

NORTH SUBURBAN COMMUNICATION COMMISSION

In Re: CenturyLink Cable Franchise
Application

FINDINGS OF FACT AND RECOMMENDATION

Following the submission of an application for a cable television franchise for each member city of the North Suburban Communications Commission (the “NSCC”), the above-entitled matter initially came before the NSCC for a public hearing on Thursday, March 5, 2015, at the NSCC’s Office located at 2670 Arthur Street, Roseville, MN 55113. Said public hearing was held open through Friday, March 13, 2015, for the purpose of allowing additional written public comments. Following the public hearing, the NSCC’s Executive Director prepared a detailed report entitled “Staff Report on CenturyLink Cable Franchise Application” (the “Staff Report”). The NSCC received and filed the Staff Report and directed NSCC staff to negotiate cable television franchise with CenturyLink.

The NSCC, in furtherance of its obligations as a steward on behalf of consumers of each member 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 each member city of the NSCC.

The NSCC 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 each member city. Adoption of this Franchise is, in the judgment of the NSCC, in the best interests of each member city and its residents.

Having held a public hearing on the cable franchise application and having reviewed the negotiated cable franchise with CenturyLink, the NSCC now makes the following findings:

FINDINGS OF FACT

1. Each member 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. On January 21, 22, 27 and 28, 2015, the NSCC published a Notice of Intent to Franchise in a newspaper of general circulation of each member city. *See* Staff Report, § 1.
3. CenturyLink submitted a cable franchise application (the “Application”) on February 20, 2015. *See* Staff Report, § 1.
4. The NSCC held a public hearing on the Application on March 5, 2015, and left the public hearing open until March 13, 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 NSCC’s Executive Director prepared a “Staff Report on CenturyLink Cable Franchise Application” (the “Staff Report”) dated April 9, 2015. The Staff Report is incorporated herein by Reference.

6. The Staff Report was received and filed by the NSCC on or about April 10, 2015, and the NSCC directed NSCC staff to negotiate a cable television franchise with CenturyLink.
7. NSCC staff negotiated a cable television franchise with CenturyLink and presented it to the NSCC on October 7, 2015.
8. The impact of competition and the challenges to a new cable operator, like CenturyLink, are identified in the Staff Report. *See* Staff Report, § 2.
9. 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.
10. The Staff Report identified the issues raised by the public, including the incumbent franchised cable operator, Comcast. *See* Staff Report, § 9.
11. The NSCC has substantially complied with the state and local cable franchise application requirements identified in the Staff Report.
12. CenturyLink's application substantially complied with state and local cable franchise application requirements identified in the Staff Report.
13. 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 each member city and intends to operate a cable communications system in each member city. *See* Staff Report, Exhibits 2 and 3.

14. CenturyLink further represents that upon completion of its cable service headend, it will be capable of providing cable communications service to a portion of each member city over its existing facilities, but currently has no market penetration in the cable communications service market in each member city. *See* Staff Report, Exhibits 2 and 3.
15. The NSCC 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.
16. Comcast of Minnesota, Inc. (“Comcast”), currently holds a non-exclusive franchise with each member city, and, Comcast, through its predecessors in interest, has continuously held a franchise with each member city since 1983. *See* Staff Report, § 3
17. CenturyLink will be the first facilities based franchised cable operator to compete against the incumbent provider in each member city since the initial cable television franchise was granted in 1983. *See* Staff Report, § 3.
18. 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.

19. *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).
20. 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).
21. 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.
22. 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.
23. 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.

24. Each member 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).
25. 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 ¶¶ 19-23.
26. CenturyLink claims the fact that these two provisions of the Minnesota Statutes constitute an unreasonable barrier to entry in each member 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 ¶¶ 19-23. CenturyLink has agreed to fully defend, indemnify and hold each member city and the NSCC harmless in the event this cable television franchise agreement is legally challenged. *See* Staff Report, § 11(c).
27. The cable television franchise ordinance is substantially similar to the Comcast cable television franchise, but also addresses a reasonable build-out of each member city, and economic redlining.

28. 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).
29. 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 every member city, including a significant number of households below the minimum income of each member city. Quarterly meetings will allow each member city and the NSCC 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 each member city by the end of the franchise term.
30. 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).

31. 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 NSCC's Competitive Franchising Policies and Procedures. *See* Staff Report, § 10(3)(b).
32. The City has considered the financial, technical, and legal qualifications of CenturyLink. *See, e.g.*, Staff Report, § 10(3).
33. CenturyLink has the financial, technical, and legal qualifications to operate a cable communication system each member city.
34. 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 each member city. *See* Staff Report, Exhibits 2 and 3. CenturyLink has also promised to provide additional enhancements to PEG offerings to each member city. For example, it has agreed in the franchise to provide every PEG channel in HD and to allow each member city to share live programming with other cities in the Twin Cities by providing a Twin Cities Metro PEG Interconnect Network.
35. Consumers and residents of each member 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
36. 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).

37. Each member city and its citizens will benefit from facilities based competition in the cable television market. *See* Staff Report, § 2.

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

RECOMMENDATION

1. That each member city grant a cable television franchise by ordinance to CenturyLink.
2. That prior to granting the franchise, each member city hold a public hearing on the recommended franchise.
3. That each member city waits seven (7) days following the public hearing before taking action on the franchise, as required in Minnesota Statutes Section 238.081.
4. That each member city adopts Findings of Fact, consistent with this Findings of Fact and Recommendation, as their official Findings and make the Findings of Fact part of the official record.