

CITY OF BLAINE, MINNESOTA

In Re: CenturyLink Cable Franchise
Application

FINDINGS OF FACT

The City is one of seven member cities of the North Metro Telecommunications Commission (the “NMTC”). Following the submission of an application for a cable television franchise for each member city of the NMTC, the above-entitled matter initially came before the NMTC for a public hearing on February 18, 2015, at Spring Lake Park City Hall, located at 1301 81st Avenue N.E., Spring Lake Park, MN 55432. Said public hearing was held open through February 27, 2015, for the purpose of allowing additional written public comments. Following the public hearing, the NMTC’s Executive Director prepared a detailed report entitled “Staff Report on CenturyLink Cable Franchise Application” (the “Staff Report”). The NMTC received and filed the Staff Report and directed NMTC staff to negotiate a cable television franchise with CenturyLink.

The City, in furtherance of its obligations as a steward on behalf of consumers in the City, 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

and 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 Council, in the best interests of the City and its residents.

Having held a public hearing (via the NMTC) on the cable franchise application and having reviewed the negotiated cable franchise with CenturyLink, the City 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); and Cable Office Report, § 4.
2. In January, 2015, the NMTC published a Notice of Intent to Franchise once a week for two successive weeks in a newspaper of general circulation of the City. *See* Staff Report, § 1.
3. CenturyLink submitted a cable franchise application (the “Application”) on February 12, 2015. *See* Staff Report, § 1.
4. The NMTC held a public hearing on the Application on February 18, 2015, and left the public hearing open until February 27, 2015, for the purpose of receiving additional written comments from the public. *See* Staff Report, Executive Summary and § 1.
5. Following the public hearing, the NMTC’s Executive Director prepared a “Staff Report on CenturyLink Cable Franchise Application” (the “Staff Report”) dated March 30, 2015. The Staff Report is incorporated herein by Reference.

6. The Staff Report was received and filed by the NMTC on or about April 15, 2015, and the NMTC directed NMTC staff to negotiate a cable television franchise with CenturyLink.
7. NMTC staff negotiated a cable television franchise with CenturyLink and presented it to the NMTC on October 21, 2015.
8. The NMTC adopted a Findings of Fact and Recommendation on October 21, 2015, which recommended approval of the negotiated cable television franchise with CenturyLink by each member city.
9. The City held a public hearing on the CenturyLink Cable Television Franchise Ordinance on _____, 2015.
10. The impact of competition and the challenges to a new cable operator, like CenturyLink, are identified in the Staff Report. *See* Staff Report, § 2.
11. The applicable federal, state and local legal cable franchising requirements, including the application requirements, are identified in the Staff Report. *See* Staff Report, §§ 5 - 8.
12. The Staff Report identified the issues raised by the public, including the incumbent franchised cable operator, Comcast. *See* Staff Report, § 9.
13. The NMTC has substantially complied with the state and local cable franchise application requirements identified in the Staff Report.
14. CenturyLink's application substantially complied with state and local cable franchise application requirements identified in the Staff 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* Staff 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* Staff Report, Exhibits 2 and 3.
17. The NMTC reviewed CenturyLink’s franchise application, published a notice of intent to franchise and held a public hearing all in compliance with applicable law. *See* Staff Report, § 1.
18. Comcast of Minnesota, 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 1983. *See* Staff 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 1983. *See* Staff 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*, Staff 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* Staff 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*, Staff 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* Staff 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*, Staff 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* Staff 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 in initial cable franchises (Minn. Stat. § 238.084 Subd. 1(m)(3)). *See* Staff 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* Staff Report, § 11(c), and Exhibit 3 at ¶¶ 18-23.
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* Staff Report, Exhibit 3 at ¶¶ 18-23. CenturyLink has agreed to fully defend, indemnify and hold the City and the

NMTC harmless in the event this cable television franchise agreement is legally challenged. *See* Staff 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 City, and economic redlining.
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 Staff 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 equitably serve households throughout the City, including a significant number of households below the minimum income of the City. Quarterly meetings will allow the City and the NMTC 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); Staff 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 NMTC's Competitive Franchising Policies and Procedures. *See* Staff Report, § 10(3)(b).
34. The City has considered the financial, technical, and legal qualifications of CenturyLink. *See, e.g.*, Staff Report, § 10(3).
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. *See* Staff Report, Exhibits 2 and 3. CenturyLink has also promised to provide additional enhancements to PEG offerings to the City. For example, it has agreed in the franchise to provide every PEG channel in HD and to allow the City to share live programming with other cities in the Twin Cities by providing a Twin Cities Metro PEG Interconnect Network.

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* Staff 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* Staff Report, § 7(E)(b).
39. The City and its citizens will benefit from facilities based competition in the cable television market. *See* Staff Report, § 2.
40. All prior actions of the NMTC related to the CenturyLink Cable Franchise Application are hereby ratified and approved.

Therefore, based on the foregoing, the City Council has determined that it is in the best interests of the City and its residents to enter in to a cable television franchise ordinance/agreement with CenturyLink, in the form negotiated by the NMTC and that these Findings of Fact be incorporated therewith.