

Memo

To: Honorable Mayor and City Council
From: Joseph Kohlmann, City Administrator
Date: December 10th, 2013
Re: LMCC Membership

Updated 12/10: Staff received the attached emails concerning the LMCC:

The City sent a letter to the LMCC notifying them of the intent to withdraw. The City has the ability to rescind the request until December 31st. The Tonka Bay City Council has two Council Meetings, tonight and December 10th (Staff is anticipating the cancellation of the December 26th Meeting).

The City needs to decide if it wants to rescind the withdrawal request to the LMCC. Things to consider if withdrawal occurs:

- 1) Local programming channels will not be broadcast with Tonka Bay City limits.
- 2) The LMCC will not film the Tonka Bay City Council Meetings anymore.
- 3) PEG and Franchise fees will be directed to the City.
- 4) The City will be able to adopt any franchise ordinance, even the same one that the LMCC adopts.
- 5) The City will lose whatever assets and cash ever contributed to the LMCC.
- 6) Franchise and PEG fees would likely cover any asset loss eventually.

So, the City essentially has three options:

- 1) Standby the letter and confirm withdrawal
- 2) Rescind the withdrawal and stay as a member of the LMCC
- 3) Try to draft up a modified proposal (i.e. stay in for one more year) – however, any modified proposal will cost money in legal expenses and the City is operating in a very short time frame to work out an

agreement with the LMCC – which would then probably need to amend their ordinance to accommodate any modified proposal.

If the City elects to rescind the withdrawal letter, it is advised that the City Council vote to approve the JPA Amendments to allow for greater flexibility in the future with the LMCC.

In short, the amendments aim to:

- 1) Provide a withdrawal clause for Member Cities in any year.
- 2) All future amendments would require 2/3 votes as opposed to unanimous approval.

Attached are the JPA Amendments

Attached is clarification from Bob Vose on the outstanding question regarding the amendments

Attached are the franchise and PEG fee breakdowns

Council Action Requested:

Consider withdrawal from the LMCC.

Joe Kohlmann

From: Linda Reilly <reill002@umn.edu>
Sent: Monday, December 02, 2013 10:25 AM
To: jkohlmann@cityoftonkabay.net
Subject: LMCC

I heard that Tonka Bay will be pulling their membership with the Lake Minnetonka Communication Commission. I heard they are used on a regular basis to film our meetings of interest to the community and rebroadcast on cable. Will this be reconsidered?

Linda Reilly
Tonka Bay resident

Joe Kohlmann

To: elliansari@gmail.com
Subject: RE: from Kay Thompson

On Fri, Nov 29, 2013 at 8:02 PM, Kay Thompson <kaymariet@msn.com> wrote:

Hello Gerry,

I am a resident of Tonka Bay and am concerned about Tonka Bay's decision to drop membership in the LMCC. Will there be a way for Tonka Bay residents to have access to council meetings and candidates' forums if the LMCC does not record them? I think it is very important for residents to be able to go to the Tonka Bay website and pull up past council meetings for viewing or to watch for them on cable. Will that still be an option if you drop LMCC? The same concern is for candidates' forums during election season. Very few people actually attend most council meetings or candidates' forums yet many people view them later on cable. This visibility and accessibility is very important. Thanks for your consideration. I am copying this email to the other council members.

Kay Thompson
190 Wildhurst Road
952 474 7971

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MEMORANDUM

To: LMCC
From: Bob Vose
Date: September 19, 2013
Re: Amendments to the Joint and Cooperative Agreement ("JPA")

At the LMCC's special meeting on September 17th, I was directed to draft amendments to the JPA regarding member withdrawal and the number of member cities that must approve future JPA amendments. I was also asked for input regarding who may serve as a commission director.

If the LMCC recommends approval any of these amendments, I will prepare a complete copy of the JPA with such amendments for consideration by the member cities.

1. Withdrawal

Amend Art. VIII. (Powers, Rights and Duties of Commission), Section 2 (Grant of Franchise) as follows:

~~g. Withdrawal. At any time after the franchise ordinance has been adopted by the Commission, but not later than five days before its effective date, a member may withdraw for any cause from the Commission by giving written notice of its withdrawal to the Secretary of the Commission. A member's withdrawal under this paragraph shall be effective upon the receipt of the notice of withdrawal by the Secretary of the Commission. A member which does not withdraw under this paragraph shall be bound by the franchise ordinance adopted and granted by the Commission. If four (4) or more members withdraw under this paragraph, the franchising process shall cease.~~

Amend Art. X. (Withdrawal) as follows:

~~Section 1. A member may withdraw from the Commission prior to the effective date of the franchise ordinance by filing a written notice with the Secretary by October 1st 15 of any year giving notice of withdrawal effective as of December 31st of the next end of that calendar year; and membership shall continue until the~~

effective date of withdrawal. A notice of withdrawal may be rescinded at any time by a member **prior to the effective date of the withdrawal**. If a member withdraws pursuant to this section, the member shall have no claim on the assets of the Commission. A member shall not withdraw until the member's financial contribution for the calendar year is paid in full.

~~Section 2. Withdrawal for Cause. A member may withdraw from the Commission after the effective date of the franchise ordinance as prescribed by Article VIII, Section 5, paragraph f only (i) if the Commission itself breaches or violates this agreement, or (ii) if the Commission fails to commence enforcement of the ordinance within four months after being notified by a member of the existence of a violation of the ordinance occurring within the territorial limits of that city.~~

Section 3. Notice of Withdrawal. A member withdrawing from the Commission under this article shall send to the MCCB and the Commission Secretary a written Notice of Withdrawal which shall specify both the grounds and the effective date of its withdrawal.

Section 4. Effectiveness of Ordinance After Withdrawal. ~~Any~~ The franchise ordinance adopted and granted by the Commission shall provide that it is effective and enforceable within the territorial limits of a city which has withdrawn from the Commission under this article and a city which withdraws from the Commission shall be bound by the terms of any cable communications franchise previously adopted and granted by the Commission. A city which has withdrawn shall be the exclusive authority to administer and enforce the cable communications franchise ordinance as to its corporate boundaries.

Section 5. Cooperation. The Commission and a city which withdraws under this article shall cooperate with each other and the cable communications operator and shall use their best efforts to achieve an orderly and efficient transfer to that city of the administrative and enforcement authority over the cable communications system established within the withdrawn city.

Section 6. Access to Commission Assets. A member withdrawing from membership at a time when such withdrawal does not result in dissolution of the Commission shall forfeit its claim to any assets of the Commission except that it shall have access, at a reasonable cost and under such conditions as the Commission may determine, to any cable communications programs, files or other materials developed for its use while it was a member.

Section 7. Merger. The merger of two or more municipalities then parties to this agreement shall not be deemed a withdrawal of the merged municipality for the purposes of this agreement. In the event of a merger of two or more municipalities then parties to this agreement, the newly created municipality shall be entitled to the number of votes on the Commission calculated pursuant to

Article V, Section 3 of this agreement and based upon the number of dwelling units within the newly formed municipality. Any subsequent financial contribution to the Commission required of a merged municipality shall be calculated pursuant to this agreement based upon new vote allocation of the merged municipality.

2. JPA Amendments

Amend Art. XV. (Duration) to read as follows:

XV.
AMENDMENT OF AGREEMENT; DURATION

Section 1. Amendment of Agreement. Any proposed amendment to this agreement shall be provided to all members of the Commission. As provided in Article VIII, Section 12, the Commission may provide a recommendation regarding any proposed amendment. The agreement shall be amended upon the approval of a proposed amendment by two-thirds (2/3) of all members.

Section 2. Duration. This agreement shall continue in effect from year to year until termination in accordance with the terms of this agreement.

3. Persons Eligible to Serve as Commission Directors.

I was asked to compare the current JPA language to the applicable state statute governing eligibility to serve as a cable commission director:

Minnesota Statutes, Section 238.08, Subd. 5 provides, in relevant part: "The members and governing body of the joint commission shall consist of two representatives appointed by each municipality, at least one of whom shall be a member of the council of that municipality or its designee and the other a qualified voter residing within that municipality." (emphasis added).

Accordingly, state law expressly allows either a council member or a council designee, such as the city administrator, to serve as one of a city's representatives on a joint cable commission.

Article V, Section 1 of the JPA provides, in relevant part: "The City Council of each member shall be entitled to appoint two directors, at least one of whom shall be a member of that council and the other a qualified voter residing within that city. The City Council of each member shall be entitled to appoint at least one alternate director..."

Accordingly, the JPA requires appointment of one city council member as a director. However, the JPA does not specifically prohibit appointment a non-councilmember alternate for that director.

Joe Kohlmann

From: Vose, Robert J. <rvose@Kennedy-Graven.com>
Sent: Monday, November 18, 2013 2:35 PM
To: 'Joe Kohlmann'; Sally Koenecke; jgrothe@twparchitects.com
Subject: RE: LMCC JPA AMENDMENTS

Joe:
That provision of the JPA is required under state statute. It gives LMCC member cities the right to adopt the LMCC's franchise if a member city withdraws from the commission.

Accordingly, after the LMCC renews the franchise with Mediacom on behalf of its member cities (which will happen soon, hopefully), Tonka Bay could elect to withdraw from the commission in, for example, 2016. Tonka Bay will have a right to adopt the LMCC's franchise at that time. Or Tonka Bay could work out a separate, different franchise with Mediacom if that's what the city and company wanted to do. This JPA language simply protects Tonka Bay and all other members from a situation where the city withdraws and then finds the cable operator unwilling to agree on a different franchise. It gives member cities options should they elect to withdraw.

Please let me know if this doesn't clear things up.

Thanks
Bob Vose
Kennedy & Graven
470 US Bank Plaza
200 S. 6th Street
Minneapolis, MN 55402
(p) 612.337.9275
(f) 612.337.9310
(c) 612.481.3210

From: Joe Kohlmann [<mailto:jkohlmann@cityoftonkabay.net>]
Sent: Monday, November 18, 2013 2:07 PM
To: Sally Koenecke; jgrothe@twparchitects.com
Cc: Vose, Robert J.
Subject: LMCC JPA AMENDMENTS

Hi Sally,

The City Council was going to take action on the proposed LMCC JPA Amendments. There was one outstanding question that we need an answer to in order to take action. Section 4 States:

Section 4. Effectiveness of Ordinance After Withdrawal. Any franchise ordinance adopted and granted by the Commission shall provide that it is effective and enforceable within the territorial limits of a city which has withdrawn from the Commission under this article...

Can you elaborate on what "Any Franchise ordinance adopted and granted by the Commission..." means? So, if a member withdraws, are city's required to operate within any franchise ordinance that the LMCC has approved until it expires? Can additional franchise ordinances be enacted once a member withdraws that they need to enforce after withdrawal?

I just needs some clarity on this for my City Council.

Thank you,

Joe Kohlmann

LMCC Votes & Estimated Per-City Revenue

| | Dwelling Units | LMCC Board Weighted Votes | Cable Subscribers | Subscribers ÷ Dwelling Units | Monthly Franchise Fee Per Subscriber | Estimated Annual Franchise Revenues | Monthly PEG Fee Per Subscriber | Estimated Annual PEG Revenues | Total Fees |
|-------------------|----------------|---------------------------|-------------------|------------------------------|--------------------------------------|-------------------------------------|--------------------------------|-------------------------------|-------------------|
| Deephaven | 1,337 | 2 | 722 | 54.00% | \$4.42 | \$38,266 | \$1.20 | \$10,397 | \$48,663 |
| Excelsior | 1,125 | 2 | 753 | 66.93% | \$4.42 | \$39,909 | \$1.20 | \$10,843 | \$50,752 |
| Greenwood | 290 | 1 | 149 | 51.38% | \$4.42 | \$7,897 | \$1.20 | \$2,146 | \$10,043 |
| Independence | 1,246 | 2 | 191 | 15.33% | \$4.42 | \$10,282 | \$1.20 | \$2,794 | \$13,076 |
| Long Lake | 734 | 1 | 321 | 43.73% | \$4.42 | \$17,013 | \$1.20 | \$4,622 | \$21,635 |
| Loretto | 270 | 1 | 128 | 47.41% | \$4.42 | \$6,784 | \$1.20 | \$1,843 | \$8,627 |
| Maple Plain | 726 | 1 | 330 | 45.45% | \$4.42 | \$17,490 | \$1.20 | \$4,752 | \$22,242 |
| Medina | 1,711 | 2 | 584 | 34.13% | \$4.42 | \$30,952 | \$1.20 | \$8,740 | \$39,692 |
| Minnnetonka Beach | 203 | 1 | 115 | 56.65% | \$4.42 | \$6,095 | \$1.20 | \$1,656 | \$7,751 |
| Minnnetonka | 2,203 | 3 | 750 | 34.04% | \$4.42 | \$39,750 | \$1.20 | \$10,800 | \$50,550 |
| Oshtemo | 2,828 | 3 | 1,119 | 39.57% | \$4.42 | \$59,907 | \$1.20 | \$18,994 | \$78,901 |
| Shorewood | 2,660 | 3 | 1,403 | 52.74% | \$4.42 | \$74,359 | \$1.20 | \$20,203 | \$94,562 |
| Spring Park | 909 | 1 | 357 | 39.27% | \$4.42 | \$18,921 | \$1.20 | \$5,141 | \$24,062 |
| St. Bonifacius | 865 | 1 | 452 | 52.25% | \$4.42 | \$23,956 | \$1.20 | \$6,509 | \$30,465 |
| Tonka Bay | 587 | 1 | 332 | 56.56% | \$4.42 | \$17,596 | \$1.20 | \$4,781 | \$22,377 |
| Victoria | 2,134 | 3 | 1,166 | 54.64% | \$4.42 | \$51,798 | \$1.20 | \$16,790 | \$68,588 |
| Woodland | 169 | 1 | 98 | 57.99% | \$4.42 | \$5,194 | \$1.20 | \$1,411 | \$6,605 |
| TOTAL | 20,347 | 28 | 9,173 | | | \$486,168 | | \$132,091 | -\$627,432 |

| | | | | | | | | | |
|----------------------------------|------|--|-------|--------|--------|----------|--------|----------|-----------|
| Mound: | | | | | | | | | |
| What they collect | 3987 | | 2,097 | 52.60% | \$4.42 | \$74,359 | \$1.20 | \$30,197 | \$104,556 |
| Mound: What they pay to the LMCC | | | | | \$0.67 | \$16,860 | \$1.20 | \$30,197 | \$47,057 |
| | | | | | | \$57,499 | | \$0 | |

*Mound pays all of their PEG fees to the LMCC (same as other LMCC cities)
 Amount of revenue kept by Mound (85% of franchise fees)
 \$57,499

Households based on most current Met Council Data (2011).
 Votes are rounded up, based on past policy.
 Cable subscribers numbers are from Mediacom 11/1/2012 data.
FRANCHISE FEES
 \$4.42 per month Franchise Fee is 5% of the cable bill (5% is the maximum allowed by FCC regulations).
 The use of franchise revenues by the LMCC and cities is not restricted.
PEG FEES
 Public Educational Government (PEG) fees are negotiated in the franchise agreement.
 2013 PEG fees are \$1.20 per subscriber per month.
 PEG fees must be used for programming / equipment.

Proposed Cuts to LMCC Budget:

| | |
|----------------------------------------------------------------------------------|----------|
| 1. Cut capital budget to minimal replacement costs of peripherals. | \$55,000 |
| 2. Eliminated all membership and dues for MACTA, NATOA and Chambers of Commerce. | 4000 |
| 3. Cut conference fees for commissioners and staff to a minimum. | 8540 |
| 4. Cut contracted videotaping to those cities who may drop out | 9198 |
| 5. Cut contingency line item | 5000 |
| 6. Cut Health Insurance, eliminated Health Savings (AGENT ESTIMATED) | 25,212 |
| 7. Cut part time staff budget for studio. Reorganize duties of full time. | 40,600 |
| 8. Cut full and part time staff hours and pay to 1/2 for administration. | 64,230 |
| 9. Cut building improvements | 14,000 |
| 10. Cut PERA. | 14,157 |
| 11. Cut FICA | 9018 |
| 12. Communications And Assessment | 10,000 |
| 13. Franchise Renewal Consulting | 20,000 |
| 14. Franchise Fee Audit | 7,000 |
| 15. Numerous line item cuts (printing, mileage, building repair, advert. etc.) | 14,000 |

Cost saving measures:

The LMCC would reduce the number of hours of operation to close at 7 PM and would not be open on Saturdays. Currently we are open until 10 PM on weekdays and 2 PM on Saturdays. This should cut our utility expenses.

We would work towards paperless which would reduce paper and printing costs as well as postage of mailing packets to commissioners.

We would no longer provide any refreshments at meetings which will cut our meeting expenses.
Water will be available from the cooler.

Due to fewer conferences and fewer cities to serve with technical service (Jim goes to cities to clean equipment and consult on equipment failure) this will cut down on mileage expenses.

I transferred some of the line item expenses in franchise to studio. Many of the bills will still be relevant even if the franchise budget is reduced. Many of the line items were split 50/50 on past budgets but as we know the studio operations take up a much greater portion of the building and those costs will remain.