafter referred to in this Article XI as a "Withdrawing Member," the Withdrawing Member shall be entitled to its portion of future Franchise Fees as well as its portion of any future public, educational and governmental programming support, equipment or equipment grant funding required of any franchised cable operator. A Withdrawing Member shall also retain title to any equipment provided by the Commission that may be located in the Withdrawing Member's City Hall for cablecasting City Council meetings. Except as provided in Section 3 of this Article XI, a Withdrawing Member shall not be entitled to any other assets of the Commission, use of the Commission's equipment and facilities nor access to any future programming provided by the Commission.

SECTION 2. Withdrawal Process. A Member may withdraw from the Commission by giving to the Chair of the Commission a certified copy of the resolution of such Withdrawing Member's City council indicating its intent to withdraw from the Commission. Such notice must be given by June 1 of the year in which withdrawal is permitted hereunder (i.e., by June 1, 2005, June 1, 2010 or June 1, 2015, as applicable) to be effective (hereinafter such notice is referred to as a "Withdrawal Notice"). Upon receipt of the Withdrawal Notice, the Chair of the Commission shall forward a copy of the Withdrawal Notice to each of the Directors. The withdrawal shall become effective December 31 of the year in which such Withdrawal Notice is given (i.e., December 31, 2005, December 31, 2010 or December 31, 2015) (the "Withdrawal Date"). Any attempted withdrawal by a Member which is not done in compliance with the provisions of this Section 2 shall not be effective and shall not relieve such Member of its respective obligations to the Commission set forth herein.

SECTION 3. Property Interests of Members on Withdrawal. From and after the Withdrawal Date, the Withdrawing Member shall no longer be entitled to representation on the Commission or to any future assets of the Commission, except for: (i) its right to receive its proportionate share of the proceeds from any subsequent sale of the real property and building owned and used by the Commission as of the date of this Agreement, which is commonly known as 5845 Blaine Avenue, Inver Grove Heights, MN 55076 and legally described on Appendix B attached hereto (collectively, "Property"), as such distribution is calculated and limited by the provisions of this Section 3; (ii) its proportionate share of future Franchise Fees and other programming support and equipment grant funding described in Section 1 of this Article XI above; and (iii) its respective rights to any equipment provided by the Commission to the Withdrawing Member as described in Section 1 of this Article XI above.

Upon receipt of a Withdrawal Notice, the Commission and the Withdrawing Member shall establish the fair market value of the Property as of the Withdrawal Date, by written consent of the Withdrawing Member and the Commission (“Withdrawing FMV”). In the event the Withdrawing Member and the Commission are unable to reach mutual agreement within a period of ninety (90) days following the delivery of the Withdrawal Notice, the fair market value of the Property shall be conclusively determined by appraisal conducted by an experienced appraiser acceptable to the Withdrawing Member and the Commission. If an appraisal of the Property is necessary and the Withdrawing Member and the Commission are unable to agree within one hundred twenty (120) days following the date of delivery of the Withdrawal Notice upon a single appraiser for the Property, the Withdrawing Member and the Commission shall each choose an appraiser, who together shall choose a third appraiser, each of whom shall appraise the Property as of the Withdrawal Date. The average of the three appraisals shall be the Withdrawing FMV. The costs of any appraisals required by this paragraph shall be paid by the Withdrawing Member. The Withdrawing Member shall be entitled to receive (following the subsequent sale of the Property and thereupon solely out of the proceeds derived therefrom) the Withdrawing Member’s proportionate share (determined by dividing the Withdrawing Member’s cable subscribers as of the Withdrawal Date by total cable subscribers of all Members as of the Withdrawal Date) of the Net Distributable Sales Proceeds (as hereinafter defined). For purposes of the foregoing calculation, “Net Distributable Sales Proceeds” means Withdrawing FMV minus (i) the amount of all indebtedness of the Commission as of the Withdrawal Date which is secured by the Property; and (ii) an amount equal to 10% of the Withdrawing FMV, said amount representing the reasonably anticipated costs of sale of the Property. The Withdrawing Member’s proportionate share of the Net Distributable Sales Proceeds shall be distributed in

accordance with Article XII, Section 2. In the event the actual sales price of the Property is less than the Withdrawing FMV, the actual sales price shall be substituted for the Withdrawing FMV in calculating Net Distributable Sales Proceeds.

Notwithstanding the foregoing, the Withdrawing Member shall continue its obligations and maintain its proportionate share of liability it has under any promissory note, guaranty, mortgage or other security instrument in connection with the Commission's indebtedness resulting from the purchase of the Property, unless otherwise agreed to by the respective lender or secured party. Upon withdrawal from the Commission, the Withdrawing Member shall have no authority and shall make no determinations regarding the sale of the Property or the price related thereto.

XII. DISSOLUTION

SECTION 1. Dissolution of the Commission. The Commission shall be terminated and dissolved by mutual agreement by two-thirds (2/3) of the Member Municipalities (i.e., if there are seven (7) Members, five (5) must agree to dissolution).

SECTION 2. Distribution of Assets. Upon dissolution of the Commission, all remaining assets of the Commission, after payment of obligations, shall be distributed among the then current Members in proportion to the percentage interest of each then current Member based on their percentage capital contribution of the total contributions made to the Commission and in accordance with procedures established by the Commission. Any withdrawn Members shall be entitled to such property interests as permitted pursuant to Article XI. The Commission shall continue to exist after dissolution for such period, no longer than six (6) months, as is necessary to wind up its affairs, but for no other purpose.

SECTION 3. **Effectiveness of Ordinance after Dissolution.** The franchise ordinance shall provide that upon the dissolution of the Commission by operation of state or federal law, the ordinance shall remain effective and enforceable by each individual Member within its territorial limits.

XIII. EFFECTIVE DATE

SECTION 1. **Execution of Agreement.** A Municipality may enter into this Agreement by resolution of its council and the authorized execution of a copy of this Agreement by its authorized officers. Whereupon, the clerk or other appropriate officer of that Municipality shall file a duly executed copy of this Agreement together with a certified copy of the authorizing resolution with the Commission.

SECTION 2. **Effective Date.** This Agreement is effective on the date when executed and the authorizing resolutions of seven (7) of the Municipalities named in Article IV of this Agreement have filed as provided in this Article.

SECTION 3. **Previous Agreement Superseded.** This Agreement, when effective, supersedes all previous agreements between the Members hereto establishing a joint cable communications commission.

APPENDIX A
AMENDED JOINT AND COOPERATIVE AGREEMENT

Member City	Votes Per City
Inver Grove Heights	12
Lilydale	2
Mendota Heights	6
Mendota	2
Sunfish Lake	2
South St. Paul	10
West St. Paul	<u>10</u>
TOTAL VOTES	<u>44</u>

APPENDIX B
AMENDED JOINT AND COOPERATIVE AGREEMENT
Legal Description of Property

EXHIBIT B
FRANCHISE RENEWAL REQUEST LETTERS
DATED JULY 27, 2012 AND AUGUST 30, 2012



10 River Park Plaza
St. Paul, MN 55107

Emmett Coleman
Vice President, Government Affairs
Comcast - Twin Cities Region
(651) 493-5774

July 27, 2012

Sent Certified Mail

Mr. Justin Miller
City of Mendota Heights
1101 Victoria Curve
Mendota Heights, MN 55118

Subject: FRANCHISE RENEWAL

Dear Justin:

We at Comcast appreciate the opportunity to serve the citizens of the Eagan franchise area. It is our Credo that *we will deliver a superior experience to our customers every day. Our products will be the best and we will offer the most customer-friendly and reliable service in the market.* In living our Credo, we look forward to providing broadband services to our customers in the Mendota Heights area for many years to come. Therefore, we are taking this step to ensure the renewal of our franchise with you.

The Cable Communications Policy Act of 1984 ("the 1984 Cable Act") encourages franchisors and cable operators to reach renewal agreements at any time through an informal process of discussion. However, Section 626 of the 1984 Cable Act also provides for commencement of a formal renewal procedure. To preserve our statutory rights to this formal procedure, this letter is our official notice to you invoking that provision.

This letter is not intended to introduce a new formality into our discussions, nor is that the intention of the 1984 Cable Act. In fact, we prefer to reach a mutually satisfactory agreement through informal negotiations, thus making many of the 1984 Cable Act's formal procedures unnecessary. I will be happy to discuss this matter with you or provide any additional information that you may require. I look forward to meeting with you in the near future and to continuing a relationship that, we believe, benefits both the community and the residents of your community.

Sincerely,

A handwritten signature in black ink that reads "Emmett Coleman". The signature is fluid and cursive, with a long horizontal flourish at the end.

Emmett Coleman
Vice President, Government Affairs
Comcast - Twin Cities Region



10 River Park Plaza
St. Paul, MN 55107

Emmett Coleman
Vice President, Government Affairs
Comcast - Twin Cities Region
(651) 493-5774

August 30, 2012

Sent Certified Mail

City of Mendota
c/o Thomas Lehmann, City Attorney
Lehmann & Lutter P.A.
2113 Cliff Drive
Eagan, MN 55122

Subject: FRANCHISE RENEWAL

Dear Thomas:

This is a copy of the same letter that was sent to you on July 27, 2012 concerning franchise renewal, but corrected to cite Mendota in the first sentence. Please feel free to contact me with any questions.

We at Comcast appreciate the opportunity to serve the citizens of the Mendota franchise area. It is our Credo that *we will deliver a superior experience to our customers every day. Our products will be the best and we will offer the most customer-friendly and reliable service in the market.* In living our Credo, we look forward to providing broadband services to our customers in the Mendota area for many years to come. Therefore, we are taking this step to ensure the renewal of our franchise with you.

The Cable Communications Policy Act of 1984 ("the 1984 Cable Act") encourages franchisors and cable operators to reach renewal agreements at any time through an informal process of discussion. However, Section 626 of the 1984 Cable Act also provides for commencement of a formal renewal procedure. To preserve our statutory rights to this formal procedure, this letter is our official notice to you invoking that provision.

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Sincerely,

Emmett Coleman
Vice President, Government Affairs
Comcast - Twin Cities Region

EXHIBIT C
COMMUNITY NEEDS ASCERTAINMENT

EXHIBIT D
INSTITUTIONAL NETWORK TECHNICAL REVIEW AND NEEDS ASSESSMENT

EXHIBIT E
REQUEST FOR FORMAL RENEWAL PROPOSAL (“RFRP”)