
NORTH METRO TV

TO: OPERATIONS COMMITTEE
FROM: HEIDI ARNISON/MIKE BRADLEY
SUBJECT: CENTURYLINK SETTLEMENT AGREEMENT STAFF MEMO
DATE: 5/17/2019

CenturyLink has announced its intent to exit the cable business. For over a year now, it has stopped actively selling, marketing, and investing in its cable service product. While a CenturyLink customer can technically still order Prism-TV, it will happen only if the customer specifically requests Prism-TV and agrees to pay an undiscounted rack rate for the service. There has been a significant decrease in the number of cable subscribers over this time.

The North Metro Telecommunications Commission (NMTC) was the first to notify CenturyLink that it was in violation of their franchise by making no attempt to serve additional subscribers. Since it was CenturyLink's intent to eventually stop providing cable service all together, it made sense to work with CenturyLink on an orderly transition and franchise termination plan rather than engaging in a franchise compliance process. We then entered into settlement discussions with CenturyLink.

Here are the highlights of the agreement:

- * CenturyLink agrees that its cable franchise will terminate upon the expiration of the initial term of the franchise.
- * CenturyLink may terminate the franchise earlier upon 90 days notice to the franchising authority.
- * CenturyLink will remove any facilities that are used exclusively for cable service and pay for any damage to the rights-of-way due to these facilities. [Note: We don't believe there are any facilities used exclusively for cable service. CenturyLink remains subject to applicable permits, local code, and state statutes and rules for its communications system.]
- * CenturyLink will provide notice to its subscribers with information on how to replace their cable service. CenturyLink will also pay for the return of any equipment that they require to be returned or provide instructions for disposal of the equipment.

* CenturyLink waives all cable franchise renewal rights.

We think this agreement benefits the Member Cities and NMTC for the following reasons:

* It avoids an expensive compliance process that ultimately would likely provide little benefit to subscribers in the short or long term.

* It clarifies that the CenturyLink franchises will terminate upon expiration of their initial term. This allows the NMTC to avoid expending money on a cable franchise renewal process with CenturyLink or going through a compliance process related to whether CenturyLink would be allowed to hold over and continue service in each franchising jurisdiction without a cable franchise.

* It minimizes impacts on CenturyLink's cable subscribers by giving subscribers notice, options to replace the service, and paying for the costs of returning equipment.

The NMTC approved the settlement agreement at their May 15, 2019 meeting and also recommend that the Member Cities approve the agreement.

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into on this ____ day of _____, 2019 by and between the North Metro Telecommunications Commission ("NMTC"), a Joint Powers Commission comprised of the municipalities of Blaine, Centerville, Circle Pines, Ham Lake, Lexington, Lino Lakes and Spring Lake Park, Minnesota (the "Member Cities"), each of the Member Cities and Qwest Broadband Services, Inc. d/b/a CenturyLink (hereinafter "CenturyLink"). The NMTC, Member Cities and CenturyLink shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

I. RECITALS

A. The NMTC, among other things, negotiates and administers cable franchises on behalf of the Member Cities.

B. The Member Cities each, through the NMTC, and CenturyLink negotiated and entered into a cable franchise agreement with Qwest Broadband Services, Inc. ("QBSI") DBA CenturyLink (collectively the "Franchise").

C. The NMTC has asserted that CenturyLink may be in violation of the Franchise for: (i) allegedly no longer aspiring to complete a reasonable build-out of its cable system within five years; (ii) allegedly no longer competing for cable service customers and not even trying to have market-based success; and (iii) allegedly not expending any effort to deploy its system in a shorter time period than allegedly required (collectively "Alleged Franchise Violations").

D. CenturyLink disputes the Alleged Franchise Violations, and specifically claims that it remains in compliance with the Franchise, including the market-based success language in the franchise; any build requirement set forth in the Franchise; and providing service as required in the Franchise.

E. Each cable franchise agreement between each Member City and CenturyLink has a term of five years and expires in December 2020/January 2021 per the cable franchise agreement (the "Initial Term").

F. It is the intent of the Parties to establish a process whereby the Member Cities and the NMTC will not pursue the Alleged Franchise Violations in exchange for the promises contained herein.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, considerations, mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties agree as follows:

II. AGREEMENT

1. Effective Date. This Agreement shall be effective on the date first written above (the "Effective Date").

2. Franchise Term. The Parties agree that the Franchise shall terminate and CenturyLink shall cease providing cable service in each Member City at the expiration of the Initial Term; provided however that CenturyLink may elect to terminate the Franchise at an earlier date upon 90 days' notice to each Member City. Upon any termination or expiration of the Franchise, CenturyLink shall cease providing cable service in the City.

3. Removal of Facilities at Expiration of Franchise. Pursuant to Section 3.7 of the Franchise, CenturyLink shall remove any facilities that are used exclusively to provide Cable Service. The City shall not require CenturyLink to remove any facilities that are used in another of CenturyLink's, or its affiliates, networks, including facilities used to provide broadband Internet access services or voice communications services. Any damage to the rights-of-way related to facilities used exclusively to provide Cable Service (if any) in any Member City shall promptly be repaired at CenturyLink's cost. In the event CenturyLink fails to make such repairs, each Member City may make the necessary repairs and CenturyLink shall pay for such repairs within thirty (30) days of receipt of the invoice.

4. Cable Subscriber Transition. CenturyLink shall provide at least 60 days written notice to its Cable Service subscribers of its intent to terminate its Cable Service product in each Member City and provide information on options available to its subscribers to replace the service. CenturyLink shall provide all of its Cable Subscribers with instructions on how to return or otherwise dispose of all CenturyLink on premises equipment (e.g., Set Top Boxes and remote controls). If CenturyLink requires the return of the on premises equipment, CenturyLink will provide its cable subscribers with a prepaid return shipping label and will not charge subscribers for the return of such equipment returned within 30 days of the disconnection date.

5. Franchise Renewal. CenturyLink hereby waives any and all franchise renewal rights under federal and state law. CenturyLink agrees not to seek any renewal or extension of the Franchise past the Initial Term. The NMTC and the Member Cities agree to refrain from further pursuing any claims against CenturyLink for the Alleged Franchise Violations.

6. Other Franchise Terms Remain Unchanged. Other than as set forth in this Agreement the Franchise remains unchanged. The Parties acknowledge a franchise fee review being conducted by the NMTC, which is not resolved by this Agreement.

7. No Admission. Except as expressly stated herein, it is understood and agreed that agreements made by the Parties in this Agreement are not to be construed as an admission of a contract right or liability on the part of either Party, and such agreements are a compromise and settlement of the Alleged Franchise Violations and CenturyLink's ability to seek a formal or informal renewal or extension of the Franchise.

8. Right to Make Agreement. The Parties represent, warrant and covenant that they have the right and authority to enter into and make this Agreement and those executing this

Agreement have all necessary authority to execute this Agreement and bind the respective Parties.

9. **Default.** In the event of breach of this Agreement, the non-defaulting party may seek judicial relief from a court of competent jurisdiction. The prevailing party shall be entitled to all of its costs and expenses including reasonable attorneys' fees.

10. **No Transfer.** Each Party represents, warrants and covenants that it has the sole right and authority to execute this Agreement, and that it has not previously assigned or transferred, or purported to have assigned or transferred, to any corporation, entity or person, any cause of action, judgment, lien, indebtedness, damage, obligation, loss, claim, liability, or right included in this Agreement.

11. **Consultation With Attorneys And Advisors.** The Parties expressly acknowledge that they have consulted, or have had the opportunity to consult, with whatever consultants, attorneys or other advisors each deems is appropriate in connection with the effect of this Agreement, and each Party assumes the risk arising from not seeking further additional consultation with such advisors. This Agreement has been, and shall be construed to have been, drafted by all of the Parties, so that the rule of construing the ambiguities against the drafter shall have no force or effect.

12. **Governing Law.** The validity, construction, interpretation and administration of this Agreement shall be governed by the internal laws of the State of Minnesota, without regard to the principles of conflict of laws. Any action arising out of, or relating to, this Agreement shall be filed in a court of competent jurisdiction in Minnesota. Each Party hereby consents to the jurisdiction of such courts for the purposes described in this Section.

13. **Integration Clause.** The Parties and/or their attorneys have engaged in settlement negotiations resulting in the execution of this Agreement. All of those settlement negotiations have been completed and are merged into this Agreement, which states as a final, complete, express, written and unambiguous integration exactly what the Parties have agreed. With respect to its subject matter, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties rights and duties. This Agreement is intended to be enforceable according to its written terms. There are no promises, oral agreements, representations, understandings or expectations of the Parties to the contrary.

14. **Modification.** Any alteration, modification or amendment to this Agreement shall be void unless in writing, signed by both Parties.

15. **Severance.** If, after the Effective Date of this Agreement, any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby.

16. **Persons Bound.** Except as otherwise stated herein, the terms of this Agreement shall extend to, and are binding upon, the Parties and each of their respective heirs, beneficiaries, representatives, partners, members, officers, directors, shareholders, employees, agents, and authorized successors and assigns.

17. **Assignment.** Neither this Agreement nor any rights, interests or obligations hereunder shall be assigned or transferred by any Party without the prior written consent of the other Party hereto. Any such assignment or transfer made without prior written consent of each Party hereto shall be null and void.


18. **Headings.** All headings herein are provided for convenience of reference only and do not affect the meaning or interpretation of this Agreement.

19. **Execution in Multiple Counterparts.** This Settlement Agreement and all documents to be executed hereunder may be executed in multiple counterparts, each of which may be treated as an original document.

20. **Copies.** Both facsimile and PDF copies of the executed Agreement may be treated as original documents.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names on the date of this Agreement.


**QWEST BROADBAND
SERVICES, INC.**

By: 
Its: VP Regulatory
Date: 5/13/19

CITY OF CENTERVILLE, MINNESOTA

Title: _____
Date: _____

**NORTH METRO
TELECOMMUNICATIONS
COMMISSION**


Title: Chair
Date: 5/15/19

CITY OF CIRCLE PINES, MINNESOTA

Title: _____
Date: _____

CITY OF BLAINE, MINNESOTA

Title: _____
Date: _____

CITY OF HAM LAKE, MINNESOTA

Title: _____

Date: _____

CITY OF LEXINGTON, MINNESOTA

Title: _____

Date: _____

CITY OF LINO LAKES, MINNESOTA

Title: _____

Date: _____

**CITY OF SPRING LAKE PARK,
MINNESOTA**

Title: _____

Date: _____