



May 26, 2021

Ben Martig
City Administrator
City of Northfield
801 Washington Street
Northfield, MN 55057

Re: Request for a Cable Franchise – City of Northfield, Minnesota

Dear Ben:

CMN-RUS, Inc., d/b/a MetroNet ("CMN") has requested a cable franchise from the City of Northfield, Minnesota ("City") to provide cable services in the City.

The City contacted Moss & Barnett seeking input regarding the appropriate procedure to be followed to consider the award of a cable franchise to CMN or any other applicant. Moss & Barnett reviewed applicable law (attached hereto as Exhibit A) with City representatives and developed a franchise procedure for the City to follow.

In accordance with Minnesota Statutes Section 238.081, City Council authorized publication of a Notice of Intent to Franchise a Cable Communications System ("Notice"). The Notice was first published in the Northfield News on May 5, 2021 and was thereafter published on May 12, 2021. The Notice referenced the City's Request for Proposals - Official Application Form that was made available on request at the office of the City Administrator. Copies of the Notice and Official Application Form were sent to CMN as well as the incumbent cable operator, Charter Communications, Inc. ("Charter").

Pursuant to Minnesota Statutes Section 238.081 the City established a deadline for submitting applications on May 25, 2021, at least twenty (20) days following the first date of publication as required by Minnesota Statutes Section 238.081. The City received only one application - from CMN.

Pursuant to Minnesota Statutes Section 238.081, the City published Notice of Public Hearing. The Public Hearing is scheduled for June 1, 2021 at 6:00 p.m. to receive input from interested parties regarding CMN's application.

Below is a listing of the information received and reviewed by Moss & Barnett. Each document listed below was reviewed and considered in the preparation of this letter and are hereby incorporated into this letter by reference. The information contained within these documents should be considered part of the City's record on which the City's decision is based.

1. Notice by the City of its Intent to Consider an Application for a Cable Franchise published on May 5 and May 12, 2021.

2. The City's Request for Proposals Official Application Form.
3. Official Application submitted to City by CMN dated May 21, 2021.
4. Minnesota Secretary of State/Good Standing. CMN-RUS, Inc. filed with the Office of the Minnesota Secretary of State, pursuant to Minnesota Chapter 303, on October 17, 2018 and is in good standing. The Certificate of Good Standing from the Minnesota Secretary of State is attached hereto as Exhibit B.

I. Scope of Review

CMN-RUS, Inc. d/b/a MetroNet, an Indiana corporation qualified to do business in the State of Minnesota ("CMN"), is an applicant for a competitive cable franchise agreement (hereinafter referred to as the "Franchise Agreement") from the City of Northfield, Minnesota (the "City"). MetroNet Holdings, LLC, a Delaware limited liability company, ("MetroNet"), is a privately held company and ultimate parent company of CMN. MetroNet operates cable television systems that provide cable services in limited markets in the United States. At the request of the City, Moss & Barnett has reviewed selected financial information that was provided by CMN and MetroNet or publicly available to provide assistance in the City's assessment of the financial qualifications of CMN to operate a competitive cable television system in the City.

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

1. Official Application for Cable Franchise submitted by CMN to the City dated May 21, 2021 (the "Application");
2. MetroNet Holdings, LLC and Subsidiaries Consolidated Financial Statements for the Years ended September 30, 2020 and 2019; and
3. Such other information as was publicly available as set forth herein.

Our procedure is limited to providing a summary of the Financial Statements in order to facilitate the City's assessment of the financial qualifications of CMN to operate a competitive cable television system in the City.

II. Overview of CMN and MetroNet

MetroNet is headquartered in Evansville, Indiana. CMN is a wholly owned indirect subsidiary of MetroNet. CMN provides communication services, including internet, phone and various TV programming to business and residential customers in the States of Florida, Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, North Carolina, and Ohio. In the states of Indiana and Illinois CMN holds state-wide cable franchises and serves approximately thirty-five (35) communities in Indiana and twenty-three (23) communities in Illinois. CMN serves approximately fourteen (14) communities in Minnesota.

CMN proposes a fiber to the premises (FTTP) build in Northfield which would provide substantial capacity to provide cable television services to residences and businesses in the City. CMN will use IPTV technology to deliver the television signals and will therefore have no channel bandwidth limitations. Once at the residential household the signal will be delivered wirelessly to set top boxes. CMN will use MetroNet's headend facilities located in Evansville Indiana with a network hub to be located in the City. Video transport from Evansville to Northfield will occur via long haul fiber circuits.

Cable providers and telecommunication companies operate in a competitive environment and the financial performance of cable television operators, like MetroNet and CMN, is subject to many factors, including, but not limited to, the general business conditions, programming costs, incumbent cable operators, digital broadcast satellite service, technology advancements, changes in consumer behavior, regulatory requirements, advertising costs, and customer preferences, as well as competition from multiple sources, which provide and distribute programming, information, news, entertainment and other telecommunication services. The cable business is inherently capital intensive, requiring capital for build-out and maintenance of its communications systems. MetroNet proposes to install a network hub site in the City, and video traffic will travel between an existing headend in Evansville, Indiana to this hub over redundant long-haul fiber circuits. In the Application, MetroNet submits that it has, "the financial resources to successfully complete a comprehensive all fiber network capable of providing video services throughout the City. Applicant will fund the construction of the network utilizing existing capital contributions from shareholders and a previously secured credit facility."

III. Findings

Based upon the above information, we have analyzed the current year financial statements of CMN's parent entity, MetroNet, in evaluating the financial qualifications of CMN. MetroNet's financial statements do not separately provide the financial information for CMN. Accordingly, we are reporting our Findings hereunder based upon MetroNet's financial statements for years ended September 30, 2020 and September 30, 2019.

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 or a competitive cable franchise. In evaluating the financial capabilities of a cable operator, the City may wish to consider the performance of an applicant based on the applicant's historical performance and its projected or budgeted financial information along with its financial capabilities (for funding and financing its entire operation). The City was not provided with such information for CMN. However, a general review of MetroNet's financial information may provide some insight into the general financial operations of MetroNet with respect to the Application. Many large cable operators have multiple operating subsidiaries that hold groups of franchises and operating systems and do not provide or disclose separate subsidiary financial information.

MetroNet's and its subsidiaries' operations include both cable television services and non-cable television services. The MetroNet financial information discussed below includes all of the MetroNet's operations, including the non-cable television services. We are providing the following information as included in MetroNet's Financial Statements as of September 30, 2020 in this section.

2. Specific Financial Statement Data and Analysis.

- a. **Assets.** MetroNet had: (i) current assets of \$70.8 million; and (ii) total assets of \$882.6 million as of September 30, 2020. MetroNet had \$45.6 million of available cash or cash equivalents on its balance sheet as of September 30, 2020.
- b. **Liabilities.** MetroNet's Financial Statements report: (i) current liabilities of \$71.0 million; (ii) long-term debt of \$411.8 million and (iii) total liabilities of \$510.9 million as of September 30, 2020. In addition, MetroNet has a revolving line of credit facility with a financial institution with a maximum borrowing amount of \$103 million. MetroNet did not provide the credit agreement, so we were unable to adequately assess the credit agreement and its limitations and restrictions. However, MetroNet did note that "as of September 30, 2020, there was no balance outstanding on the revolving line of credit.
- c. **Equity.** The Financial Statements report that as of September 30, 2020, the Total Member Capital was 371.6 million.
- d. **Income and Expense.** MetroNet's Statement of Earnings reports: (i) total revenue of \$192.0 million (ii) cost of sales of \$115.7 million, (iii) operating expenses of \$106.3 million and (iv) a operating loss of (\$30.0) million for the period ending September 30, 2020.

IV. Summary

We are not aware of any state or federal standards by which to assess the financial qualifications of a competitive cable operator seeking a Franchise Agreement in the City. The FCC has provided minimum standards to consider when assessing the qualifications of a prospective transferee when a cable system is sold or control of the franchise changes. This FCC financial qualification standard is found in FCC Form 394. 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 to obtain and operate a cable system, CMN has the burden of demonstrating to the City's satisfaction that CMN has "sufficient net liquid assets on hand or available from committed resources" to obtain and operate the system in the City, together with its existing operations, for three (3) months. This minimum standard is not easy to apply to a company that is in growth mode and expanding its operations. As stated above, the Financial Statements presented in this report relate solely to CMN's parent entity, MetroNet.

Based solely on MetroNet's (CMN's parent entity) Financial Statements, MetroNet has had sufficient funding to finance, operate and expand MetroNet's operations in the past. Due to the limited financial information that was provided and the many uncertainties regarding the future operations, there is not enough information that has been made available to make any definitive conclusions regarding the future financial qualifications of CMN, independently, to own and operate a system serving the City. However, we see no basis on which the City can deny the Application due to a lack of financial qualifications.

In the event the City elects to proceed with approving the issuance of a Franchise Agreement, the assessment of CMN's, and its parent entity MetroNet's, financial qualifications should not be construed in any way to constitute an opinion as to the financial capability or stability of CMN or MetroNet to (i) operate under a competitive cable television system in the City, and (ii) operate their other operations. The City is solely responsible in determining the assessment of CMN and MetroNet's financial qualifications and its capability to operate a competitive system in the City. Consequently, we make no representation regarding the sufficiency of the financial information provided or used either for the purpose for which this analysis of financial qualifications was requested or for any other purpose.

Moss & Barnett has prepared a proposed Resolution regarding CMN's Application for a cable franchise - attached hereto as Exhibit C.

After you have had a chance to review this information, please contact me with any questions you may have or if I can provide any additional information.

Very truly yours,

[Sent via E-Mail]

Brian T. Grogan

Attorney at Law

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[Sent via E-Mail]

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EXHIBIT A APPLICABLE LAW

Statutory Requirements:

A. Federal Regulatory Scheme: Competition among Cable Television Providers and the Federal Cable Act

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 (hereinafter collectively referred to as the "Cable Act"), contains many provisions relevant to the application before the City. According to the Cable Act, one of its primary purposes is to:

*promote competition in cable communications and minimize unnecessary regulation that would impose an undue economic burden on cable systems.*¹

Furthermore, 47 U.S.C. Section 541(a)(1) provides that a franchising authority may award one or more franchises within its jurisdiction. To that end, the Cable Act states:

*that a franchising authority may not grant an exclusive franchise and **may not unreasonably refuse to award an additional competitive franchise.***²

Any applicant whose application for a second franchise has been denied by a final decision of a franchising authority is not without recourse. The applicant may appeal an adverse decision pursuant to the provisions of Section 635 of the Cable Act.

The Cable Act also provides that a city may require certain assurances from the prospective franchisee. Subsection 4 of 47 U.S.C. Section 541(a) provides that:

in awarding a franchise, the franchising authority –

- a. *shall allow the applicant's cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area;*
- b. *may require adequate assurance that the cable operator will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; and*
- c. *may require adequate assurance that the cable operator has the financial, technical, or legal qualifications to provide cable service.*

When Congress passed the 1992 amendments to the Cable Act, Congress suggested that it favors competition in the delivery of cable communications services. The Senate report that accompanied the amendments concluded that:

¹ 47 U.S.C. Section 521(b).

² 47 U.S.C. Section 541(a)(1) (emphasis added).

*Based on the evidence and the record taken as a whole, it is clear that there are benefits from competition between two cable systems. Thus, the Committee believes that **local franchising authorities should be encouraged to award second franchises**. Accordingly, [the Cable Act as amended], prohibits local franchising authorities from unreasonably refusing to grant second franchises.³*

B. Federal Communications Commission Observations on Competition in the Cable Television Industry

The Federal Communications Commission's ("FCC's") annual competition reports in video markets have found that subscribers have generally benefited from "head-to-head" competition in the delivery of cable services. Benefits enjoyed by consumers as a result of the increased competition include:

- a. lower monthly charges for services and equipment;*
- b. additional program offerings;*
- c. access to alternative sources of telecommunications and Internet services;*
- d. new digital services; and*
- e. better customer service from the incumbent cable operator.*

The FCC completed rulemaking proceedings on competition in the video marketplace resulting in the FCC's issuance of what is now known as the FCC 621 Order.⁴ The Sixth Circuit affirmed the FCC 621 Order in 2008.⁵ In the 621 Order the FCC summarized the evidentiary record in the following manner:

The record indicates that in today's market, new entrants face "steep economic challenges" in an "industry characterized by large fixed and sunk costs," without the resulting benefits incumbent cable operators enjoyed for years as monopolists in the video services marketplace. According to commentators, "a competitive video provider who enters the market today is in a fundamentally different situation" from that of the incumbent cable operator: "[w]hen incumbents installed their systems, they had a captive market," whereas new entrants "have to 'win' every customer from the incumbent" and thus do not have "anywhere near the number of subscribers over which to spread the costs."

C. Minnesota Statutory and Judicial Treatment of Competition in the Cable Television Industry

Minnesota Statutes

In addition to the requirements contained in the Cable Act, Minnesota has several statutory

³ (emphasis added). S. Rep. No. 102-92, June 28, 1991, reprinted in 1992 U.S. Code Cong. & Admin. News 1133, 1141, 1146, 1151; H.Conf. Rep. No. 102-862, reprinted in 1992 U.S. Code Cong. & Admin. News 1231, 1259.

⁴ See *In the Matter of Implementation of Section 612(a)(1) of the Cable Communications Policy Act of 1984*, 22 FCC Rcd 5101 (Mar. 5, 2007).

⁵ See *Alliance for Community Media v. FCC*, 529 F.3d 763 (6th Cir. 2008).

provisions that must be carefully followed by the City when considering the award of a franchise. In particular, Minnesota Statutes Chapter 238.08, titled **Franchise Requirement**, states that a municipality must require a franchise or extension permit of any cable communications system providing service within the municipality. Further, Minnesota Statutes Section 238.081, **Franchise Procedure**, provides a precise procedure to be followed by a municipality when requesting applications for a cable communications franchise.

The text of Section 238.08 and Section 238.081 is set forth below to provide the City with the exact requirements of state law on this matter.

Minnesota Statute Section 238.08, Franchise Requirement, provides in pertinent part:

Subd. 1. Requirement; conditions.

(a) *A municipality shall require a franchise or extension permit of any cable communications system providing service within the municipality.*

(b) *No municipality shall grant an additional franchise for cable service for an area included in an existing franchise on terms and conditions more favorable or less burdensome than those in the existing franchise pertaining to: (1) the area served; (2) public, educational, or governmental access requirements; or (3) franchise fees. The provisions of this paragraph shall not apply when the area in which the additional franchise is being sought is not actually being served by any existing cable communications system holding a franchise for the area. Nothing in this paragraph prevents a municipality from imposing additional terms and conditions on any additional franchises.*

Subd. 2. Other requirements. *Nothing in this chapter shall be construed to prevent franchise requirements in excess of those prescribed unless such requirement is inconsistent with this chapter.*

Subd. 3. Municipal operation. *Unless otherwise prohibited by applicable law, any municipality may construct, purchase, and operate cable communications systems or operate facilities and channels for community television, including, but not limited to, public, educational, and governmental access and local origination programming. Any municipal system, including the operation of community television by a municipality, is subject to this chapter to the same extent as any nonpublic cable communications system.*

Subd. 4. Fee, tax or charge. *Nothing in this chapter shall be construed to limit the power of any municipality to impose upon any person operating a cable communications company a fee, tax or charge.*

* * * *

Minnesota Statute Section 238.081, Franchise Procedure, provides in pertinent part:

Subd. 1. Publication of Notice. *The franchising authority shall have published once*

each week for two successive weeks in a newspaper of general circulation in each municipality within the cable service territory, a notice of intent to consider application for a franchise other than a franchise renewal pursuant to the United States Code, Title 47, Section 546.

Subd. 2. Required information. *The notice must include at least the following information:*

- (1) *the name of the municipality making the request;*
- (2) *the closing date for submission of applications;*
- (3) *a statement of the application fee, if any, and the method for its submission;*
- (4) *a statement by the franchising authority of the desired services to be offered;*
- (5) *a statement by the franchising authority of criteria and priorities against which the applicants for the franchise must be evaluated;*
- (6) *a statement that applications for the franchise must contain at least the information required by subdivision 4;*
- (7) *the date, time, and place for the public hearing, to hear proposals from franchise applicants;*
- (8) *the name, address, and telephone number of the individuals who may be contacted for further information.*

Subd. 3. Other recipients of notice. *In addition to the published notice, the franchising authority shall mail copies of the notice of intent to franchise to any person it has identified as being a potential candidate for the franchise.*

Subd. 4. Contents of franchising proposal. *The franchising authority shall require that proposals for a cable communications franchise be notarized, and contain, but not necessarily be limited to, the following information:*

- (1) *Plans for channel capacity, including both the total number of channels capable of being energized in the system and the number of channels to be energized immediately;*
- (2) *A statement of the television and radio broadcast signals for which permission to carry will be requested from the Federal Communications Commission;*
- (3) *A description of the proposed system design and planned operation, including at least the following items:*
 - (i) *the general area for location of antennae and the head end, if known;*
 - (ii) *the schedule for activating two-way capacity;*
 - (iii) *the type of automated services to be provided;*
 - (iv) *the number of channels and services to be made available for access cable broadcasting; and*
 - (v) *a schedule of charges for facilities and staff assistance for access cable broadcasting;*
- (4) *the terms and conditions under which particular service is to be provided to governmental and educational entities;*
- (5) *a schedule of proposed rates in relation to the services to be provided, and a proposed policy regarding unusual or difficult connection of services;*

- (6) *a time schedule for construction of the entire system with the time sequence for wiring the various parts of the area requested to be served in the request for proposals;*
- (7) *a statement indicating the applicant's qualifications and experience in the cable communications field, if any;*
- (8) *an identification of the municipalities in which the applicant either owns or operates a cable communications system directly or indirectly, or has outstanding franchises for which no system has been built;*
- (9) *plans for financing the proposed system, which must indicate every significant anticipated source of capital and significant limitations or conditions with respect to the availability of the indicated sources of capital;*
- (10) *a statement of ownership detailing the corporate organization of the applicant, if any, including the names and addresses of officers and directors and the number of shares held by each officer or director, and intracompany relationship including a parent, subsidiary or affiliated company; and*
- (11) *a notation and explanation of omissions or other variations with respect to the requirements of the proposal.*

Subd. 5. Time limits to submit applications. *The franchising authority shall allow at least 20 days from the first date of published notice to the closing date for submitting applications.*

Subd. 6. Public hearing on franchise. *A public hearing before the franchising authority affording reasonable notice and a reasonable opportunity to be heard with respect to all applications for the franchise must be completed at least seven days before the introduction of the franchise ordinance.*

Subd. 7. Award of franchise. *Franchises may be awarded only by ordinance.*

Subd. 8. Costs of awarding franchise. *Nothing in this section prohibits a franchising authority from recovering from a successful applicant the reasonable and necessary costs of the entire process of awarding the cable communications franchise.*

* * * *

The existing franchise between the City and Charter, and Minnesota Statutes Section 238.08 both include provisions requiring some form of level playing field obligation which the City must consider before the award of a second, competitive cable franchise.

Specifically, the Charter Franchise at Section 4.1(c) contains requirements related to the grant of a competitive franchise:

4.1(c) Grant of Nonexclusive Authority.

(3) This Franchise shall be nonexclusive. Additional cable franchises granted by the City shall be granted the substantially similar terms and conditions.

The City should carefully review the above criteria when determining whether to grant a competitive franchise.

EXHIBIT B MINNESOTA SECRETARY OF STATE BUSINESS RECORD DETAILS

Business Record Details »

Minnesota Business Name

CMN-RUS Inc.

Business Type

Business Corporation (Foreign)

MN Statute

303

File Number

1038364800028

Home Jurisdiction

Indiana

Filing Date

10/17/2018

Status

Active / In Good Standing

Renewal Due Date

12/31/2021

Registered Office Address

100 South 5th Street
Minneapolis, MN 55402
USA

Registered Agent(s)

National Registered Agents, Inc.

Home Business Name

CMN-RUS Inc.

Mailing Address

8837 Bond Street
Overland Park, KS 66214
USA

Chief Executive Officer

John Cinelli
3701 Communications Way
Evansville, IN 47715
USA

Filing History

Filing History

Select the item(s) you would like to order:

<input type="checkbox"/>	Filing Date	Filing	Effective Date
<input type="checkbox"/>	10/17/2018	Original Filing - Business Corporation (Foreign) (Business Name: CMN-RUS Inc.)	

**EXHIBIT C
RESOLUTION**

RESOLUTION No. _____

Regarding the Application of CMN-RUS, Inc. for a Cable Franchise

RECITALS:

1. CMN-RUS, Inc., d/b/a MetroNet ("CMN") has requested that the City of Northfield, Minnesota ("City") commence proceedings to consider the award of a cable franchise to CMN.
2. Minnesota Statutes Section 238.08(a) mandates that a city require a franchise for any cable communication system providing service within the city.
3. Federal law at 47 U.S.C. Section 541(a) provides that a city "may not unreasonably refuse to award an additional competitive franchise."
4. The City retained the law firm of Moss & Barnett, a Professional Association, to assist the City in conducting the procedure required under Minnesota Statutes Section 238.081 and the review of any applications submitted to the City.
5. The City followed the franchise procedure required by Minnesota Statutes Section 238.081 by publishing once each week, (May 5 and 12, 2021) for two successive weeks in the Northfield News, a Notice of Intent to Consider an Application for a Cable Franchise ("Notice").
6. In addition to the published Notice, the City provided copies of the Notice and the Request for Proposals Official Application Form to CMN and to the City's existing cable operator, Charter Communications, Inc. ("Charter").
8. The City's Official Application Form required that proposals for a cable communications franchise contain responses to each of the items identified in Minnesota Statute Section 238.081, Subd. 4.
9. The City's closing date for submission of applications was set for May 25, 2021 which complied with the statutory minimum of twenty (20) days from the date of first publication.
10. Upon the deadline for submitting applications, May 25, 2021, the City received only one application, from CMN.
11. The City Council determined to call a Public Hearing to consider the application received from CMN at its regularly scheduled June 1, 2021 meeting.
12. All interested parties were provided an opportunity to speak to the City Council and to present information regarding this matter, including Charter.

13. The City carefully reviewed all information and documentation presented to it regarding CMN's proposal and qualifications to operate a cable communications system within the City.
14. Based on information and documentation made available to the City and the letter and attachments, dated May 25, 2021, prepared by Moss & Barnett with respect to CMN's application, the City Council has reached conclusions regarding CMN's legal, technical and financial qualifications.

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

1. The City hereby finds that CMN's application, received on May 21, 2021, complies with the requirements of Minnesota Statute Section 238.081.
2. The City finds that CMN possesses the requisite legal, technical and financial qualifications to operate a cable communications system within the City.
3. City staff is authorized to continue negotiations with CMN to attempt to reach mutually acceptable terms for a cable television franchise to be introduced to the City Council for consideration.
4. The City finds that its actions are appropriate and reasonable in light of the mandates contained in Chapter 238 of Minnesota Statutes and applicable provisions of federal law including 47 U.S.C. Section 541(a).

PASSED AND ADOPTED this 1st day of June 2021

CITY OF NORTHFIELD, MINNESOTA

Its: _____

ATTEST:

Its: _____