






**City Clerk**  
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## MEMORANDUM

**Date:** April 30, 2015

**To:** Mayor Troxell and City Councilmembers

**Thru:** Darin Atteberry, City Manager   
Wanda Nelson, City Clerk 

**From:** Christine Macrina, Board and Commission Coordinator 

**Re:** April 28, 2015 Work Session Follow Up

At the April 28, 2015 Work Session, Board, Commission, Committee, Authority, and other Organization Liaison assignments were discussed.

There are a total of 59 liaison assignments.

During the discussion, Council requested the City Clerk's Office review the schedule of tasks, such as Annual Reports, Work Plans, and Periodic Reviews to align with Council's retreat and subsequent strategic plan.

Recommendation for modifications will be presented to Council in the next several months.



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DATE: May 1, 2015

TO: Mayor Troxell and Councilmembers

FM: Ginny Sawyer, Project and Policy Manager *GS*

TH: Darin Atteberry, City Manager *DA*  
Kelly DiMartino, Assistant City Manager *KD*

RE: April 28, 2015 Work Session Summary - Capital Improvement and Street Maintenance Quarter Cent Taxes

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Staff provided a high level overview of the Capital Improvement Program and the Street Maintenance Program and the process leading up to the recent renewals. All Councilmembers were present.




There were no questions regarding process or specific projects. The majority of the discussion focused on next steps and timing of projects.

Next Steps:

- Staff will be working on a project timing schedule for Council review. The schedule seeks agreement but not adoption to allow for flexibility to take advantage of currently unknown leveraging opportunities.
- Once collections begin (2016) staff will ensure transparency and accessibility to the public for dollars spent.
- An ordinance to codify the Street Maintenance Program will come to Council prior to 2016.



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Date: April 30, 2015  
To: Mayor Troxell and City Councilmembers  
Thru: Darin Atteberry, City Manager   
Kelly DiMartino, Assistant City Manager   
From: Dan Coldiron, Chief Information Officer   
Re: April 28, 2015 Work Session Summary: Comcast Franchise Renewal Update

Mayor Troxell, Mayor Pro Tem Horak, and Councilmembers Campana, Cunniff, Martinez, Overbeck, and Stephens were in attendance. Staff members Dan Coldiron, Ingrid Decker and Carson Hamlin provided Council with an update on the status of the process to renew the Comcast cable franchise agreement. Staff provided an overview of the community needs assessment, the limitations on the negotiations based upon federal communications law, highlights of items that have been negotiated thus far, and a brief update on an emerging question about overhead service lines.

Council raised a number of questions and provided feedback about the proposed agreement. Council inquired about the 10-year term of the agreement and expressed an interest in reducing the term and ensuring that the agreement requires Comcast to stay current with emerging technology and policy trends. Council also voiced concern about Comcast's current level of customer service and lack of promotion for the "basic-basic" subscription tier. Council would like staff to investigate technologies that would allow for the broadcast of PEG programming to the community, as well as consider the use of a board or an ad-hoc group to participate in the negotiation, administration, and enforcement of the franchise agreement.

Additionally, Council requested further information on whether it is possible to recover all or a portion of the potential underpayment of the franchise fee based on the current definition of "gross revenues," and asked if it could be negotiated to have the Customer Service Standards state that the local service center must be "within City limits."

Lastly, Council requested a more detailed plan regarding staff's recommendation that the City to engage in a more proactive approach to the administration and enforcement of the proposed franchise agreement, including an enhanced Web presence, scheduled audits and performance evaluations, and enhanced citizen request/complaint tracking.

Responses will be provided in the May 7 Council packet.



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Date: May 7, 2015  
To: Mayor Troxell and City Councilmembers  
Thru: Darin Atteberry, City Manager *DA*  
Kelly DiMartino, Assistant City Manager *KD*  
From: Dan Coldiron, Chief Information Officer  
Re: April 28, 2015 Work Session Responses: Comcast Franchise Renewal Update

Provided below are responses to questions and concerns posed by Councilmembers during the April 28 Work Session regarding the proposed Franchise Renewal Agreement:

**The proposed agreement allows for a technical assessment after 5 years. What leverage does this provide the City?**

- After five years from the Effective Date, the City can conduct a technology assessment per 11.5(A), but 11.5(C) basically says that we can use the results “in any proceeding commenced for the purpose of identifying future cable-related community needs...pursuant to 47 U.S.C. §546.” That means the City can use the results of the technology assessment during the next franchise renewal process, if we end up in formal proceedings, to help establish the cable-related needs of the community.
- The franchise agreement does require that Comcast’s system meet or exceed all applicable federal, State and local technical standards.
- Negotiating more substantive language that requires Comcast to address technology changes identified during the technical assessment would be extremely difficult. In recent negotiations, Denver and Aurora attempted to negotiate these types of requirements unsuccessfully. Comcast is very aware that municipalities do not have much legal authority to require specific technologies for cable services under existing law. Even if Comcast were willing to negotiate this, in exchange for any concessions Comcast would likely ask for concessions on the part of the City.

**Would a 2 or 5 year agreement be reasonable?**

- A two year agreement is too short, because under the Cable Act the franchise renewal process starts three years before a franchise expires. For many years cable franchises across the country were typically for 15 years. In the last 10 to 20 years cable providers have become more comfortable with 10 year franchises as long as they have adequate “level playing field” protections in the franchise agreement. Cable providers are concerned about protecting their financial investment in the franchise, and a longer franchise provides assurance in that area. The City could request a term as short as 5

years. However, there are two reasons that a shorter term is not necessarily in the best interest of the City. First, Comcast will definitely prefer a longer term and negotiations to shorten the term would almost certainly require concessions on the part of the City. Secondly, according to the City's consultants, a shorter term may not be advantageous to the City. The rate and extent of change in the industry and the associated regulatory environment are likely to leave municipalities with less regulatory authority in the future. A longer franchise could lock in more of the authority the City currently has.

#### **Can we get Limited-Basic marketing from Comcast?**

- In the proposed side letter agreement Comcast states that it "intends" to continue offering the limited basic tier as requested by the City, but that ultimately the decision about what to charge and what to include in that package remains in its control. At the present time, information about the limited basic package is difficult, if not impossible, to find on Comcast's website. However, the model Customer Service Standards that Comcast would like the City to adopt state, in Section III.E.1, that "at any time a customer or prospective customer may request, a Cable Operator shall provide the following information, in clear, concise written form, easily accessible and located on Cable Operator's website:... b. the Cable Operator's complete range of service options and the prices for these services." That suggests that, under the proposed model Standards, if a citizen were to visit the Comcast website and "request" information on what packages are available, they should expect that it would include all of them, including limited basic.
- The above was posed as a question to the Comcast representative. Unfortunately, a response required internal discussions within Comcast and was not available for inclusion in this document. The representative did state that every new customer receives a local rate card that definitely includes information on the limited basic packages, as well as all other packages provided.

#### **Could we broadcast PEG channels with low power broadcast technology?**

- Adequately investigating the potential opportunities to develop and implement technologies that would allow the City to broadcast the local PEG channels to the community will require a great deal of time and research. As such, a response to this question will be provided at a later date. The proposed agreement does not contain language that would inhibit or otherwise restrict the City's ability to implement these technologies.

#### **Would it be useful to have a board associated with the cable franchise, or would ad-hoc committees be useful?**

- The upgrade of Comcast's system from analog to digital early many years ago dramatically reduced the amount of technical and related customer service issues that were necessary to resolve for the community. The related work performed by the Telecommunications Board was dramatically reduced as a result of this. Once the current cable TV franchise agreement was negotiated, the board requested that the City sunset the board due to lack of available work.

- The use of ad-hoc committees might serve a variety of purposes to assist in the financial, technical and performance reviews provided for within the proposed agreement. The use of ad-hoc committees will be addressed in the plan for the proactive administration of the franchise agreement.

**What would the City do to provide proactive administration of the proposed franchise agreement?**

- This should be a separate discussion, closely following the approval of the franchise agreement. The proposed agreement contains the necessary requirements, regulations, restrictions, and consequences that will empower proactive administration. Staff will fully develop an ongoing communication and enforcement strategy, which will include a comprehensive Website. Financial, technical and performance reviews and audits are fully provided for within the proposed agreement and the use of ad-hoc committees to assist would be advisable.
- Fort Collins Website options:
  - Dashboard for metrics;
  - Customer comment tracking;
  - Discussion forum;
  - Ticket/Issue tracking.

**Is it possible to negotiate full or partial repayment of the \$24k potential underpayment that was identified in the audit?**

- The financial audit was conducted by the consulting group that the City engaged to produce the report on the administration of the current franchise. The audit was conducted for a one-year period, which was 2012. The identified \$24k potential underpayment was for 2012 only. Similar underpayment could have potentially occurred in other years, but would have required further auditing. However, the City's right to audit expires 3 years after payment is made, so we would be unable to audit and collect on no more than 3 previous years at any given time.
- After discussions with the City's consultants early in the renewal process, it was determined that the City would likely not be successful in an attempt to collect these monies or similar that might be identified by further audits. This was due to the fact that the existing agreement's gross revenues definition was too weak to adequately support the claim and would most likely require expensive litigation. In response to this situation, the definition of gross revenues within the proposed agreement is significantly improved, as it is much more comprehensive. The current and proposed definitions are included at the end of this document.

**Can we have "within city limits" explicitly stated in customer service standards?**

- This issue will be discussed in a confidential legal memo to the City Council in advance of the May 19 Executive Session discussion.

**Does the fact that the City is talking about setting up its own broadband internet service affect how Comcast is negotiating on the cable franchise?**

- The short answer is no. Under state law the City cannot require telecommunications providers other than cable TV providers to have a franchise for using the City's rights-of-way. The City and Comcast have had conversations about broadband, but those have been outside the context of the franchise discussions. The City and Comcast are not legally prevented from talking about broadband as part of the franchise negotiations; but because that service is beyond the scope of a cable TV franchise, the topic was not included. The franchise discussions have focused on cable TV-related services and requirements, and neither the City nor Comcast has tried to use the City's interest in broadband service as part of a negotiation strategy.

In summary, staff believes that the proposed franchise agreement is very solid, representing the needs of the community as researched and documented in the assessment. There were a number of elements of the agreement that were provided by Comcast that were not required of them, but met the needs of the community as were established by the City's assessment report. These included provision of 2 HD channels, grant monies for Fort Collins Public Access Network (FCPAN), a Limited Basic programming package, marketing for PEG broadcasting, and network infrastructure for FCPAN.

The next steps in the process include:

- An Executive Session with Council on May 19<sup>th</sup>.
- A proposed extension of the current agreement will be heard at the May 19<sup>th</sup> Council Meeting, to July 31<sup>st</sup>, 2015, unless Council determines that further time and negotiation is required.

**Current Agreement Definition of Gross Revenues:**

1.27 "Gross Revenues" means all revenue derived by the Grantee as determined in accordance with GAAP from the operation of the Grantee's Cable System to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged Subscribers for any Cable Service; installation, disconnection, reconnection and change-in-service fees; Leased Access Channel fees; Cable System equipment rental fees; all Cable Service lease payments from the Cable System; late fees and administrative fees; fees, payments or other consideration received by the Grantee from programmers for carriage of programming on the Cable System; advertising revenues (net of commissions paid to any entity that is not an Affiliate of Grantee); the fair market value of consideration received by the Grantee for use of the Cable System to provide Cable Service; revenues from program guides; additional outlet fees; Franchise Fees; revenue from the sale or carriage of other Cable Services; and revenue from home shopping, bank-at-home Channels and other revenue-sharing arrangements. Gross Revenues shall include revenue received by the Grantee or any entity other than the Grantee where necessary to prevent evasion or avoidance of the obligation under this Franchise to pay the Franchise Fees. Gross Revenues shall not include (i) to the extent consistent with GAAP, Bad Debt; provided, however, that all or part of any such Bad Debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; (ii) the Capital Contributions specified in subsections 9.1 and 9.2; or (iii) any taxes on services furnished by the Grantee which are imposed directly on any Subscriber or user by the State, City or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. The Franchise Fee is not such a tax.

**Proposed Agreement Definition of Gross Revenues:**

1.29 "Gross Revenues" means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee's Cable System to provide Cable Services within the City. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within



the City;

- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;
- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- revenues from program guides;
- Franchise Fees;
- FCC Regulatory Fees; and,
- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the City.

(A) "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Grantee's Cable System subscribers within the City and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications ("NCC") and Comcast Spotlight ("Spotlight") or their successors associated with sales of advertising on the Cable System within the City allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) "Gross Revenues" shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the City;
- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;
- launch fees and marketing co-op fees; and,
- unaffiliated third party advertising sales agency fees which are reflected as

a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the City. The City reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.29 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the City within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.29(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the City reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

