

**CITY OF MINNEAPOLIS  
CITY COUNCIL  
WAYS AND MEANS COMMITTEE**

In Re: CenturyLink Cable Franchise  
Application

**FINDINGS OF FACT  
AND  
RECOMMENDATION**

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Following the submission of an application for a cable television franchise, the above-entitled matter initially came before the Standing Committee on Ways and Means of the Minneapolis City Council for a public hearing on Monday, February 23, 2015, in Room 317, City Hall, 350 South Fifth Street, Minneapolis, MN 55415. Said public hearing was held open through Friday, February 27, 2015, for the purpose of allowing additional written public comments. Following the public hearing, the City's Cable Officer prepared a detailed report entitled "Cable Office Report on CenturyLink Cable Franchise Application" (the "Cable Officer Report"). The Ways and Means Committee received and filed the Cable Officer Report and directed City staff to negotiate cable television franchise with CenturyLink. Following the introduction of a cable television franchise ordinance, a second public hearing on the above-referenced matter was held before the Ways and Means Committee on April 27, 2015, at the same location. Upon conclusion of the second public hearing, the Ways and Means Committee recommended approval of the CenturyLink cable television franchise ordinance and directed staff to make findings of fact consistent with that recommendation for adoption by the City Council.

The City, in furtherance of its obligations as a steward on behalf of consumers, desires to promote competition in the delivery of cable services and to encourage the deployment of state-

of-the-art broadband networks in the hope that true and effective competition between cable service providers will increase the availability and quality of cable services, spur the development of new technologies, improve customer service, minimize rate increases and generally benefit consumers of the City.

The City also recognizes that any facilities based, second cable entrant is in a different position than the incumbent cable provider because the second entrant faces a significant, up front capital investment prior to having the opportunity to compete for its first customer. It is beneficial to attract and retain second entrants because of the investment made in the community, the creation of new jobs as well as the benefits to consumers by having a cable service competitor in the City. Adoption of this Franchise is, in the judgment of the City, in the best interests of the City and its residents.

Having held two public hearings on the cable franchise application and the cable television franchise ordinance respectively, the Committee now makes the following findings:

#### **FINDINGS OF FACT**

1. The City has the authority to grant cable television franchises to cable service providers, pursuant to applicable law. *See* Minn. Stat. § 238.08, Subd. 1(a); City Charter § 4.1(d); and Cable Office Report, § 4.
2. On December 23 and 30, 2015, the City published a Notice of Intent to Franchise in *Finance and Commerce*. *See* Cable Officer Report, § 1.
3. CenturyLink submitted a cable franchise application (the “Application”) on January 20, 2015. *See* Cable Officer Report, § 1.
4. The Ways and Means Committee held a public hearing on the Application on February 23, 2015, and left the public hearing open until February 27, 2015, for

the purpose of receiving additional written comments from the public. *See* Cable Officer Report, § 1.

5. Following the public hearing, the City’s Cable Officer prepared a “Cable Officer Report on CenturyLink Cable Franchise Application” (the “Cable Officer Report”) dated March 13, 2015. The Cable Officer Report is incorporated herein by Reference. *See* City Pet. \_\_\_\_\_.
6. The Cable Officer Report was received and filed by the Ways and Means Committee on March 16, 2015, and the Committee directed City staff to negotiate a cable television franchise with CenturyLink.
7. The City Council gave notice of intent to introduce an ordinance granting CenturyLink a cable franchise on March 20, 2015.
8. A cable television franchise ordinance was introduced by the City Council on April 3, 2015, and a public hearing on the cable television franchise ordinance was held on April 27, 2015, before the Ways and Means Committee.
9. Upon conclusion of the second public hearing, the Ways and Means Committee recommended approval of the CenturyLink cable television franchise ordinance and directed staff to make findings of fact consistent with that recommendation for adoption by the City Council.
10. The impact of competition and the challenges to a new cable operator, like CenturyLink, are identified in the Cable Officer Report. *See* Cable Officer Report, § 2.

11. The applicable federal, state and local legal cable franchising requirements, including the application requirements, are identified in the Cable Officer Report. *See* Cable Officer Report, §§ 5 - 8.
12. The Cable Officer Report identified the issues raised by the public, including the incumbent franchised cable operator, Comcast. *See* Cable Officer Report, § 9.
13. The City has substantially complied with the state and local cable franchise application requirements identified in the Cable Officer Report.
14. CenturyLink's application substantially complied with state and local cable franchise application requirements identified in the Cable Officer Report.
15. In the cable television franchise, CenturyLink agrees it has constructed a legacy communications system throughout the City that is capable of providing telephone and internet services. CenturyLink represents that it desires to upgrade its existing legacy communications system and to install certain new facilities and equipment in the City and intends to operate a cable communications system in the City. *See* Cable Officer Report, Exhibits 2 and 3.
16. CenturyLink further represents that upon completion of its cable service headend, it will be capable of providing cable communications service to a portion of the City over its existing facilities, but currently has no market penetration in the cable communications service market in the City. *See* Cable Officer Report, Exhibits 2 and 3.
17. The City reviewed CenturyLink's franchise application, published a notice of intent to award a cable television franchise, and held a public hearing all in compliance with applicable law. *See* Cable Officer Report, § 1.

18. Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. (“Comcast”) currently holds a non-exclusive franchise with the City, and, Comcast, through its predecessors in interest, has continuously held a franchise with the City since 1979. *See* Cable Officer Report, § 3
19. CenturyLink will be the first facilities based franchised cable operator to compete against the incumbent provider in the City since the initial cable television franchise was granted in 1979. *See* Cable Officer Report, § 3.
20. Section 621(a)(1) of the Cable Television Consumer Protection and Competition Act of 1992 was amended to provide that “. . .a franchising authority may not unreasonably refuse to award an additional competitive franchise.” In support of its mandate, the Conference Report noted that “[W]ithout the presence of another multichannel video programming distributor, a cable system faces no local competition. The result is undue market power for the cable operator as compared to that of consumers . . . .” *See* H.R. Conf. Rep. No. 102-862, at 1231 (1992); and 621 Order at ¶ 8.
21. *In the Matter of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, MB Docket No. 05-311 (Rel. March 5, 2007) (the “621 Order”), the FCC determined, based on Section 621(a)(1), that it is unlawful for a local franchising authority to refuse to grant a competitive franchise on the basis of unreasonable build-out mandates and that such mandates “can have the effect of granting de facto exclusive franchises, in direct contravention of Section 621(a)(1)’s prohibition of

exclusive cable franchises.” *See* 621 Order, at ¶ 40; *see also*, Cable Officer Report, § 7(E).

22. According to the FCC, “[b]ecause a second provider realistically cannot count on acquiring a share of the market similar to the incumbent’s share, the second entrant cannot justify a large initial deployment. Rather a new entrant must begin offering service within a smaller area to determine whether it can reasonably ensure a return on its investment before expanding.” *See* Cable Officer Report, § 7(D).
23. In the 621 Order, the FCC found that “new cable competition reduced rates far more than competition from DBS [Direct Broadcast Satellite]. Specifically, the presence of a second cable operator in a market results in rates approximately 15 percent lower than in areas without competition.” *See also*, Cable Officer Report, § 2.
24. The FCC also found that “competition for delivery of bundled services will benefit consumers by driving down prices and improving the quality of service offerings.” *See* Cable Officer Report, § 2.
25. The FCC has concluded in the 621 Order that “broadband deployment and video entry are ‘inextricably linked’ and that broadband deployment is not profitable without the ability to compete with the bundled services that cable companies provide.” *See* 621 Order at ¶ 51; *see also*, Cable Officer Report, §§ 2 and 7.
26. The City must, pursuant to the Federal Cable Act “allow the applicant’s cable system a reasonable period of time to become capable of providing service to all households in the franchise area.” *See* Cable Officer Report, § 7(A).

27. Minnesota Statutes, Chapter 238, among other things, requires a level playing field with the incumbent relating to area served (Minn. Stat. § 238.08, Subd. 1(b)) and a mandatory build out requirement within five years (Minn. Stat. § 238.084 Subd. 1(m)(3)). *See* Cable Officer Report, § 8(A)-(B), and 11(c). CenturyLink has demonstrated a good faith basis for its position that applicable federal law, preempts these provisions of Chapter 238 because they constitute an unreasonable barrier to entry. *See* Cable Officer Report, § 11(c), and Exhibit 3 at ¶¶ 28-31.
28. CenturyLink claims the fact that these two provisions of the Minnesota Statutes constitute an unreasonable barrier to entry in the City is evidenced in part by the fact that there has been no facilities-based competitor since the initial cable communications franchise was granted. *See* Cable Officer Report, Exhibit 3 at ¶¶ 28-31. CenturyLink has agreed to fully defend, indemnify and hold the City harmless in the event this cable television franchise agreement is legally challenged. *See* Cable Officer Report, § 11(c).
29. The cable television franchise ordinance is substantially similar to the Comcast cable television franchise, but also addresses a reasonable build-out of the entire City, economic redlining, and culturally diverse programming.
30. The reasonable build-out provisions in the cable television franchise satisfy the state franchise requirement of requiring the cable system to be substantially complete within five (5) years and the federal franchise requirement of allowing a new cable service provider a reasonable period of time to become capable of providing cable service to all households in the franchise area. *See* Minn. Stat. §

238.084, Subd. 1(m); 47 U.S.C. § 541(a)(4)(A); and Cable Office Report, §§ 7(A), 7(D)-7(E), 8(B), and 11(c).

31. The 5-year cable television franchise requires CenturyLink to initially construct its system to serve fifteen percent (15%) of the City over 2 years. CenturyLink is required to make its best efforts to complete its initial deployment in less than 2 years and is required to serve households in every ward including a significant number of households below the minimum income of the City. Quarterly meetings will allow the City to monitor CenturyLink's progress and compliance with the cable franchise and, if CenturyLink has market success, the cable television franchise has provisions to accelerate the construction of the cable communications system with the goal being complete coverage of the City by the end of the franchise term.
32. The state's cable franchising level playing field statute is satisfied because the cable television franchise requires (1) CenturyLink to pay the same franchise fee as Comcast; (2) the same area of coverage as Comcast; and (3) similar, and in some instances greater, public educational and governmental access requirements. *See* Minn. Stat. § 238.08, subd. 1(b); Cable Office Report, §§ 7(G), 8(A), and 11(d).
33. CenturyLink submitted an application that included a design for a state-of-the-art cable system that is capable or reliably providing a panoply of cable services to subscribers as required by the City's Competitive Franchising Policies and Procedures. *See* Cable Officer Report, § 10(4)(b).

34. The City has considered the financial, technical, and legal qualifications of CenturyLink and the cable-related needs and interests of the community. *See, e.g., Cable Officer Report, § 10(4).*
35. CenturyLink has the financial, technical, and legal qualifications to operate a cable communication system in the City.
36. A CenturyLink cable television franchise will provide a meaningful, distinct alternative to existing multichannel video programming distributors, including existing cable, direct broadcast satellite and other companies, will result in greater consumer choice, is in the public interest for economic development in the City and, addresses the cable-related needs of the community. *See Cable Officer Report, § 10(4)(d), Exhibits 2 and 3.*
37. Consumers and residents of the City will also benefit from CenturyLink's competitive presence because it will drive broader deployment of higher broadband speeds. *See Cable Officer Report, Exhibits 2 and 3*
38. CenturyLink has agreed to an initial deployment area and it will serve additional areas based upon its market success, as defined in the franchise agreement, which the FCC has deemed to be a reasonable deployment model. *See Cable Officer Report, § 7(F)(b).*
39. The City and its citizens will benefit from facilities based competition in the cable television market. *See Cable Officer Report, § 2.*

Therefore, based on the foregoing Findings of Fact, the Committee makes the following recommendation:

## **RECOMMENDATION**

1. That the City Council grant a cable television franchise by ordinance to CenturyLink.
2. That these Findings of Fact and Recommendation be adopted by the City Council as their official Findings and be made part of the official record.