City of Birmingham
A Walkable Community

MEMORANDUM

City Manager's Office

DATE: **December 8, 2014**

TO: **Joseph A. Valentine, City Manager**

FROM: **Amanda Thomas, Management Analyst**

SUBJECT: **Consent of Transfer from Comcast to Midwest Cable**

In April of this year, Comcast Corporation and Charter Communications entered into a transaction agreement that includes a transfer of control of all southeast Michigan Comcast cable customers to Midwest Cable. The Birmingham Area Cable Board, with direction from attorney Tim Currier, reviewed all transaction agreements and official filings with the Federal Communications Commission.

Based on the review of all materials attorney Currier submitted a resolution to the Board for consideration on November 19. This resolution was for a recommendation for adoption of a resolution for its constituent communities to consent to the transfer of control of the cable television system from Comcast to Midwest Cable, pursuant to certain conditions to be included. A complete copy of the resolution and related conditions is attached. Representatives from the Birmingham Area Cable Board will be in attendance and available to take your questions and comments.

SUGGESTED RESOLUTION:
To adopt the resolution of consent to the transfer of control of the City of Birmingham franchises from Comcast to Midwest Cable, LLC in the manner described in the Agreement and Plan of Merger dated April 25, 2014, subject to the conditions precedent and conditions subsequent.

RESOLUTION GRANTING CONSENT TO THE TRANSFER OF CONTROL OF THE CABLE TELEVISION SYSTEM

Moved by_____ Supported by_____

WHEREAS, Comcast of Colorado/Florida/Michigan/New Mexico/Pennsylvania/ Washington (Comcast) is a current cable franchisee for the Local Franchising Authorities within the Birmingham Area Cable Board (BACB); and,

WHEREAS, Comcast and Midwest Cable submitted an application on June 17, 2014 for Franchising Authority Consent to the transfer of control of the cable television franchise; and,

WHEREAS, the Local Franchising Authority is relying upon such information as contained in the FCC Form 394 application, documents, and additional information provided by Comcast and acted upon the application and such information for Franchising Authority Consent. The Local Franchising Authority intends to consent to the transfer of control subject to the acceptance of the terms and conditions set forth herein with the hope that such consent is in the best interest of the Local Franchising Authority.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Local Franchising Authority does hereby consent to the transfer of control of the Franchisee from Comcast to Midwest Cable, LLC in the manner described in the Agreement and Plan of Merger dated April 25, 2014, subject to the following conditions precedent and conditions subsequent:

Conditions Precedent

a) The written representation by Comcast that it will promptly notify the Local Franchising Authority, in writing, of any change in service or operation in the cable system serving the Local Franchising Authority's community and/or change in the personnel directly responsible for the operation of the cable system in contemplation of, or as a result of consummation of the Agreement and Plan of Merger; and,

b) The prompt and proper remediation of all existing defaults, if any, under the current Cable Franchise Agreement with Local Franchising Authority, pursuant to PA 480 of 2006 or other applicable law, as may be specified in writing by the Local Franchising Authority; and, the representation in writing by Comcast that it has no knowledge of any defaults except those that are identified by it; and,

c) The Transferee agrees in writing to accept and be bound by the lawful terms and conditions of the Franchise Agreement and the cable regulatory ordinances, pursuant to PA 480 of 2006 or other applicable law. This Resolution is without prejudice to the right of the Local Franchising Authority, Comcast, and Transferee to take positions with respect to what constitutes applicable state law; provided, however, that in all instances, the Transferee will assume all lawful obligations of such franchise.

d) All prior written agreements between the Franchisee and the Local Franchising Authority and any of the Local Franchising Authority's member communities, apart from the Franchise Agreement, shall remain in full force and effect, until such time as proper written notice is provided to change such terms and conditions and the Transferee shall cause the same to be honored by the Franchisee.

e) The written representation by Comcast that all franchise fees that are currently due the Local Franchising Authority have been paid in full and on time.

Conditions Subsequent

a) The Local Franchising Authority's approval shall be voidable if the Agreement and Plan of Merger is not consummated by August 31, 2015, or such Agreement is terminated prior to that time without the same having been consummated; and,

b) The Transaction itself does not require any rate increases. To the extent that rate changes are made in the future, Midwest Cable will provide customers and the LFAs with reasonable notice of any such changes.

Grant of Consent

The Local Franchising Authority's grant of consent to the transfer of Comcast, to Midwest Cable, LLC pursuant to the Agreement and Plan of Merger dated April 25, 2014 shall be effective immediately subject to the above conditions, and further requires

Comcast to notify the Local Franchising Authority promptly upon the closing of the transaction described in the aforementioned Agreement and Plan of Merger. The Local Franchising Authority is hereby authorized to enter into, execute and deliver in the name of the Local Franchising Authority a certificate along with such other documents as may be necessary evidencing this Resolution without further act or Resolution of the governing body.

AYES: _____

_____

NAYS: _____

_____

PRESENT: _____

_____

ABSENT: _____

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Clerk