FILED WITH
Executive Secretary
October 13, 2015
IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA 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 NO. VCA-2008-0002, CERTIFICATE NO. C-0002** **RESPONSE TO SEPTEMBER 21, 2015 BOARD ORDER**

On September 21, 2015, the Board issued an Order relating to an "Application for Notice" filed by the City of Iowa City. Having sought and obtained the termination of the certificates of other terrestrial providers, Iowa City seeks to re-regulate Mediacom's service under the terms of its prior city franchise agreement. The Board requested Mediacom response as to whether it would or would not return to operating under the Iowa City franchise agreement.

Mediacom does not believe it can or should be required to return to the Iowa City franchise agreement at this time as doing so would prejudice Mediacom's rights established by federal law. The timing of Iowa City's actions here, which have been entirely driven by Iowa City itself, create a conflict between Iowa Code § 477A.3(6)(b) and 47 U.S.C. § 546.

The timeline here is critical. Mediacom and Iowa City entered into a 13-year agreement on August 1, 2005, which would run until July 31, 2018. Under federal law, there is a period for a notice of interest in renewal which can be initiated by either the franchising authority or the cable operator. The window for such notices under federal law "begins with the 36th month before the franchise expiration." See 47 U.S.C. § 546(a)(1). *In this case, that would have been be August 1, 2015*. On September 1, 2015, Iowa City asked this Board to issue notice to Mediacom that it had to return to operating under the Iowa City franchise within 90 days – by

November 30, 2015, had the Board issued an order immediately (which would have been improper; the Board correctly provided Mediacom opportunity to respond but it also means that any return to the Iowa City franchise would now be after mid-January 2016.) The notice of intended renewal under federal law triggers a series of subsequent steps and procedural rights including, for example, a four-month public comment period. This is to say, there is a good reason that the notice window under federal law begins 36-months in advance; moreover to allow for the process required and for certainty of the status of the franchise agreement, the notice period closes six-months after it opens, in this case on or about February 1, 2016.

Due to the particular timing of Iowa's City's efforts, Mediacom may be under the prior Iowa City franchise agreement *less than 30 days before the renewal notice window closes*, cutting off over 80% of the time Mediacom (and the city) are allowed under federal law for making such a decision. That would clearly be prejudicial to Mediacom's rights established under federal law. While Mediacom has availed itself of the state franchise certificates and has converted local franchises where possible, Mediacom continues a standard practice to submit letters under § 546 to local communities 36 months prior to the expiration of all local franchises in Iowa. Mediacom goes to great lengths in those letters to preserve our rights under federal law in the event there is a change in state law in Iowa.

Simply put, Iowa City's motion comes too late to avoid a conflict between state and federal law. Under the Supremacy Clause, the state law cannot conflict with the rights provided under federal law, nor does the Board have the authority to extend the federal timelines. As a result, in circumstances where the application of Iowa Code § 477A.3(6)(b) would have the effect of shortening or interfering with the renewal timeline established under 47 U.S.C. § 546, the application of the Iowa provision must be preempted. The result of preemption – the

inapplicability of Iowa Code § 477A.3(6)(b) – would be that there is no method to require Mediacom to return to a city franchise agreement where it would not have appropriate time to seek a proper renewal process.

There is no unfairness in this result: the triggering of Iowa Code § 477A.3(6)(b) was no fault or act of Mediacom's, and the control over the timing of seeking termination of other providers' certificates and seeking to apply § 477A.3(6)(b) to Mediacom were choices made by Iowa City. If Iowa City is going to force Mediacom to return to city franchising, however, it cannot use the state process to limit Mediacom's federal rights. Such would be the result here, and it is a result that, legally, is impermissible.

Accordingly, in response to the question presented by the Board, Mediacom does not believe it is appropriate to return to operating under the prior Iowa City franchise agreement.

Respectfully submitted this 12th day of October, 2015.

By: */s/ Bret A. Dublinske*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 12th day of October, 2015, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
Bret A. Dublinske