STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: MCC IOWA, LLC, d/b/a MEDIACOM; PHALANX TECHNOLOGY HOLDINGS, LLC, d/b/a fyreSTORM CABLE & FIBER, INC.; ALLIANCE TECHNOLOGIES, INC.	DOCKET NOS. VCA-2008-0002, CERTIFICATE NO. C-0002; VCA-2009-0004, CERTIFICATE NO. VC-0005; AND VCA-2013-0007, CERTIFICATE NO. VC-0022

ORDER REGARDING MEDIACOM'S RESPONSE TO BOARD ORDER

(Issued October 20, 2015)

On September 1, 2015, the City of Iowa City (Iowa City) filed with the Utilities Board (Board) an "Application of City of Iowa City for Issuance of Notice Under Section 477A.3(6)(b)" (Application for Notice). Iowa City asked the Board to issue a notice, pursuant to Iowa Code § 477A.3(6)(b), to MCC Iowa, LLC, d/b/a Mediacom (Mediacom), the incumbent cable provider in Iowa City, requiring Mediacom to comply with the terms of the municipal franchise agreement previously in place between Iowa City and Mediacom within 90 days of the notice.

On September 21, 2015, the Board issued an "Order Providing Notice and Requiring Response" in Docket Nos. VCA-2008-0002, VCA-2009-0004, and VCA-2013-0007. In that order, the Board discussed its revocation of the certificates of franchise authority the Board had issued to the two competitive service providers that had applied for authority to provide service in Iowa City. In response to Iowa City's application, the Board notified the parties that it appeared that Iowa Code

§ 477A.3(6)(b) applied to require Mediacom to comply with the terms of the previous municipal franchise with Iowa City. The Board directed Mediacom to file a response within 20 days informing the Board whether Mediacom intends to comply with the terms of the prior municipal franchise agreement or, if it does not intend to return to that agreement, its reasons for that decision.

Mediacom filed a response on October 12, 2015. Mediacom does not believe it should be required to return to the Iowa City franchise agreement and asserts that doing so would prejudice its rights under federal law. Mediacom contends the timing of Iowa City's actions creates a conflict between Iowa Code § 477A.3(6)(b) and 47 U.S.C. § 546, the federal provision that governs the renewal process for cable franchises. According to Mediacom, its municipal franchise with Iowa City would expire on July 31, 2018. Mediacom explains that the six-month period in federal law for renewal of cable franchises begins with a notice of interest in renewal, and the window for that notice begins 36 months before the franchise expires; in this case that opening date would be August 1, 2015.

The conflict between state and federal law, in Mediacom's view, is that because Iowa City waited until September 1, 2015, to ask the Board to issue a notice to Mediacom that it must comply with the municipal franchise within 90 days pursuant to the state law provision in Iowa Code § 477A.3(6)(b), Mediacom might be subject to the municipal franchise for less than 30 days before the renewal notice window closes. Mediacom illustrates this problem by suggesting that if the Board issued the notice requested by Iowa City after considering Mediacom's response, e.g., in mid-

October, the return to the municipal franchise would be after mid-January 2016, with the federal six-month notice period closing on or about February 1, 2016. Mediacom contends that shortening the time it would have to follow the federal renewal procedures disadvantages Mediacom's rights established in federal law. In the face of this conflict, Mediacom contends the state law must be preempted. Mediacom asserts that as a result of the preemption of state law, there is no method to require Mediacom to return to the municipal franchise in such time as to allow Mediacom sufficient time to properly follow the federal franchise renewal process.

In its September 21, 2015, "Order Providing Notice and Requiring Response," the Board stated that

> [b]ased on the assertions in Iowa City's Application for Notice, it appears that the provisions of Iowa Code § 477A.3(6)(b) may apply to require Mediacom to comply with the terms of its previous franchise agreement with Iowa City. Mediacom, the incumbent cable provider in Iowa City, had not been issued a certificate of franchise authority to serve Iowa City pursuant to Iowa Code § 477A.2(6) as of April 12, 2010. In other words, Mediacom did not expand its certificated service area to include Iowa City until October 2, 2013, and thus may be covered by § 477A.3(6)(b).

Based on Mediacom's response to the Board's order, it does not appear that Mediacom disagrees with that analysis. Instead of disputing the Board's interpretation of state law, Mediacom asserts that the state law provision is preempted because Iowa City waited too long to ask the Board to notify Mediacom that it was obliged to return to the municipal franchise. Mediacom fails to acknowledge, however, that it could accelerate its return to the municipal franchise, thereby gaining time in which to seek renewal under federal law. Mediacom has not

claimed that it would not be possible to return to the municipal franchise sooner than later, nor has it asserted 90 days are necessary to come into compliance with the municipal franchise.

Iowa Code § 477A.11 provides that Iowa Code chapter 477A is intended to be consistent with the federal Cable Act, § 47 U.S.C. § 521 et seq. The provisions of state law and federal law must work together. In this case, Mediacom alleges a conflict between state and federal law precludes the application of the state law provision that would require Mediacom to return to the municipal franchise. The Board does not agree that a conflict is present that would make it impossible to give effect to both state and federal law. Mediacom has been on notice since the Board's September 21, 2015, order that the Board reads Iowa Code § 477A.3(6)(b) to require Mediacom to return to the municipal franchise, so it must return to the municipal franchise no later than December 21, 2015. If Mediacom believes more time is necessary to follow the federal renewal process, to maximize the time available to do that, Mediacom could return to the municipal franchise sooner than December 21, 2015, and certainly sooner than it describes in its response to the Board order. In fact, it appears Mediacom could give the notice at any time, even before returning to the municipal franchise.

IT IS THEREFORE ORDERED:

As described in this order and in the "Order Providing Notice and Requiring Response" issued by the Board in these dockets on September 21, 2015, and pursuant to Iowa Code § 477A.3(6)(b), MCC Iowa, LLC, d/b/a Mediacom, shall

comply with the terms of its prior franchise agreement with the City of Iowa City on or before December 21, 2015.

UTILITIES BOARD

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 20th day of October 2015.