Request for City Council Committee Action
From the City Attorney's Office

Date: October 02, 2009
To: Ways & Means/Budget Committee
Referral to:

Subject: Approval of new Cable Franchise Agreement between the City of Minneapolis and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc. and passage of proposed Cable Franchise Ordinance implementing Cable Franchise Agreement; approval of Indefeasible Right of Use Agreement regarding the existing "Alternative Network"; and, approval of Indefeasible Right of Use Agreement for certain Dark Fibers owned by Comcast in Downtown Minneapolis.

Recommendation: That the City Council approve the Cable Franchise Agreement between the City of Minneapolis and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.; approve the proposed Indefeasible Right of Use Agreement regarding the existing "Alternative Network" and approve the Indefeasible Right of Use Agreement of Certain Dark Fibers, and further recommends that proper City officials be authorized to execute said agreements. The City Attorney further recommends that the City Council pass the cable franchise ordinance implementing the agreement between the City of Minneapolis and Comcast as required by Minneapolis City Charter.

Previous Directives:

Prepared by: Peter W. Ginder, Deputy City Attorney, Civil — Phone: (612) 673-2478
Approved by: Susan L. Segal, City Attorney

Financial Impact (Check those that apply)

_X_ No financial impact (If checked, go directly to Background/Supporting Information).
___ Action requires an appropriation increase to the _____ Capital Budget or _____ Operating Budget.
___ Action provides increased revenue for appropriation increase.
___ Action requires use of contingency or reserves.
___ Business Plan: ____ Action is within the plan. _____ Action requires a change to plan.
___ Other financial impact (Explain):
___Request provided to department's finance contact when provided to the Committee Coordinator.

Community Impact
City Goal(s):

Background/Supporting Information

In 2006, the City entered into a Settlement Agreement and Initial Release between Time Warner Cable, Inc., KBL Cable Systems of Minneapolis Limited Partnership, and Cable Holdco II, Inc. (collectively "Time Warner Cable"), and Comcast Cable Communications Holdings, Inc. and MOC Holdco II, Inc. (together "Comcast"). That Settlement Agreement resolved a number of lawsuits between the parties and franchise violations that were being pursued against Time Warner Cable. As part of the Settlement Agreement, Comcast and Time Warner Cable collectively agreed to pay $3.5 million dollars for cable related purposes, which was paid in 2006. The City also agreed to transfer the franchise from Time Warner Cable to Comcast. As further part of the settlement agreement, Comcast and the City agreed to proceed to negotiate in good faith to obtain a written franchise renewal for 15 year term. The Settlement Agreement contemplated

that the franchise renewal agreement would be reached prior to calendar year end 2006 and, if not, the franchise was deemed to be extended.

The Settlement Agreement also established the framework for a renewed or extended franchise. The terms of the framework included that the franchise would reflect a streamlined and efficient regulatory process; that Comcast would be allowed to modify any franchise agreement if the City permitted a provider of multi-channel video programming under less burdensome regulations; provided for keeping nine Public Educational Governmental ("PEG") channels that the City was currently using; and, provides that the City will receive additional PEG funding estimated over the term of the franchise between $12.7 million and $15.3 million. The Settlement Agreement further provided that the City could enter into a long term (99 years) use of the existing alternative network and that the City could also receive long term (99 years) use for up to 48 "dark fibers" on Comcast facilities in downtown Minneapolis, each at no cost. The Settlement Agreement also provided that Comcast would agree to construct additional downtown I-net fiber connections at its cost until year end 2011.

The City Attorney's Office recommends that the proper City officials be authorized to execute the attached Cable Franchise Agreement between the City and Comcast of Arkansas/Florida/Louisiana/Minnesota/Mississippi/Tennessee, Inc.; the Indefeasible Right of Use Agreement for the Alternative Network; and, the Indefeasible Right of Use Agreement for certain Dark Fibers. It further recommends that the City Council pass the Cable Franchise ordinance implementing the Cable Franchise Agreement.