

Memo

To: Honorable Mayor and City Council
From: Joe Kohlmann, City Administrator
Date: February 26, 2013
Re: LMCC Resolution Request

The City was contacted by the LMCC and requested that we considered adopting the *attached resolution* regarding franchise negotiations. Staff obtained a Resolution adopted by the City of Greenwood. There are similarities to the proposed resolution from the LMCC but Greenwood also added in a few additional provisions such as:

- 1) Disbursement of the franchise fees
- 2) Concerns over LMCC spending
- 3) Reexamination of priorities
- 4) Reorganization recommendations

Please review the two resolutions and we can discuss the City of Tonka Bay's position on the matter.

Council Action Requested:

Discuss the attached resolutions and direct staff to prepare a resolution that reflects the City Council's position.



LMCC

LAKE MINNETONKA COMMUNICATIONS COMMISSION

4071 SUNSET DRIVE • BOX 385 • SPRING PARK, MN 55384-0385 • 952.471.7125 • FAX 952.471.9151 • lmcc@lmcc-tv.org

RECEIVED

FEB - 1 2.

January 31, 2013

To: All LMCC Member Cities:

- DEEPHAVEN
- EXCELSIOR
- GREENWOOD
- INDEPENDENCE
- LONG LAKE
- LORETTO
- MAPLE PLAIN
- MEDINA
- MINNETONKA BEACH
- MINNETRISTA
- ORONO
- ST. BONIFACIUS
- SHOREWOOD
- SPRING PARK
- TONKA BAY
- VICTORIA
- WOODLAND

The LMCC Executive Committee met on January 29th to review the status of the franchise negotiations with regard to city support of the LMCC negotiation process. As you are aware the three-year federal renewal process contemplates that the LMCC will evaluate and identify past performance problems and future interests. The current franchise expires at the end of 2013. The LMCC established a Franchise Renewal Committee in January of 2011 to begin working on franchise renewal. The LMCC began the discussions early with a meeting with Mediacom in August, 2011 where system expansion was communicated as the top priority.

The Renewal Committee's main objective has been full disclosure of information and requests for participation and input from the cities. The process has included a technical and needs assessment by professional consultants. Those reports were provided to the cities for review. Requests for city participation have taken place in a city representative stakeholders meeting with the LMCC consultants (CBG Communications, Inc.), in meetings with the cities who do not have full build-out of cable and with a recent mayors meeting to gather input. The LMCC has documented data to substantiate negotiation requests to Mediacom based on your participation and efforts.

The Franchise Renewal Committee began regularly scheduled negotiation sessions with Mediacom in December of 2012 and the first priority presented to Mediacom was the request for full build-out of the cable plant to all city residents except where infeasible and for Mediacom to establish a working relationship with the cities in planning for cable installation in new developments and businesses.

A preliminary list of negotiation priorities was provided to the cities at the Mayors meeting. The Franchise Renewal Committee just received the final needs assessment report on the 23rd of January and is studying the report to ensure that the final list of priorities is thoroughly concluded from the reports as well as from city input.

The Executive Committee would welcome further comments and discussions with the cities as you have had the opportunity to review the needs assessment. Please be aware that the needs assessment includes upgrades to the technologies and projections of future needs through the life of the franchise.

At the January 29th meeting, the LMCC Executive Committee approved a resolution for cities to adopt stating support of the LMCC in negotiations with Mediacom. The LMCC Executive Committee would ask that you approve the attached "Resolution in Support of Exclusive Representation by the Lake Minnetonka Communications Commission in Cable TV Franchise Negotiations" at your next council meeting as affirmation of the franchise renewal process, so that the LMCC franchise negotiations team, lead by the LMCC legal representative, can negotiate the most advantageous agreement for all LMCC member cities.

Sincerely,



Sally Koenecke
Executive Director
Lake Minnetonka Communications Commission
952-471-7125
Ext. 101

cc. Robert Vose
LMCC Member City Administrators

CITY OF _____
RESOLUTION NO. _____

**RESOLUTION IN SUPPORT OF EXCLUSIVE REPRESENTATION BY THE
LAKE MINNETONKA COMMUNICATIONS COMMISSION IN CABLE TV FRANCHISE NEGOTIATIONS**

WHEREAS, the Lake Minnetonka Communications Commission provides the following valued services to the member cities within its Joint Powers Association (JPA):

1. Expertise in franchise negotiations.
2. Expertise in the production of public cable TV programming.
3. Enforcing the terms of the negotiated contract with Mediacom.
4. Dealing with resident complaints about Mediacom.

WHEREAS, the city council of the city of _____, Minnesota finds the following to be true:

1. Some LMCC member cities have been approached by Mediacom to negotiate separate cable TV franchise agreements.
2. Cities cannot in good faith have two separate franchise negotiations proceeding at the same time.
3. The LMCC franchise renewal committee has asked for clarification as to what cities it is representing in their franchise negotiations.
4. The LMCC attorney and franchise committee will have better negotiating power if the majority of the cities stay in the JPA.
5. Some "underserved" member cities would like assurance that build-out of the cable TV system is an LMCC priority in franchise renewal negotiations. Some member cities have expressed interest in reorganizing the oversight structure of the LMCC and clarification regarding the procedure for withdrawal.

NOW THEREFORE, BE IT RESOLVED that city council of the city of _____, Minnesota:

1. Authorizes exclusive representation by Lake Minnetonka Communications Commission in 2013 cable TV franchise negotiations as long as a similar resolution is approved by 50% of the LMCC member cities.
2. Supports that a priority in the franchise negotiations is to build out the underserved cities.
3. Requests that the LMCC board investigate and make recommendations to the member cities regarding other potential amendments to the Joint and Cooperative Agreement including clarification of the procedure for withdrawal from the LMCC by member cities.

MAY IT BE FURTHER RESOLVED that city council of the city of _____, Minnesota directs the city clerk to email a copy of this resolution to the LMCC executive director for distribution to the LMCC board, and to the other LMCC JPA city administrators and mayors for consideration by their respective councils with the recommendation that this or a similar resolution be approved by March 31, 2013.

ADOPTED by the city council of the city of _____, Minnesota this ____ day of _____, 2013.

____ AYES ____ NAYS

CITY OF _____

By: Mayor _____

Attest: City Clerk _____

**CITY OF GREENWOOD
RESOLUTION NO. 07-13**

**RESOLUTION IN SUPPORT OF EXCLUSIVE REPRESENTATION BY THE
LAKE MINNETONKA COMMUNICATIONS COMMISSION IN CABLE TV FRANCHISE NEGOTIATIONS
AND SUPPORT OF FRANCHISE FEE DISBURSEMENTS TO CITIES**

WHEREAS, the Lake Minnetonka Communications Commission provides the following valued services to the member cities within its Joint Powers Association (JPA):

1. Expertise in franchise negotiations.
2. Expertise in the production of public cable TV programming.
3. Enforcing the terms of the negotiated contract with Mediacom.
4. Dealing with resident complaints about Mediacom.

WHEREAS, the city council of the city of Greenwood, Minnesota finds the following to be true:

1. Some LMCC member cities have been approached by Mediacom to negotiate separate cable TV franchise agreements.
2. Cities cannot in good faith have two separate franchise negotiations proceeding at the same time.
3. The LMCC franchise renewal committee has asked for clarification as to what cities it is representing in their franchise negotiations.
4. The LMCC attorney and franchise committee will have better negotiating power if the majority of the cities stay in the JPA.
5. A disbursement of a portion of franchise fees to the respective cities may encourage cities to stay in the JPA.
6. Some current JPA cities have expressed a concern regarding LMCC spending.
7. Reduced franchise fees retained by the LMCC will encourage re-examination of programming, equipment, facility, and staffing priorities.
8. Some "underserved" member cities would like assurance that build-out of the cable TV system is an LMCC priority in franchise renewal negotiations. Some member cities have expressed interest in reorganizing the oversight structure of the LMCC and clarification regarding the procedure for withdrawal.

NOW THEREFORE, BE IT RESOLVED that city council of the city of Greenwood, Minnesota:

1. Authorizes exclusive representation by Lake Minnetonka Communications Commission in 2013 cable TV franchise negotiations as long as a similar resolution is approved by 50% of the LMCC member cities.
2. Supports the franchise fee disbursement concept as shown on the attached exhibit A where each individual city shall spend their disbursement as they see fit.
3. Understands that there will need to be reductions in LMCC spending on public and educational programming with the franchise fee disbursement concept.
4. Supports that at priority in the franchise negotiations is to build out the underserved cities.
5. Supports a franchise agreement that includes an option where underserved cities may subsidize, to the extent permitted by law, build-out consistent with the terms offered by Mediacom to the city of Medina in it's proposed Letter of Intent dated December 13, 2012.
6. Requests that the LMCC board consider recommending to the member cities that the LMCC Joint and Cooperative Agreement be amended to reduce the number of directors from two to one per member city (could be a council member, staff member, or resident), and have the votes per city be weighted based on the number of dwelling units with no limit to the votes per city.
7. Requests that the LMCC board investigate and make recommendations to the member cities regarding other potential amendments to the Joint and Cooperative Agreement including clarification of the procedure for withdrawal from the LMCC by member cities.

MAY IT BE FURTHER RESOLVED that city council of the city of Greenwood, Minnesota directs the city clerk to email a copy of this resolution and exhibit A to the LMCC executive director for distribution to the LMCC board, and to the other LMCC JPA city administrators and mayors for consideration by their respective councils with the recommendation that this or a similar resolution be approved by March 31, 2013.

ADOPTED by the city council of the city of Greenwood, Minnesota this ____ day of _____, 2013.

____ AYES ____ NAYS

CITY OF GREENWOOD

By: _____
Debra J. Kind, Mayor

Attest: _____
Gus E. Karpas, City Clerk

EXHIBIT A

CONCEPT: The LMCC disburses 50% of franchise revenues to member cities.

HOW THE CONCEPT WOULD WORK:

The new franchise agreement would require Mediacom to provide quarterly reports to the LMCC showing the per-city franchise and PEG revenues. Based on the Mediacom report the LMCC would in turn disburse to each member city a percentage of the franchise fees that were paid by it's residents and businesses after the LMCC receives it's quarterly payment from Mediacom. For example, if Mediacom's report showed that the residents and businesses in Greenwood paid \$8000 in franchise fees in the fourth quarter of 2012, the LMCC would disburse \$4000 to the city of Greenwood in the first quarter of 2013.

The current LMCC Joint and Cooperative Agreement does not need to be amended to implement this concept. This concept could be implemented by a majority weighted vote of the LMCC directors who are appointed by member cities.

The LMCC 2013 balanced budget for 2013 includes estimated total revenues of \$696,413. Franchise Fees account for \$485,311 or 70% of the total revenues. Since most of the LMCC's operating and capital expenses are related to programming, there would need to be significant reductions in this area as well as in administrative expenses. The most likely areas for programming reduction are public access and events along with some educational programming. The internet and YouTube provide alternatives for this programming that was not available 15 years ago. It is unlikely that the LMCC will continue to produce programming such as "The Safety Expert," cover community concerts, etc. in this scenario.

The LMCC owns it's building and does not have any debt associated with it. Thus, the best strategy is probably to maintain the building for the time being. The public access studio could be maintained on a scaled down basis with no plans for future capital investment. The LMCC's production van may need to be sidelined unless users are willing to fund ongoing operation and future capital expenses.

To reduce expenses the LMCC likely will need to consider contracting with a member city for administrative and accounting support. A successful example of this option is the Excelsior Fire District, which contracts with the city of Deephaven for it's financial and accounting support.

With the above changes the LMCC should be able to continue to manage the Mediacom franchise and provide coverage of local government activities. Note: According to the CBG Communications December 2012 presentation, the LMCC government channels had 18% weekly viewership as compared to 5 to 8% for the LMCC's public and educational channels.

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	194	15.57%	\$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	\$8,410	\$39,362
Minnetonka Beach	203	1	115	56.65%	\$4.42	\$6,095	\$1.20	\$1,656	\$7,751
Minnetrista	2,203	3	750	34.04%	\$4.42	\$39,750	\$1.20	\$10,800	\$50,550
Orono	2,828	3	1,319	46.64%	\$4.42	\$69,907	\$1.20	\$18,994	\$88,900
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	2,484	3	1,166	46.94%	\$4.42	\$61,798	\$1.20	\$16,790	\$78,588
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	

Grey indicates "underserved" cities.
 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.

Amount of revenue kept by Mound (85% of franchise fees)

Mound pays all of their PEG fees to the LMCC (same as other LMCC cities)