

## **Quad Cities Cable Communications Commission**

Remote Meeting via Zoom  
December 17, 2020, 3:00 PM

### **Agenda**

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of Agenda**
- 4. Administrative Reports**
  - 4.1. None
- 5. General Business**
  - 5.1. CenturyLink Settlement Agreement
  - 5.2. Other
- 6. Adjourn**

QCTV has declared a local emergency effective March 17, 2020. The special meeting of the Quad Cities Cable Communications Commission will meet via Zoom, 3 pm. All commissioners will be attending remotely. The public may watch the QCCCC meeting at [www.qctv.org](http://www.qctv.org) on the main page streaming live the Community Channel or on Comcast Channels 859 and 15 and CenturyLink Channels 8940 and 8440.



C H A R T E R E D

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### MEMORANDUM

**Date:** December 15, 2020  
**To:** QCCCC  
**From:** Bob Vose, Kennedy & Graven, Chartered  
**Re:** CenturyLink

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The member cities issued 10-year franchises to Qwest Broadband Services, Inc. d/b/a CenturyLink (“CenturyLink”). The franchises expire on December 21, 2026. Notwithstanding, earlier this year CenturyLink provided notice that it intends to cease providing Prism cable services to customers in the cities by the end of the year. The company intends to terminate Prism throughout the Minneapolis/St. Paul market and across the country.

CenturyLink proposed amendments to each of the cities’ franchises to allow early termination. Staff has subsequently negotiated an alternate agreement with CenturyLink. Under the agreement, CenturyLink would pay \$35,000 in exchange for a right to cease providing cable service upon 90 days’ written notice to the Commission. The agreement would not require franchise amendments by the members, but instead provides that the Commission will release all claims for breach of contract or any other theory due to CenturyLink’s early termination. The parties would reserve and retain any claims associated with any other alleged violations of the franchises.

Under the agreement, CenturyLink will need to provide at least 60 days’ notice to customers along with information about alternative video services/providers. In addition, CenturyLink must facilitate customer return of Prism video equipment at no cost. Finally, for one (1) year after giving notice of termination, CenturyLink must maintain the performance bond and letter of credit required by the franchises, and meet the indemnification and insurance requirements in the franchises.

Staff would prefer that CenturyLink vigorously compete with Comcast for the remaining term of the franchises. Unfortunately, CenturyLink is unwilling or unable to do so. Accordingly, staff recommends approval of the agreement.

## FRANCHISE AGREEMENT AMENDMENT

This Franchise Agreement Amendment (the “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_ 2020 by and between the Quad Cities Cable Communications Commission, a municipal joint powers body, (“the Commission ”), and Qwest Broadband Services, Inc. d/b/a CenturyLink (hereinafter “CenturyLink”). The Commission and CenturyLink shall sometimes be referred to herein individually as a “Party” and collectively as the “Parties.”

### **I. RECITALS**

A. The Commission is a municipal joint powers body comprised of the cities of Anoka, Andover, Champlin, and Ramsey (“the Cities”), each municipal corporations under Minnesota law. The Commission administers and enforces the cable franchises issued by the Cities and advances the cable-related interests of the Cities.

B. CenturyLink negotiated and entered into substantively identical cable franchise agreements with the Cities (together, "the Franchise").

C. By its terms, the Franchise expires on December 21, 2026 (the "Initial Term").

D. CenturyLink intends to cease providing cable services in the Cities prior to the end of the Initial Term, but no sooner than December 31, 2020.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, considerations, mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties agree as follows:

### **II. AGREEMENT**

**1. Effective Date.** This amendment to the Agreement shall be effective on its mutual execution by the Parties (the "Effective Date").

**2. Franchise Term.** The Parties agree that, except as provided in paragraph 3, the Franchise shall terminate and CenturyLink shall cease providing cable service in the Cities prior to the expiration of the Initial Term upon 90 days' written notice to the Commission . Upon such termination or the expiration of the Franchise, CenturyLink shall cease providing cable service in the Cities.

**3. Removal of Facilities at Termination or Expiration of Franchise.** Pursuant to Sections 3-7 of the Franchise, CenturyLink shall remove any facilities that are used exclusively to provide Cable Service. CenturyLink shall not be required to remove any facilities that are used in another of CenturyLink's or its affiliates' networks, including facilities used to provide broadband

Internet access services or voice communications services. Any damage to the rights-of-way related to facilities used exclusively to provide Cable Service (if any) in the Cities shall promptly be repaired at CenturyLink's cost. In the event CenturyLink fails to make such repairs, the Cities may make the necessary repairs and CenturyLink shall pay for such repairs within thirty (30) days of receipt of the invoice. CenturyLink's obligations pursuant to Section 9 of the Franchise to maintain a performance bond and letter of credit and provide indemnification and insurance shall remain in full force and effect for one (1) year from the date of the written notice required by paragraph 2 above.

**4. Cable Subscriber Transition.** CenturyLink shall provide at least 60 days' written notice to its Cable Service subscribers of its intent to terminate its Cable Service product in the Cities and provide information on options available to its subscribers to replace the service. CenturyLink shall provide all of its Cable Subscribers with instructions on how to return or otherwise dispose of all CenturyLink on premises equipment (*e.g.*, Set Top Boxes and remote controls). If CenturyLink requires the return of the on premises equipment, CenturyLink will provide its cable subscribers with a prepaid return shipping label and will not charge subscribers for equipment returned within 90 days of the disconnection date.

**5. Franchise Renewal.** CenturyLink hereby waives any and all franchise renewal rights under federal and state law. CenturyLink agrees not to seek any renewal or extension of the Franchise past the Initial Term.

**6. Consideration and waiver of claims.** In consideration for termination of CenturyLink's obligations pursuant to the Franchise, including PEG support obligations called for in Section 6.2 of the Franchise, CenturyLink agrees to pay thirty five thousand dollars (\$35,000) to the Commission within 30 days upon effective date of this Agreement. Both Parties agree to release all claims for breach of contract or any other theory, whether known or unknown, associated with this Agreement allowing early termination of the Franchise provided, however, that the Parties expressly reserve and retain all claims for breach of contract or any other theory associated with any other violation of, or non-compliance with, the Franchise whether arising prior to or after the date of this Agreement including specifically any alleged non-payment or underpayment of fees due pursuant to the Franchise.

**7. Other Franchise Terms Remain Unchanged.** Other than as set forth in this Agreement the Franchise remains unchanged.

**8. Right to Make Agreement.** The Parties represent, warrant and covenant that they have the right and authority to enter into and make this Agreement and those executing this Agreement have all necessary authority to execute this Agreement and bind the respective Parties.

**9. Default.** In the event of breach of this Agreement, the non-defaulting party may seek judicial relief from a court of competent jurisdiction. The prevailing party shall be entitled to all of its costs and expenses including reasonable attorneys' fees.

**10. No Transfer.** Each Party represents, warrants and covenants that it has the sole right and authority to execute this Agreement, and that it has not previously assigned or transferred, or purported to have assigned or transferred, to any corporation, entity or person, any cause of

action, judgment, lien, indebtedness, damage, obligation, loss, claim, liability, or right included in this Agreement.

**11. Consultation with Attorneys and Advisors.** The Parties expressly acknowledge that they have consulted, or have had the opportunity to consult, with whatever consultants, attorneys or other advisors each deems is appropriate in connection with the effect of this Agreement, and each Party assumes the risk arising from not seeking further additional consultation with such advisors. This Agreement has been, and shall be construed to have been, drafted by all of the Parties, so that the rule of construing the ambiguities against the drafter shall have no force or effect.

**12. Governing Law.** The validity, construction, interpretation and administration of this Agreement shall be governed by the internal laws of the State of Minnesota, without regard to the principles of conflict of laws. Any action arising out of, or relating to, this Agreement shall be filed in a court of competent jurisdiction in Minnesota. Each Party hereby consents to the jurisdiction of such courts for the purposes described in this Section.

**13. Integration Clause.** The Parties and/or their attorneys have engaged in negotiations resulting in the execution of this Agreement. All of those negotiations have been completed and are merged into this Agreement, which states as a final, complete, express, written and unambiguous integration exactly what the Parties have agreed. With respect to its subject matter, including without limitation all matters incorporated herein by reference, this Agreement is a complete integration and final expression of the Parties rights and duties. This Agreement is intended to be enforceable according to its written terms. There are no promises, oral agreements, representations, understandings or expectations of the Parties to the contrary.

**14. Modification.** Any alteration, modification or amendment to this Agreement shall be void unless in writing, signed by both Parties.

**15. Severance.** If, after the Effective Date of this Agreement, any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision will be fully severable and the remainder of the Agreement will remain enforceable and not affected thereby.

**16. Persons Bound.** Except as otherwise stated herein, the terms of this Agreement shall extend to, and are binding upon, the Parties and each of their respective heirs, beneficiaries, representatives, partners, members, officers, directors, shareholders, employees, agents, and authorized successors and assigns.

**17. Assignment.** Neither this Agreement nor any rights, interests or obligations hereunder shall be assigned or transferred by any Party without the prior written consent of the other Party hereto. Any such assignment or transfer made without prior written consent of each Party hereto shall be null and void.

**18. Headings.** All headings herein are provided for convenience of reference only and do not affect the meaning or interpretation of this Agreement.

**19. Execution in Multiple Counterparts.** This Agreement and all documents to be executed hereunder may be executed in multiple counterparts, each of which may be treated as an original document.

**20. Copies.** Both facsimile and PDF copies of the executed Agreement may be treated as original documents.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names on the date of this Agreement.

**QWEST BROADBAND SERVICE, INC.**

**THE QUAD CITIES CABLE  
COMMUNICATIONS COMMISSION**

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_