

**CITY OF SHOREVIEW
MINUTES
CITY COUNCIL WORKSHOP MEETING
May 12, 2014**

CALL TO ORDER

Mayor Martin called the workshop meeting of the Shoreview City Council to order at 7:00 p.m. on May 12, 2014.

ROLL CALL

The following attended the meeting:

City Council: Mayor Martin; Councilmembers Johnson, Quigley, Wickstrom and Withhart

Staff: Terry Schwerm, City Manager
Mark Maloney, Public Works Director

North Suburban
Cable Commission Coralie A. Wilson, Executive Director
(NSCC)

Legal Counsel
for NSCC Michael Bradley

DISCUSSION REGARDING CABLE FRANCHISE RENEWAL

Ms. Wilson stated that the franchise renewal process is set in federal law. It begins with a letter from the franchise company three years in advance giving notice of renewal of the franchise. The process includes a technical review, needs ascertainment review, a financial review, and a franchise fee review. The current negotiations are under the formal process as requested by NSCC. NSCC, on behalf of its 10-member cities, has been in informal negotiations with Comcast. In her report the differences between the agreement proposed by Comcast and the one proposed by NCSS are outlined. The deadline to accept or deny Comcast's proposal is June 20, 2014. On May 13, 2014, the Franchise Renewal Committee meets to make a recommendation to the NSCC who will meet and vote on the recommendation May 15, 2014. The meeting on May 15th will be televised. Comcast will be invited to give a presentation. Three resolutions have been drafted: 1) to recommend to the cities to accept the proposal; 2) to recommend denial of the proposal; and 3) to recommend preliminary denial of the agreement in order to allow the formal renewal process and to stop the transfer of ownership process to occur. The 10-member cities will then vote on the recommendation from NSCC.

Councilmember Wickstrom clarified that the franchise agreement is between Comcast and the City, not NSCC. Ms. Wilson explained that NSCC administers and manages the franchise on

behalf of the 10 cities. City Manager Schwerm further explained that the City receives revenue from franchise fees, which come to the City and PEG (public education in government) fees that are received by the North Suburban Access Corporation. The PEG revenue is provided for the operation of the public access channels. The City contributes slightly more than \$70,000 per year to the NSCC for franchise administration and oversight.

Mayor Martin stated that some cities may vote one way while others vote differently. Mr. Bradley responded that a City vote to deny is a preliminary vote, not a final vote. If there is a preliminary vote to deny, Comcast would be eligible to request a hearing with an Administrative Law Judge. The judge will send recommended findings to the NSCC. The NSCC will review those findings and make a recommendation to the member cities. The final vote is then made by the cities. Ms. Wilson stated that even if a preliminary vote for denial is taken, Comcast can go back to the informal process of negotiation.

Ms. Wilson stated that it is important to note that NSCC has been trying to negotiate and has presented two offers to Comcast. The most recent was in March, when NSCC proposed to significantly cut funding, number of channels and set up a management services network within three to five years. Comcast's most recent proposal would cut the number of channels significantly and would provide operating funding for two years. Currently, the NSAC is receiving approximately \$1.5 million per year in PEG fee revenue (\$4.15 per month). Comcast's proposal is funding at \$0.40 per subscriber with operating funds of approximately \$800,000 for the first year, half that amount the second year and no operating funds after two years. Comcast also believes the value of their institutional network justifies having cities pay \$1600 per connection instead of the free INET that is available now. Comcast does not talk about the public rights-of-way that they lease in order to provide services, which also has value. Mr. Schwerm explained that Comcast sees the 5% franchise fee as payment for use of public rights-of-ways and the \$4.15/per subscriber/month PEG fee to customers as their support. They have not proposed a reduction in franchise fee but have proposed a significant reduction in PEG fees.

Ms. Wilson stated that the matter is further complicated by the fact that Comcast has decided to acquire Time Warner. That merger has to be approved by the federal government. Comcast will be divesting themselves of a number of their Cable subscribers in the course of this merger. That means that in Minnesota, Charter will pick up a number of those Cable accounts. Comcast is also creating a spinoff company, two-thirds of which will be owned by Comcast shareholders and the other one-third owned by Charter. The cities will have to approve the transfer of ownership to this spinoff company. The problem with this transfer, compared to when it happened in 1998, is that the companies transferred to at that time were established with a track record. The spinoff company proposed does not have a track record.

Councilmember Withhart stated that whether Comcast or a spinoff company, the agreement would be the same. Ms. Wilson explained that the spinoff company has not yet been created. Yet it is her understanding that Comcast will be sending requests to cities in June to approve the transfer.

Councilmember Quigley stated that as any other Cable company, the spinoff company will be guided by federal law. Ms. Wilson explained that the issue is whether the spinoff company will

have the resources to comply with whatever franchise agreement is signed. The NSCC will provide an analysis of the transfer to cities.

Councilmember Withhart asked what percentage of fees goes to cities and what percentage goes to Comcast. Ms. Wilson stated that the city receives 5% of gross cable revenues. Mr. Schwerm stated that the franchise fee brings in approximately \$310,000 per year to the City. Of that amount, approximately \$72,000 goes to NSCC for franchise administration and oversight. The \$4.15 monthly fee pays for Public Access and Government (PEG), cable programming and is given to the NSAC. Mr. Bradley added that there are three components of public access: public access programming, public education and government access.

Ms. Wilson stated that the PEG fees to CTV provide public access, educational access and government access. CTV provides training to volunteers for producing programs; training to schools, such as Bethel and Northwestern for events and sports; school board meetings; graduations. CTV provides 100 hours production assistance services to the 10 member cities with PEG funding. The Shoreview Northern Lights Variety Band is covered every year as are elections. This is done by community people who are trained by NSCC. As examples, Mr. Schwerm stated that PEG fees were used for production and broadcasting of programs such as *Community for All Ages*, *Slice of Shoreview* parade, *Tale of 10 Cities*, and *Disability Viewpoints*. CTV also does webstreaming and runs videos on request, such as the broadcasts of the Environmental Quality Committee (EQC) speaker series programs.

Councilmember Quigley noted the low number of residents who watch CTV as found on the Community Survey, and questioned its value in light of the many repetitive programs and services. Ms. Wilson stated that just because people do not often watch the programs does not mean there is no value. She used the analogy of a library card, which she has even though she does not have time to use it now. Many of the cable channels have repeated programs.

Mayor Martin noted that the PEG fees in various cities are all over the map when comparing rates among cities. Edina receives less than \$1.00. Shoreview is among the highest in PEG fees at \$4.15. She asked how the higher rate is justified. Ms. Wilson stated that NSCC has had a higher PEG fee for a long time. There has never been a complaint about PEG fees from customers. No written comments have been received complaining about PEG fees. As for Edina, that city only provides government access. Edina does not support the schools or community programming. Each community is different. A great example of value is the program, *Disability Viewpoints*, which has been running for 15 years. Without NSAC support, that program would not exist. Mayor Martin asked how the City can justify fees that will almost double. Ms. Wilson stated that negotiations have focused on keeping rates whole for the next 10 years. During those 10 years, NSAC would work on finding other funding sources.

Councilmember Johnson asked what NSAC will be doing in the future to keep up with the rapidly changing industry and youth. Ms. Wilson stated that most programming is already available on the website. Webstreaming is about two weeks away from Council meetings being on INET and phones. The goal with youth is to provide media literacy training.

Mayor Martin stated that NSCC has put the cities in a tough spot because the current Comcast proposal cannot be approved. However, to deny it will potentially mean litigation. She asked what plans exist to avoid a federal lawsuit. Mr. Bradley stated that the plan is to leverage a position to negotiate with Comcast. As counsel for the Cable Commission, he has tried repeatedly to get Comcast to the table but with no response.

Councilmember Quigley stated that the legal fees are out of balance with the programming and services provided. Comcast believes it will prevail. Ms. Wilson stressed that there has been continual effort by the NSCC to get Comcast to the negotiating table. There has been no response.

Mayor Martin stated that she does not want to see NSCC spend huge amounts of legal fees. To vote to deny does not bring the City anything. Ms. Wilson responded that a vote to deny puts pressure on Comcast. NSCC has offered a serious compromise that does cut staff and services, but there has been no response. The NSAC has proposed significant cuts to PEG fees to a little over a million for the 10 years of the contract. The number of channels proposed is six instead of eight. NSCC has offered to go to a managed services program in the INET.

Councilmember Withhart stated that he would want to know exactly what would be lost if the proposal were accepted. Mr. Schwerm stated there are consumer protections in the current agreement that would be lost, which is a troublesome issue. It would be important to know in detail how the proposed agreement compares with the existing agreement. Mr. Schwerm stated that he posed the question of what would happen if the City did not formally accept or deny the proposal before the deadline. The answer is that no action would be interpreted as acceptance of Comcast's formal proposal.

Mr. Schwerm noted that a FCC ruling indicates that cable companies cannot be obligated to provide operating support as part of the franchise renewal. Comcast has taken a hard line in not offering operating support. Ms. Wilson stated that although cable companies have never been required to provide operating costs, they have been willing to do so in recognition of the public property use they receive. Mr. Schwerm stated that under federal law he believes Comcast is on solid ground in not providing operating support. If the decision had to be made today, he would recommend the Council vote for preliminary denial because formal proposal is not in the City's best interest.

Councilmember Wickstrom asked if the June 20, 2014 deadline for acceptance of the agreement could be extended. Mr. Schwerm stated that the date can only be extended if both parties agree.

Mayor Martin stated that no one wants to have services cut, but she believes there is room for negotiation. The services are valuable to the community, but there is a lot of money being spent on legal issues. She thanked Ms. Wilson and Mr. Bradley for their time in meeting with the Council.

Mayor Martin called a five-minute break and reconvened the meeting.

Mayor Martin stated that there was a meeting earlier in the day with other neighboring mayors regarding the proposed Comcast agreement. Mr. Schwerm gave a presentation, and it was clear that some of the other cities did not have a full understanding of what the agreement means.

Mr. Schwerm stated that when the NSCC decided to seek the formal process, deadlines were triggered. Comcast has put a lot of money into preparation of their proposal and with the FCC decision. Comcast has not been willing to change its position on PEG operating support.

Councilmember Withhart asked if City broadcasts will be lost if there is no NSCC.

Councilmember Wickstrom answered, no. Instead of broadcasting through CTV, the City would broadcast meetings directly through Comcast. Mr. Schwerm stated that there will be community push back from those who are producing local programs. However, the City does not have the resources to offer the services to continue public access programming without NSCC.

Councilmember Johnson stated that her big concern is litigation that would put the City at risk.

Mr. Schwerm stated that he believes there are two options: 1) preliminary denial and then withdrawing from the Commission and negotiating with Comcast directly--this could benefit the City financially because the \$72,000 being given to the Commission would be available to the City; and 2) see if the informal negotiation can proceed and move forward. A preliminary denial of Comcast's formal proposal will likely be necessary. However, there will eventually need to be a decision on whether or not to leave the NSCC.

Councilmember Wickstrom stated that Comcast sent forms to the FCC citing the competition in this area. It is likely that there will be no rate regulation on Basic TV, which will mean less for the NSCC to administer. The NSCC would only negotiate the service level agreements. The NSCC Board includes volunteer representatives from some cities but should be city councilmembers because it is the cities that pay the NSCC budget. She would suggest dropping out of NSCC.

Councilmember Withhart stated that if the City wants meetings or events aired, they can be recorded and put on a website and skip Cable TV. If a contract can be negotiated, he would suggest trying to restructure the NSCC.

Mayor Martin stated that more than 50% of Shoreview residents have Comcast and of that number, 1% actually watch CTV. She would consider opting out of NSCC, but she would like to see if a new contract can be negotiated. Mr. Schwerm noted that if a new contract is negotiated, NSCC would still have oversight but would be providing fewer services. If the City were to negotiate on its own, he would recommend hiring an attorney that specializes in telecommunications franchises to assist the City. However, that would be a one-time attorney expenditure for the City for the entire contract rather than ongoing annual support of NSCC. He further noted Comcast's request to meet with the Council. It was the consensus of the Council to meet with Comcast representatives at a special workshop meeting immediately following the City Council meeting on May 19, 2014, if possible.

DISCUSSION REGARDING DRAFT AUAR AND MITIGATION PLAN - TCAPP

Mr. Schwerm explained that an AUAR is similar to an Environmental Impact Statement. Arden Hills is in the process of developing a Master Plan with minimum and maximum development scenario for the TCAAP property. Public comment is requested for the study area and land use. The current study area does not include the property adjacent to County Road I. A possible connection to County Road I could impact Shoreview and needs comment, although the AUAR is somewhat vague about any connection.

Public Works Director Mark Maloney explained that one issue is if there is an attempt to connect a road to align with Rice Creek Parkway, it could change the function of the road. It should not be assumed by the County and Arden Hills that Shoreview's infrastructure will support their development. The City has been consistent in pointing out the need for continued access to 35W and the County Road I interchange. The two concerns for the City are the potential change to Rice Creek Parkway and the critical importance of maintaining access from County Road I off I-35W. The City's response will be for the plan to look at a larger area because of the potential road connections.

Mr. Maloney stated that there are references to a connection road to Schutta or Fairview, but no ownership is shown. Ramsey County Park staff have also discussed trail connections at Schutta, which makes sense if there is a road connection. However, that is not shown specifically on the AUAR.

Councilmember Wickstrom stated that a connection at Schutta or Fairview would allow a safe connection from trails north of County Road I to trails south of County Road I.

OTHER ISSUES

Mr. Schwerm announced that Rebecca Olson has been hired as Assistant to the City Manager. She has been serving in a similar role in Blaine and will be starting in early June.

The meeting adjourned at 9:20 pm.