

MEMORANDUM

To: Kurt Wolf, IT Manager
From: Brian T. Grogan
Date: November 6, 2018
Re: Charter's FCC Form 394 - City of Northfield, MN

Attached please find Moss & Barnett's Report regarding Charter's FCC Form 394 – Assignment of Cable Television Franchise to Spectrum Mid-America, LLC. Moss & Barnett's Report also includes a proposed Resolution for your City Council's review and consideration.

If the City adopts the proposed Resolution, please forward one executed original of the Resolution directly to Charter at the below address:

Amanda Duerr
Senior Manager, Government Affairs
Charter Communications
16900 Cedar Avenue
Rosemount, MN 55068

Please also send a copy to my attention and I will retain in our file.

If you should have any questions regarding this matter, please feel free to contact me.

END OF MEMO

INTRODUCTION

By letter dated October 1, 2018, Adam Falk, Senior Vice President, State Government Affairs for Charter Communications, submitted to the City FCC Form 394 ("Form 394") - Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("Application"). In the Application Charter has requested the City's approval of the proposed pro forma transfer of control of Charter from Charter Cable Partners, LLC to Spectrum Mid-America, LLC, a Delaware limited liability company ("Spectrum"). If the transaction is completed, Spectrum will thereafter hold the cable television franchise ("Franchise") in the City.

Moss & Barnett has been retained by a number of jurisdictions including the City (hereinafter collectively referred to as "City" or "Cities") to review the Application. This report has been provided by Moss & Barnett, a Professional Association, for the express purpose of evaluating the Application and providing the City with a recommendation on Charter's request.

Pursuant to Minnesota State law and the City's Franchise, this proposed transfer is prohibited without the written consent of the City. Federal law provides the City with a period of one hundred twenty (120) days to examine the legal, technical and financial qualifications of the proposed transferee - Spectrum. Under Federal law, if the one hundred twenty (120) days expires without action by the City, the Application is deemed granted. Given that an entity owned by Charter will retain control of the Franchise following completion of the proposed transaction, the Cities have directed that this report not address the legal and technical qualifications of Spectrum, by rather focus solely on the financial qualifications of Charter Communications, Inc. as more fully described herein.

In addition to the Franchise requirements, the following provisions of Federal law and State law govern the actions of the City in acting on the request for approval of the proposed transfer.

FEDERAL LAW

The Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 ("Cable Act"), provides at Section 617 (47 U.S.C. § 537):

Sales of Cable Systems. A franchising authority shall, if the franchise requires franchising authority approval of a sale or transfer, have 120 days to act upon any request for approval of such sale or transfer that contains or is accompanied by such information as is required in accordance with Commission regulations and by the franchising authority. If the franchising authority fails to render a final decision on the request within 120 days, such request shall be deemed granted unless the requesting party and the franchising authority agree to an extension of time.

Further, the Federal Communications Commission ("FCC") has promulgated regulations governing the sale of cable systems. Section 76.502 of the FCC's regulations (47 C.F.R. § 76.502) provides:

Time Limits Applicable to Franchise Authority Consideration of Transfer Applications.

(a) A franchise authority shall have 120 days from the date of submission of a completed FCC Form 394, together with all exhibits, and any additional information required by the terms of the franchise agreement or applicable state or local law to act upon an application to sell, assign, or otherwise transfer controlling ownership of a cable system.

(b) A franchise authority that questions the accuracy of the information provided under paragraph (a) must notify the cable operator within 30 days of the filing of such information, or such information shall be deemed accepted, unless the cable operator has failed to provide any additional information reasonably requested by the franchise authority within 10 days of such request.

(c) If the franchise authority fails to act upon such transfer request within 120 days, such request shall be deemed granted unless the franchise authority and the requesting party otherwise agree to an extension of time.

STATE LAW

Minnesota Statutes Section 238.083 provides:

Sale or Transfer of Franchise.

Subd. 1. Fundamental corporate change defined. For purposes of this section, "fundamental corporate change" means the sale or transfer of a majority of a corporation's assets; merger, including a parent and its subsidiary corporation; consolidation; or creation of a subsidiary corporation.

Subd. 2. Written approval of franchising authority. A sale or transfer of a franchise, including a sale or transfer by means of a fundamental corporate change, requires the written approval of the franchising authority. The parties to the sale or transfer of a franchise shall make a written request to the franchising authority for its approval of the sale or transfer.

Subd. 3. Repealed, 2004 c 261 art 7 s 29

Subd. 4. Approval or denial of transfer request. The franchising authority shall approve or deny in writing the sale or transfer request. The approval must not be unreasonably withheld.

Subd. 5. Repealed, 2004 c 261 art 7 s 29

Subd. 6. Transfer of stock; controlling interest defined. Sale or transfer of stock in a corporation so as to create a new controlling interest in a cable communication system is subject to the requirements of this section.

The term "controlling interest" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

FINANCIAL QUALIFICATIONS

I. SCOPE OF REVIEW

Charter Communications, Inc., a Delaware corporation ("Charter"), is the ultimate parent company of Charter Cable Partners, LLC, a Delaware limited liability company ("CCP"), the current holder of the Franchise granted by the City. Under the Franchise, Charter, through its subsidiaries, operates cable television systems (the "System") that provide cable services and other communication services in the City. Charter has requested the City's approval of the proposed pro forma transfer of control of Charter from CCP to Spectrum Mid-America, LLC, a Delaware limited liability company ("Spectrum").

At the request of the City, Moss & Barnett, PA has reviewed selected financial information that was provided by Charter or publicly available to assess the financial qualifications of Spectrum, an indirectly wholly-owned subsidiary of Charter.

The financial information that was provided or available through other public sources and to which our review has been limited, consists solely of the following financial information (hereinafter referred to collectively as the "Financial Statements"):

1. FCC Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" dated October 1, 2018, provided by Charter Communications, Inc. (the "Application"), along with such other exhibits as provided therewith;
2. Form 10-K for Charter Communications, Inc. filed with the Securities and Exchange Commission on February 13, 2018, for the fiscal year ended December 31, 2017; and
3. Such other information as is publicly available.

Our procedure is limited to providing a summary of our analysis of the Financial Statements in order to facilitate the City's assessment of the financial capabilities of Spectrum to control and operate the System in the City. We have not requested any additional financial information from Charter other than what is available publicly.

II. OVERVIEW OF TRANSACTION

According to the Application, Charter is simplifying its operating structure by reducing the number of operating entities and subsidiaries, and by aligning its cable operations into regional entities (the "Reorganization"). CCP is the authorized holder of the Franchise in the City. As part of the Reorganization, CCP will merge into Spectrum, another subsidiary of Charter.¹

¹ FCC Form 394 "Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise" dated October 1, 2018, provided by Charter Communications, Inc. (the "Application") at Exhibit 1.

Upon consummation of the Reorganization, CCP will merge into Spectrum and assign the Franchise to Spectrum.² This merger with and into Spectrum creates a pro forma change of control of the System serving the City for which Charter is seeking the City's approval.³

As a result of the transactions described above, Charter's current shareholders, who include Liberty Broadband Corporation and Advance/Newhouse Partnership, which own 25.01% and 12.7% of Charter's Class A common stock, respectively, will continue to own a majority of the outstanding equity interests of Spectrum.⁴

The steps necessary to complete the Reorganization will conclude and be fully consummated by approximately the second quarter of 2019.⁵

III. OVERVIEW OF CHARTER AND SPECTRUM

Charter Communications, Inc. provides full service communications and cable services, along with other video programming, Internet services, and voice services to approximately 27.1 million residential and business customers in certain markets in the United States.⁶

Cable providers and telecommunication companies operate in a competitive environment and the financial performance of cable television operators, like Charter, are subject to many factors, including, but not limited to, the general business conditions, programming costs, incumbent operators, digital broadcast satellite service, technology advancements, burdensome service contracts, and customer preferences, as well as competition from multiple sources, which provide and distribute programming, information, news, entertainment and other telecommunication services.⁷ The cable business is inherently capital intensive, requiring capital for the construction and maintenance of its communications systems. Each of these factors could have a significant financial impact on Spectrum and its ability to continue to operate the System.

IV. FINDINGS

As part of our review, we have analyzed the Financial Statements, including the historical financial statements of Charter. Charter's financial statements do not separately provide financial information for Spectrum, and Spectrum did not provide us with financial statements specific to its business. Since Spectrum combined and projected financial statements are not available, we are reporting our Findings hereunder based upon Charter's historical information as reported to the Securities and Exchange Commission.

1. Analysis of Financial Statements. Federal law and FCC regulations provide franchising authorities, such as the City, with limited guidance concerning the evaluation of the financial qualifications of an applicant for a cable franchise. In evaluating the financial

² Application at page 2.

³ Id.

⁴ Application at Exhibit 3.

⁵ Application at Exhibit 1.

⁶ Form 10-K for Charter Communications, Inc. filed with the Securities and Exchange Commission on February 13, 2018, for the fiscal year ended December 31, 2017 ("Form 10-K") at p. 1.

⁷ Form 10-K at pp. 16-25.

capabilities of a cable operator, we believe it is appropriate to consider the performance of an applicant based on the applicant's historical performance plus its projected or budgeted financial information along with its financial capabilities (financing). We believe a general review of the historical Charter financial information may provide some insight into the general financial operations of Spectrum with respect to the Application, but we note that there are many unanswered questions regarding Spectrum's operations going forward.

Spectrum's operations will include both cable television video services and non-cable television services. According to Charter's financial statements, Charter's video service compromised approximately thirty-two and one-half percent (32.5%) of its revenue in 2017.⁸ The Charter financial information discussed below includes all of the Charter operations, including the non-cable television video services. We have analyzed historical financial statements as of December 31, 2017 and 2016 in providing the information in this section.

2. **Specific Financial Statement Data and Analysis.**

(a) **Assets.** Charter had (i) current assets of \$2,555 million and \$3,300 million; and (ii) total assets of \$146,623 million and \$149,067 million as of December 31, 2017 and 2016, respectively.⁹

(b) **Liabilities and Net Equity.** Charter had (i) current liabilities of \$11,090 million and \$9,572 million; (ii) deferred taxes of \$17,314 million and \$26,665 million; and (iii) long term debt of \$68,186 million and \$59,719 million as of December 31, 2017 and 2016, respectively.¹⁰

(c) **Income and Expense.** Charter reported (i) revenue of \$41,581 million and \$29,003 million; (ii) operating expenses of \$26,541 million and \$18,655 million; and (iii) operating income of \$10,115 million and \$3,522 million for the year ending December 31, 2017 and 2016, respectively.¹¹ Charter posted an overall net loss for the fiscal year ending December 31, 2015.¹²

V. **SUMMARY**

Using the FCC Form 394 to establish an absolute minimum standard of financial qualifications that a proposed applicant must demonstrate in order to be qualified as the successor operator of the System, Charter has the burden of demonstrating to the City's satisfaction that Charter has "sufficient net liquid assets on hand or available from committed resources" to consummate the transaction and operate the System, together with its existing operations, for three (3) months. This minimum standard is not easy to apply to the complex organizational structure of Charter and the multiple wholly-owned companies that hold cable operations in other geographical locations.

⁸ Form 10-K at p. 3.

⁹ Form 10-K at p. F-4.

¹⁰ Form 10-K at p. F-4.

¹¹ Form 10-K at p. F-5.

¹² Id.

Based solely on Charter's financial information that we reviewed and limited strictly to the financial information analyzed in conducting this review, we do not believe that Charter's request for transfer of the System from one indirectly wholly-owned subsidiary to another indirectly wholly-owned subsidiary can reasonably be denied based solely on a lack of financial qualifications of Charter.

In the event the City elects to proceed with approving the proposed transfer of control, the assessment of Charter's financial qualifications should not be construed in any way to constitute an opinion as to the financial capability or stability of Charter to (i) operate under the Franchise, (ii) operate its other operations, or (iii) successfully consummate the transaction as contemplated in the Transaction Agreement. The sufficiency of the procedures used in making an assessment of Charter's financial qualifications and its capability to remain the parent of the operator of the System is solely the responsibility of the City. Consequently, we make no representation regarding the sufficiency of the procedures used either for the purpose for which this analysis of financial capabilities and qualifications was requested or for any other purpose.

Lastly, in order to ensure compliance with its obligations to operate the System and since we have based a significant part of our analysis on the Financial Statements of Charter, the parent entity; we recommend that the City maintain any performance bonds, security funds and/or corporate parent guaranty that may be required under the Franchise.

RESOLUTION REGARDING THE PROPOSED TRANSACTION

Moss & Barnett has prepared a proposed Resolution approving the transaction for the City's review and consideration - attached hereto as Exhibit A.



Moss & Barnett

**EXHIBIT A
RESOLUTION**

RESOLUTION NO. _____

**APPROVING THE ASSIGNMENT OF
THE CHARTER CABLE FRANCHISE**

WHEREAS, Charter Cable Partners, LLC (hereinafter referred to as "Grantee"), currently holds a cable television franchise ("Franchise") granted by the City of Northfield, Minnesota ("City"); and

WHEREAS, Grantee operates a cable television system ("System") that provides cable services and other communication services in the City; and

WHEREAS, Charter Communications, Inc., ("Charter") is the ultimate parent company of Grantee; and

WHEREAS, on or about October 1, 2018 the City received from Grantee, FCC Form 394 - Application for Franchise Authority Consent to Assignment or Transfer of Control of Cable Television Franchise ("Application"); and

WHEREAS, under the Application Grantee and Charter have requested the City's approval of the proposed assignment of the Franchise ("Assignment") from Grantee to Spectrum Mid-America, LLC, a Delaware limited liability company ("Spectrum"); and

WHEREAS, Spectrum will become the new holder of the Franchise in the City; and

WHEREAS, Federal law and the terms of the Franchise require that the City take action to consider the Application within one hundred twenty (120) days of the date of receipt, or on or before January 29, 2019; and

WHEREAS, Minnesota state law and the Franchise require the City's advance written consent prior to the proposed Assignment; and

WHEREAS, the City has reviewed the Application and the proposed Assignment, and based on information provided by Grantee and information otherwise publicly available, the City has elected to approve the Assignment subject to certain conditions as set forth herein.

NOW, THEREFORE, the City of Northfield, Minnesota hereby resolves as follows:

1. All of the above recitals are hereby incorporated by reference as if fully set forth herein.
2. The Franchise is in full force and effect and Grantee is the lawful holder of the Franchise.
3. The City hereby consents and approves of the Assignment as set forth in the Application.
4. The City's consent to the Assignment shall not serve to waive any rights the City may have under applicable law to hold the Grantee or Spectrum liable for any and all liabilities, known and unknown, under the Franchise.

5. The City expressly reserves any and all rights it may have under applicable law to enforce compliance with the terms of the Franchise against Grantee and Spectrum.

6. In the event the Assignment contemplated by the Application is not completed, for any reason, the City's consent shall not be effective and shall be null and void.

This Resolution shall take effect and continue and remain in effect from and after the date of its passage, approval, and adoption.

Approved by the City of Northfield, Minnesota this ___ day of _____, 2018.

ATTEST:

CITY OF NORTHFIELD, MINNESOTA

By: _____

By: _____

Its: _____

Its: _____