

**CITY OF SHOREVIEW  
AGENDA  
CITY COUNCIL WORKSHOP  
MAY 19, 2014  
IMMEDIATELY FOLLOWING REGULAR MEETING**

1. ROLL CALL
2. DISCUSSION WITH COMCAST REGARDING CABLE FRANCHISE RENEWAL
3. OTHER ISSUES
4. ADJOURNMENT

**TO: MAYOR AND COUNCILMEMBERS**

**FROM: TERRY SCHWERM  
CITY MANAGER**

**DATE: MAY 13, 2014**

**SUBJECT: DISCUSSION REGARDING CABLE FRANCHISE RENEWAL**

At its May 12, 2014 workshop meeting, the City Council heard from Cor Wilson, Executive Director of the North Suburban Communications Commission, and Michael Bradley, attorney for the Commission, regarding the status of cable franchise negotiations with Comcast. As discussed at the meeting, the City will likely need to make a decision whether to accept Comcast's renewal proposal or preliminarily deny the proposal before June 20<sup>th</sup>. The reason that this decision will need to be made is that the cities, through the NSCC, are currently engaged in the formal renewal process with Comcast which has established guidelines.

After discussing many of the issues related to the franchise renewal process for nearly two hours at the workshop meeting, the Council also decided to invite Comcast to a meeting to discuss the franchise renewal process. Emmett Coleman, Comcast's Vice President of Government Affairs, had sent the attached letter to the Mayor and Councilmembers requesting an opportunity to meet regarding the franchise renewal. Also attached is a letter from Mr. Coleman to the NSCC Chair Steve Beilke outlining Comcast's position on some of the key issues regarding franchise renewal.



May 7, 2014

Mayor Sandy Martin  
City of Shoreview  
444 Lake Wabasso Court  
Shoreview, MN 55126

Re: Renewal of Comcast Cable Franchise Agreement

Dear Mayor Martin:

Three and a half years ago Comcast notified the City of Shoreview of its desire to renew its cable television franchise with the City. At that time, Comcast hoped that it could informally negotiate a franchise renewal agreement with the North Suburban Cable Communications Commission (NSCC) – as we do in almost every other community across the country. Since then, Comcast has had ongoing informal meetings with the NSCC. Unfortunately, negotiation with the NSCC has proven futile and the NSCC has instead chosen to invoke a parallel formal, contentious, and expensive franchise renewal process governed by federal law.

As part of the formal process, on July 29, 2013, the NSCC issued a request (“RFP”) that Comcast submit a formal franchise renewal proposal. Under federal law, each NSCC member city, as the franchising authority, has until June 20, 2014 to approve or deny Comcast’s formal renewal proposal. On May 15, 2014, the Commission is expected to issue a formal recommendation to the City as to whether Comcast’s formal proposal should be approved or denied. Comcast, therefore, respectfully requests an opportunity to discuss this issue with the City Council prior to any anticipated action by the City.

Comcast believes, for example, that the NSCC member cities may not be aware of the PEG funding inequities embedded in the NSCC’s RFP to which Comcast was required to respond. These inequities result in distorted cross-subsidies between the member cities with respect to PEG funding. Comcast would like the opportunity to shed light on these cross subsidies and allow the City Council the opportunity to consider whether it believes these cross subsidies are fair to its constituents. With respect to the amount of PEG support, federal law expressly prohibits the NSCC from demanding that Comcast provide additional operating support if the franchising authority is already collecting its full 5% franchise fee allowed under federal law; and each of the NSCC communities are already doing so. Yet, in the RFP the NSCC actually states “the Applicant shall voluntarily pay” this support on top of the millions of dollars of support already being required.

Despite the unreasonableness of many of the demands in the RFP, Comcast was required to put forth a proposal that meets actual community needs and that is consistent with federal law. If Comcast has done this, then the City cannot reasonably deny the proposal in question. In the event that Comcast’s proposal is denied, and we are obliged to pursue the matter with an Administrative Law Judge or in court, we believe that we will ultimately prevail on these issues.

However, we also want to make certain that councilmembers are aware of the informal proposal that Comcast has put forward to the NSCC and its member jurisdictions. In informal discussions, the parties are not necessarily limited by the federal criteria that define what may be requested formally. Comcast suspects there is a lot the City Council has not heard about Comcast's informal proposal, and why, we believe, informal discussions continue to provide a better path forward than the formal process. If given the opportunity to be heard before the City Council, or to meet with individual councilmembers, Comcast will answer any questions City Council members may have about this important matter.

Thank you for your consideration. Either I or someone from my team will follow-up with you shortly to confirm an opportunity to discuss this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emmett V. Coleman", with a long horizontal flourish extending to the right.

Emmett V. Coleman  
Vice President, Government Affairs

cc:

Councilmember Ady Wickstrom  
Councilmember Ben Withhart  
Councilmember Emy Johnson  
Councilmember Terry Quigley  
City Manager Terry Schwern



January 6, 2014

Steve Beilke  
NSCC Cable Commission  
2670 Arthur St.  
Roseville, MN 55113

Dear Chairman Beilke:

On December 20th Comcast filed its Formal Franchise Renewal Proposal with the North Suburban Communications Commission. The Federal Cable Act requires the NSCC to accept or reject Comcast's proposal within 120 days. If the proposal is rejected, the NSCC must hold an administrative hearing that will include depositions and written discovery, the presentation of evidence and testimony at a multi-day hearing, and a final decision. If the final decision is a denial, Comcast has a right of appeal to Federal District Court. We hope all of that will be unnecessary.

I am writing today to provide you with an explanation of our Formal Franchise Renewal Proposal. The document we filed is more than 800 pages, which includes our proposal, a draft franchise agreement, and supporting exhibits. Our filing was so large for two reasons. First, we had to respond to the "Application Form" your staff provided, a form that has been copied and reused by consultants for more than twenty years because they seem to believe its onerous requirements will intimidate a cable operator into abandoning the formal renewal process. Second, we have documented the evidentiary basis for our proposal since the formal renewal process is driven by what the parties are able to prove in court. We have also documented many of the serious deficiencies in the record presented in the NSCC Staff Report.

In order to make this summary as useful to you as possible, I have organized the information below in the following order for each topic: (1) what you demanded from Comcast on behalf of your constituents when you adopted the NSCC Staff Report and RFRP, (2) what Comcast offered in its proposal, and (3) why Comcast's offer differed from your demand. This summary includes what we believe to be the most important elements of the renewal to you (based on informal negotiations to date) and not every possible topic covered by the franchise.

## PEG Funding

The RFRP and Staff Report demanded two types of funding in support of public, educational, and governmental programming: capital funding (facilities and equipment) and operational funding (payroll, supplies, everything else).

### PEG Capital Funding

You demanded more than \$14 million over a franchise term of 10 years. (Under the current franchise, PEG capital funding is less than \$100,000 per year for 15 years, or \$0.27 per customer.) The new grand total included \$8.6 million for the NSAC's purported capital needs, which amounted to \$2.36 per customer per month. On top of that, you demanded the following capital support for each community:

Arden Hills	\$ 393,183	(\$ 1.80 per customer per month)
Falcon Heights	\$ 481,183	(\$ 3.78 per customer per month)
Lauderdale	\$ 481,183	(\$ 8.10 per customer per month)
Little Canada	\$ 393,183	(\$ 1.35 per customer per month)
Mounds View	\$ 473,183	(\$ 1.72 per customer per month)
New Brighton	\$ 413,183	(\$ 0.71 per customer per month)
North Oaks	\$ 393,183	(\$ 3.00 per customer per month)
Roseville	\$ 543,183	(\$ 0.54 per customer per month)
Shoreview	\$ 473,183	(\$ 0.69 per customer per month)
St. Anthony	\$ 473,183	(\$ 1.85 per customer per month)

The resulting total PEG Capital Fee (\$2.36 plus the above amounts) you demanded for each community was:

Arden Hills	\$ 4.16 per customer per month
Falcon Heights	\$ 6.14 per customer per month
Lauderdale	\$ 10.46 per customer per month
Little Canada	\$ 3.71 per customer per month
Mounds View	\$ 4.08 per customer per month
New Brighton	\$ 3.07 per customer per month
North Oaks	\$ 5.36 per customer per month
Roseville	\$ 2.90 per customer per month
Shoreview	\$ 3.05 per customer per month
St. Anthony	\$ 4.21 per customer per month

Comcast's offer for PEG Capital Support is explained in detail on pages 75-79 of our proposal. In short, we agreed to provide \$1.6 million in funding to the NSCC/NSAC in the form of a \$0.44 per customer per month pass through – representing historical capital expenditures and a 63%

increase over current funding of \$0.27 per customer. In addition, we will provide almost all of the individual community funding set forth above, less a small deduction for an improper last-year contribution included in your consultant's original figures. As you should be aware, NSCC/NSAC has a \$2.1 million reserve, so we also proposed that half of the reserve be applied on a pro-rata basis to reduce the capital needs of each community. The resulting proposal from Comcast of an additional \$3.2 million is comprised of the following individual community amounts:

<u>Community</u>	<u>Capital Total</u>	<u>Per Cust.</u>	<u>w/\$0.44 for NSCC/NSAC</u>
Arden Hills	\$ 310,228.12	\$ 1.43	<b>\$ 1.87</b>
Falcon Heights	\$ 424,360.99	\$ 3.33	<b>\$ 3.77</b>
Lauderdale	\$ 444,004.02	\$ 7.47	<b>\$ 7.91</b>
Little Canada	\$ 288,815.13	\$ 0.99	<b>\$ 1.43</b>
Mounds View	\$ 373,673.83	\$ 1.36	<b>\$ 1.80</b>
New Brighton	\$ 215,245.47	\$ 0.37	<b>\$ 0.81</b>
North Oaks	\$ 335,319.84	\$ 2.56	<b>\$ 3.00</b>
Roseville	\$ 222,840.91	\$ 0.22	<b>\$ 0.66</b>
Shoreview	\$ 253,941.55	\$ 0.37	<b>\$ 0.81</b>
St. Anthony	\$ 379,400.15	\$ 1.49	<b>\$ 1.93</b>

#### PEG Operating Funding

In addition to the amounts set forth above, you have demanded PEG operating support in the amount of \$13.5 million, which would be an additional \$3.71 per customer per month on top of the PEG capital support set forth above. (Your combined PEG funding demand of \$27.5 million would have had an average per customer cost of \$7.57 monthly for the next 10 years.)

Your demand for PEG operating support is unlawful and Comcast's proposal offers no PEG operational funding. The Federal Cable Act prohibits communities from conditioning franchise renewal on PEG operational funding because such funds count toward the 5% franchise fee cap. Where a cable operator is already paying the full 5% franchise fee, as Comcast is doing here, PEG operating support must come out of the franchise fee already being paid. In this case, Comcast's 5% franchise fee will total approximately \$15.5 million over the next 10 years, and the communities can fund PEG operations accordingly with those fees.

#### PEG Channels

At minimum, you appear to have demanded that Comcast maintain the existing 8 standard-definition PEG channels and launch an additional 4 PEG channels in high-definition format. The Staff Report and RFRP (pages 77-89) is oddly worded and unclear. The ultimate demand appears to be for 12 PEG channels simulcasted in HD and SD, plus an unspecified quantity of Video On Demand capacity.

Comcast's proposal is for 4 strong PEG channels – 3 in standard-definition and 1 in high-definition, with an opportunity to add a channel in the future based on actual use. Comcast will assist in adding the programming information for the PEG channels to the digital channel guide.

It is difficult to conceive that all of the governmental, educational, and public interest activities of these 10 communities totaling 60,000 residents cannot be covered in the space of 4 full-time channels. The current 8 PEG channels are sparsely-watched and under-utilized despite the best efforts of a large staff and numerous volunteers. The attempt to program 8 channels has diluted the programming content to the point that the channels have little to no value for the vast majority of the community. The report relied upon by NSCC Staff to justify the PEG channel demands is at best unreliable if not outright and intentionally misleading – as detailed in the expert report we provided. Comcast's properly conducted survey and our analysis of the PEG programming data reluctantly provided by your staff shows the current channels are not valued and are underutilized.

Comcast wants to increase the value of the PEG channels by working with the PEG programmers to consolidate 8 diluted channels into 4 stronger channels, where the programming can be kept fresh and relevant, and therefore more valuable to the community.

### **Institutional Network**

The RFRP required that the existing institutional network continue and be expanded or improved under a new franchise at no cost to the NSCC or its member cities—in effect demanding an in-kind service unrelated to PEG usage. The Staff Report and RFRP do not offer information showing current usage, expected need, or community interest for this separate institutional network, and customers surveyed expressed no desire to pay for one.

Comcast's proposal continues to provide institutional-network services comparable to that provided the NSCC today. Comcast will offer the portion of the institutional network used for PEG-purposes without charge to the NSCC (subject to Comcast's right to pass through the value of the network used for PEG-related purposes to subscribers as a PEG-capital contribution). To account for the NSCC's I-Net usage unrelated to PEG, Comcast will charge the fair-market value of that portion as calculated by our outside expert. If the NSCC and member cities would prefer to not pay for the non-PEG-related I-Net features that it demands, Comcast will offer these services as an in-kind contribution to the NSCC subject to the 5% franchise fee cap. The member cities of the NSCC may choose to allocate these costs to individual communities depending on their usage. The NSCC and member cities would be prohibited from offering the network as a commercial service to nongovernmental entities.

The NSCC may not condition renewal of a franchise on demands for a free and separate institutional network. The Cable Act does allow LFAs to ask for some capacity for PEG-related uses on an existing network built by a cable operator for non-residential use. For the NSCC, this has expanded into provision of an institutional network beyond PEG purposes, offered by one

member city commercially to third parties, even bidding against Comcast for business. This exceeds what the Cable Act allows and appears to be in violation of the current agreement with Comcast.

### Other Terms

Comcast's formal proposal includes many other important terms. It protects your ability to collect the maximum franchise fee allowed by law and to audit the payments. Most importantly, we proposed an improved dispute resolution process that provides the opportunity to reduce legal and consultant expenses and encourages a cooperative approach to problem solving. The formal proposal provides for customer service standards and enforcement mechanisms, a performance bond, insurance, and indemnification obligations. Lastly, the proposed franchise term is significantly shorter than prior franchises – at only 10 years – allowing for an earlier reassessment of community needs in the future.

Comcast has requested an opportunity to make a presentation at your February meeting regarding our formal renewal proposal. I hope you will take an opportunity before that meeting to review the materials Comcast submitted with its formal proposal. The ascertainment upon which the NSCC's demands are based is seriously flawed and presents a significant risk to the member communities in proceeding with the formal renewal process. Comcast nevertheless remains willing to continue informal renewal negotiations and is hopeful we can reach an agreement in the near future.

Sincerely,

A handwritten signature in cursive script that reads "Emmett V. Coleman". The signature is written in black ink and is positioned above the typed name.

Emmett Coleman

Vice President, Government Affairs

[emmett\\_coleman@cable.comcast.com](mailto:emmett_coleman@cable.comcast.com)