



May 2, 2016

Mayor Todd Larson and Members of the Farmington City Council
City of Farmington
430 3rd Street
Farmington, MN 55024-1355

Re: Frontier Communications Cable Application

Dear Mayor Larson and Members of the City Council:

Thank you for giving Charter Communications (“Charter”) the opportunity to comment on the application (“Application”) submitted by Frontier Communications (“Frontier”) to provide cable television service in the City of Farmington (“City”). We look forward to reviewing and commenting on the franchise ordinance once that is available.

- **Charter respectfully recommends that the Council reject the legally deficient Application and invite Frontier to submit an application that complies with applicable law.** Frontier’s Application fails to provide the information required by Minnesota law to demonstrate its legal, financial and technical qualifications.
- **The City must honor the competitive equity provisions in Minnesota law and the Franchise agreement between Charter and the City (“Charter Franchise”).** As summarized herein and addressed by a separate letter from Charter’s outside counsel to the City’s counsel, attached here, Frontier also has placed the City in an untenable position by requesting approval of franchise terms which violate the competitive equity provisions in Minnesota law and the Charter Franchise. Specifically, Frontier’s Application asks the City to violate state law and Charter’s Franchise by granting a franchise to Frontier that is more favorable and less burdensome than Charter’s Franchise. In doing so, the Frontier Application also invites the City to undermine any real opportunity for competition by sanctioning cherry-picking and undercutting its stated public policy of equality. The City should decline this invitation.

Charter has no objection to fair competition in the City; we have franchised competition in other Minnesota communities. But potential competitors seeking a franchise from the City must comply with Minnesota law. And the City must honor the competitive equity requirements of the current Charter Franchise and Minnesota law. If the City were to grant Frontier a franchise based on the Application, it would violate Charter’s Franchise and Minnesota law. The City also would confer unwarranted preferential treatment on Frontier at the expense of City residents who have come to expect fair and universal access to services in the City.

A. The Content of the Application is Deficient under State and Local Law and Fails to Show the Applicant’s Legal, Technical and Financial Qualifications.

Minnesota law requires specific information regarding the legal, financial and technical qualifications of the applicant.¹ Among other information, a franchising proposal must contain (i) a schedule for construction of the entire system; (ii) a schedule for activating the cable system and two-way capacity; (iii) the terms and conditions for service to governmental and educational entities; (iv) a schedule of proposed rates; and (v) plans for financing the system. The Frontier Application provides almost none of the critical information required by the Minnesota Cable Act:

(1) A time schedule for construction of the entire system with the time sequence for wiring various parts of the area requested to be served.²

Frontier response: “Frontier is still finalizing its initial footprint for the deployment of cable services with the City of Farmington service area. Frontier’s planned deployment is highly confidential. Pursuant to an executed franchise agreement(s), Frontier will meet regularly with the City and the Commission to discuss where service is available and any plans for additional deployment. Frontier is the second entrant into the wireline video market in the City of Farmington. As a second entrant, investment in and expansion of Frontier’s cable system should be driven by market success and not a contractual requirement for ubiquitous coverage.” Frontier uses the next 5 pages of its abbreviated Application to argue why it shouldn’t have to provide service in compliance with Minnesota law.

Frontier’s response is wholly unresponsive and ignores the statutory mandate to provide service throughout Frontier’s telephone service area,³ which encompasses the vast majority of the City. The separate letter from Charter’s outside counsel explains why the City has no legal authority to act on Frontier’s invitation to disregard state law.

(2) The schedule for activating cable and two-way capacity.⁴

Frontier response: “While an exact launch date has yet to be determined, Frontier is working diligently to complete all necessary work and required testing and operational readiness review to offer service to customers upon successful execution of a Franchise Agreement. Frontier will meet with Commission and appropriate member jurisdictions to share the actual launch date when it becomes finalized.”

Again, wholly unresponsive. The Application is materially deficient without this critical information.

¹ Minn. Stat. 238.081, Subd. 4.

² Id. at (a)(6).

³ Minn. Stat. 238.08 Subd. 1(c).

⁴ Minn. Stat. 238.081 Subd. 4(a)(3)(ii).

(3) **Terms and conditions under which particular service is to be provided to governmental and education entities.**⁵

Frontier response: “Frontier will provide at no charge expanded basic service to all government buildings, schools, and public libraries located within its service footprint so long as those locations are capable of receiving service from Frontier and no other cable provider is providing service at such locations.”

As Charter provides service to most public buildings and Frontier will not commit to any build-out, this is both unresponsive and unclear.

(4) **A schedule of proposed rates in relation to the services to be provided and a proposed policy regarding unusual or difficult connection of service.**⁶

Frontier response: “Final rates have yet to be determined...”

The statute clearly requires proposed rates, not final rates. Frontier did not propose any policy for unusual connections.

(5) **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.**⁷

Frontier response: The Application refers the reader to SEC filings by the ultimate parent company.

This response again fails to provide the detailed information required by Minnesota law.

B. The City Must Honor the Competitive Equity Provisions In State Law and Charter’s Franchise.

State law does not allow the City to grant an additional 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.”⁸ For telephone companies like Frontier, state law specifies that “[a]n area for an additional cable franchise is not more favorable or less burdensome if . . . the area of the franchise is no less than the area within the municipality in which the telephone company offers local exchange telephone service.”⁹

⁵ Id. at (a)(4).

⁶ Id. at (a)(5).

⁷ Id. at (a)(9).

⁸ Minn. Stat. 238.08, Subd. 1(b).

⁹ Id. Subd. 1(c).

Similarly, Section 2.3.c. of Charter’s Franchise requires the City to grant additional cable franchises on “substantially similar substantive terms and conditions.”¹⁰ Thus, any franchise granted by the City to a competitive provider must abide by this mandate. The Frontier Application, however, is bereft of important commitments on substantive terms and conditions that must parallel those in the Charter Franchise. For example:

- The Charter Franchise requires service throughout the City to all areas with at least thirty (30) homes per mile as the City chose to assure service availability to as many residents as possible. The Frontier Application includes no such commitment.
- The Charter Franchise included a \$60,000.00 grant for PEG equipment and also includes a per subscriber PEG Fee. The Frontier Application offers no commitment to fund PEG, either through an up-front payment or on an ongoing basis.
- The Charter Franchise require complimentary service to numerous public buildings. The Frontier Application proposes only that it will provide service to those public buildings that are within its (yet undefined) service area and only if the building isn’t currently served by Charter.

The competitive equity requirements of Minnesota law and Charter’s Franchise are clear: any franchise granted by the City to Frontier must contain substantially similar substantive terms and conditions as the Charter Franchise.

C. There Are Substantial Public Policy Reasons for Competitive Equity.

Beyond the legal and contractual mandates, the City must follow, sound public policy reasons exist for competitive equity among cable service providers. Charter and other providers currently operate in a very competitive environment. DirecTV (now owned by AT&T) is a significant competitor, as well as other direct-to-home satellite program distributors like Dish that transmit video programming, data and other information by satellite to customers receiving dishes. Other companies currently provide a wide variety of services that compete with cable – Netflix, Amazon, Roku and Apple TV to name a few. Charter expects that it will likely face additional competition in the future from other competitors using additional spectrum the FCC has made available for wireless services.

If the City were to hold Frontier to a different standard than Charter or other franchised competitors, it would confer unwarranted preferential treatment on Frontier in violation of Charter’s Franchise and state law, and at the expense of City residents. This not only would create “have” and “have-not” classes among City residents, but would sanction an unfair and anticompetitive situation in contravention of federal, state, and local policies.

Moreover, if Frontier were allowed to “cherry-pick” only the areas of the City it chooses to serve, it is highly unlikely that other facilities-based providers would consider competing in

¹⁰ The separate letter from Charter’s outside counsel explains why the Charter Franchise remains valid and in effect.

Farmington. Capital intensive projects like cable systems work economically when they are balanced across an entire City. If Frontier can ignore the less economically attractive parts of the City and serve only what it chooses, that makes the market less attractive to the next potential provider.

Given these governing laws and policies, the City should reject the invitation to create a privileged cable provider unfettered by the significant public accountability and broad service requirements applicable to its competitors.

If Frontier were to cure these deficiencies in its Application and the City proposed an additional franchise for Frontier, Charter expects an opportunity to review and comment on whether that franchise complies with state law and is granted on substantially similar substantive terms and conditions as Charter's Franchise.

We would be happy to respond to any questions or comments that the City might have.

Sincerely,

A handwritten signature in cursive script that reads "LeeAnn Herrera".

LeeAnn Herrera
Director, Government Affairs – MN/NE
Charter Communications

cc: Robert Vose, Esq.