

AGENDA ITEM SUMMARY

February 19, 2019

City Council

STAFF

Erin Shanley, Broadband Marketing Manager
Colman Keane, Broadband Director
Gerry Paul, Director of Purchasing & Risk Management
Cyril Vidergar, Legal

SUBJECT

Resolution 2019-025 Approving the Purchase of Video Content Licensing and Services from the National Cable Television Cooperative for Fort Collins Connexion as an Exception to the Competitive Purchase Process.

EXECUTIVE SUMMARY

The purpose of this item is to seek approval for an exception to the competitive bid or proposal process for Fort Collins Connexion's membership with and purchase of video content licensing and services from National Cable Television Cooperative (NCTC).

To provide video services, Fort Collins Connexion must secure license agreements with video content providers. NCTC is the largest content aggregator with pre-negotiated agreements that give members access to video content cost-effectively, efficiently, and better terms. NCTC provides a cost effective and efficient way to secure license agreements for content which will be viewable via MobiTV, the preferred video provider selected through an RFP process.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

As part of Fort Collins Connexion providing video services, license agreements are required with the content providers for networks. The National Cable Television Cooperative (NCTC) is a non-profit, 750+ member organization that negotiates master licensing agreements with content providers for hundreds of networks and with technology providers and hardware vendors, providing cost-effective access to equipment and services. Based number of cable subscribers, NCTC is the third largest content negotiator in the nation, with Comcast and Charter being first and second respectively.

NCTC's pre-negotiated agreements with video content providers give members access to video content cost-effectively, efficiently, and with better terms. NCTC secures the best possible pricing and terms for its members regardless of size. In addition, NCTC provides the convenience of paying one monthly invoice that covers most of the programming license fees.

However, there are certain content families as well as local channels (ABC, NBC, CBS, etc.) not covered by NCTC which will require direct negotiations. Fort Collins Connexion anticipates negotiating with roughly 20 content families not under contract with NCTC.

As an additional benefit, NCTC has favorable arrangements with technology and hardware vendors. One of

these is MobiTV. Using the RFP process, MobiTV was selected as the video platform for Fort Collins Connexion. MobiTV is amenable to Fort Collins Connexion opting into the NCTC contract which provides more favorable terms than Fort Collins Connexion can negotiate directly with MobiTV.

There are two options on how to source content:

1. Negotiate Individual Agreements with all Content Owners

In order to provide video content (channels), Fort Collins Connexion will need to acquire content rights for every channel made available to customers. There are hundreds of channels that require content agreement negotiations. With a lack of negotiating power due to our small comparative size, Fort Collins Connexion would be subject to each content provider's sole discretion regarding content rights. This would hamper ability to negotiate better terms, tiering restrictions, marketing dollars, penetration requirements, pricing, etc. In addition, Fort Collins Connexion would need to maintain relationships and pay monthly content fees to each content provider, requiring significant staff resources. Finally, the time necessary to negotiate such a quantity of individual agreements would be labor intensive and may result in limited channel availability at launch.

This option is not recommended by staff as it would require significant staff time and legal resources for such a volume of individual contracts.

2. Membership with NCTC

NCTC negotiates rates with content providers, technology providers and hardware vendors on behalf of all its members. As a member of NCTC, Fort Collins Connexion would benefit from its collective bargaining power and receive "better volume" pricing and terms as compared to negotiating directly/individually.

An additional benefit is that the City would only need to process and pay a single invoice each month to NCTC, compared to paying individual invoices for each content provider. Please note that there will be a number of content providers to which NCTC may not have rights (local channels for example) – such content would still need to be negotiated separately. Overall, a membership with NCTC will reduce the cost, complexity, and time spent compared to having to negotiate a large number of individual agreements.

This option is recommended by staff as the best choice for the Fort Collins Connexion and its upcoming video services.

CITY FINANCIAL IMPACTS

Membership Cost Structure

- The NCTC membership fee is a one-time, \$1 per premise passed (using an estimate of homes passed by the end of year two of the buildout). Current estimates are 35,600 premises passed or \$35,600 as the estimated membership fee.
- NCTC requires a \$1500 application fee (payment is required to start the application process). This payment is applied to the above membership fee once the application is approved.
- There is no further membership fee (no monthly or annual maintenance).

Other Costs Savings

- As a member, Fort Collins Connexion will be able to purchase equipment through NCTC at discounted rates.
- NCTC uses its total subscriber size to negotiate favorable pricing on equipment and services, available for members.

Content Provider Costs

- Detailed cost estimates are unavailable until such time as a contract is negotiated with each content provider, or by gaining a membership with an organization such as NCTC. However, estimates can be provided:
 - Taking into account experience with other municipal providers, Fort Collins Connexion anticipates an estimate of ~\$60 per month per subscriber for national video content.
 - MobiTV is budgeted at \$7.00/month per subscriber in addition to national video content license fees.
 - Fort Collins Connexion’s projected internet service take rate is 28.2%, with a stretch goal of 50%.
 - The budgeted take rate for video customers is 60% of internet customers, while the industry average is closer to 80%.
 - Over the last decade, video content costs have increased dramatically with average annual increases ranging from 8% to 12 %.
 - All of these variables yield a wide range for a projected 5-year potential cost. The range for both NCTC video content and MobiTV is \$34 million to \$55 million for the 5-year period.

Low Range Estimate (28% internet take rate, 8% rate increase, 60% video penetration,)

2019	2020	2021	2022	2023	2024
\$ 60,068	\$ 1,392,370	\$ 4,912,158	\$ 9,249,198	\$ 10,609,144	\$ 5,723,580
\$ 7,008	\$ 150,410	\$ 491,328	\$ 856,603	\$ 909,771	\$ 454,460
\$ 67,076	\$ 1,542,780	\$ 5,403,486	\$ 10,105,801	\$ 11,518,915	\$ 6,178,040

High Range Estimate (50% internet take rate, 12% rate increase, 80% video penetration)

2019	2020	2021	2022	2023	2024
\$ 140,160	\$ 3,369,192	\$ 12,326,440	\$ 24,069,312	\$ 28,630,848	\$ 16,018,279
\$ 16,352	\$ 350,957	\$ 1,146,432	\$ 1,998,740	\$ 2,122,799	\$ 1,060,407
\$ 156,512	\$ 3,720,149	\$ 13,472,872	\$ 26,068,053	\$ 30,753,647	\$ 17,078,686

5 Year Total:

Total Low:	\$ 34,816,100
Total High:	\$ 91,249,918

- Fort Collins Connexion video customers will pay their monthly bill in advance while fees paid to content providers are paid in arrears. The risk for the City is the non-pay, disconnect customers who fail to pay their bill. As long as bills are paid in a timely manner, the revenue will offset the cost of goods sold.
- The administrative costs will be significantly lower with NCTC than negotiating and managing invoices and payments directly with content providers.
- EPB in Chattanooga, TN saw a ~25% reduction in content provider fees when it gained membership in NCTC.

ATTACHMENTS

1. City Manager Approval Exception (PDF)



Financial Services
 Purchasing Division
 215 N. Mason St. 2nd Floor
 PO Box 580
 Fort Collins, CO 80522

970.221.6775
 970.221.6707- fax
 fcgov.com/purchasing

Date: February 6, 2019

To: Darin Atteberry, City Manager



Copy: Mike Beckstead, Chief Financial Officer
 Colman Keane, Broadband Executive Director
 Cyril Vidergar, Assistant City Attorney II

From: Gerry Paul, Purchasing Director GP

Re: Exception to use of the competitive purchasing process for the purchase of video content licensing and services from the National Cable Television Cooperative for Fort Collins Connexion

Bottom-Line:

The City recently completed a competitive purchasing process under Request for Proposal (RFP) #8720 for broadband video hosting and streaming services. In order for the selected video hosting and streaming service provider to deliver video content for distribution by Connexion, the City must secure license rights to video content through a content aggregation service provider. Based on a review and evaluation of available video content aggregation services, it has been determined the National Cable Television Cooperative (NCTC) offers the best value.

Firms offering content aggregation services require membership and will not respond to competitive sealed bids or proposals. Therefore, a competitive purchasing process cannot reasonably be used.

Sufficient funds to apply for the NCTC membership and pay annual content license fees have been budgeted by Connexion.

Exception to Competitive Bid or Proposal Rationale:

The annual license fee totals payable by the City to opt-in for access to video content packages available through NCTC are unavailable until the City becomes a member of NCTS, and such license fees may vary based on the terms of master licenses NCTC secures with video content products. The annual cost of services will also be determined by the subscription rate achieved by Connexion. However, the annual cost for services to be provided by NCTC are anticipated to exceed \$200,000.

Based on expert guidance provided by the Broadband Executive Director and NCTC's compatibility with the network operated by the broadband video and streaming hosting service provider selected under RFP #8720 the Purchasing Agent recommends an exception to the competitive Purchasing process as follows:



Code Section 8-161(d)(1)(b). Although there exists more than one (1) responsible source, a competitive process cannot reasonably be used or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the City's administrative functions or the delivery of services to the public.

In accordance with Code Section 8-161(d)(2) the Purchasing Agent shall submit each determination made to the City Manager, who shall approve or reject the procurement.

Subsequently, the City Manager shall submit exceptions which exceed \$200,000 to the City Council in an open meeting for final approval. Subject to City Manager approval of this purchase, the resolution is scheduled for February 19, 2019.

Background and Justification:

The NCTC is a non-profit, video content aggregator service organization, that negotiates preferential master licensing agreements with video content producers, including traditional cable channel operators, on behalf its subscribing members. NCTC has secured license rights to an extensive library of video content with cost efficiencies and terms that would not otherwise be available from those content producers to Connexion directly or other individual NCTC members.

NCTC members have reported approximately 25% lower monthly expenses for content licensing through NCTC, compared to license fees charged by other content aggregation services or through independent negotiations with content producers.

Membership in NCTC requires the City to pay a \$1,500 application fee and one-time membership fee of approximately \$35,600, based on estimates of the potential subscriber premises to be passed during the Connexion network buildout. The annual license fee totals payable by the City to opt-in for access to video content packages available through NCTC are unavailable until the City becomes a member of NCTS, and such license fees may vary based on the terms of master licenses NCTC secures with video content products. The annual cost of services will also be determined by the subscription rate achieved by Connexion.

Based on input from the Broadband Executive Director, the Purchasing Agent has determined that due to the numerous advantages offered by NCTC, the existing service compatibility of NCTC's services with the network operated by the broadband video hosting service provider selected under Request for Proposals #8720, and the limited availability of wholesale video content rights for Connexion, a competitive process cannot reasonably be used.

Recommendation:

Recommend approval by the City Manager of an exception to the use of the competitive bid or proposal in accordance with City Code Sections 8-161(d)(1)(b) and 8-161(d)(2) for the purchase of video content licensing and services from the National Cable Television Cooperative (NCTC) for Fort Collins Connexion.

Further recommend use of this approval, as authorization by City Code Section 8-161(d)(4), as the basis for negotiating the additional purchases from NCTC for up to five (5) years.

RESOLUTION 2019-025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE PURCHASE OF VIDEO CONTENT LICENSING AND SERVICES
FROM THE NATIONAL CABLE TELEVISION COOPERATIVE FOR FORT COLLINS
CONNEXION AS AN EXCEPTION TO THE COMPETITIVE PURCHASING PROCESS

WHEREAS, the City recently completed a competitive purchasing process under Request for Proposals #8720 for broadband video hosting services via sealed proposals; and

WHEREAS, the City is currently finalizing contract negotiations with the selected third-party video hosting and streaming service provider (Video Host) to enable the broadband division of the City's Electric Utility, Fort Collins Connexion ("Connexion"), to deliver video streaming service; and

WHEREAS, in order for the Video Host to deliver video content for distribution by Connexion, the City must secure license rights to video content through a content aggregation service provider; and

WHEREAS, the National Cable Television Cooperative (NCTC) is a non-profit, video content aggregator service organization that negotiates preferential master licensing agreements with video content producers, including traditional cable channel operators, on behalf of its subscribing members; and

WHEREAS, NCTC has secured license rights to an extensive library of video content on more cost-effective, efficient, and better terms than would be otherwise available from those content producers to individual NCTC members; and

WHEREAS, based on review and evaluation of available video content aggregation services, the Purchasing Agent has determined NCTC is able to secure access to substantially all the video content Connexion will require within the next five years on terms not otherwise available to the City; and

WHEREAS, there are certain video content families, including local channels (e.g., Denver affiliates and public broadcasting channels) not available through NCTC, which will also require Connexion to enter independent negotiations to secure content rights; and

WHEREAS, membership in NCTC requires the City to pay a \$1,500 application fee and a one-time membership fee of approximately \$35,600, based on estimates of the potential subscriber premises to be passed during the Connexion network buildout; and

WHEREAS, final license fee totals payable by the City to opt-in to NCTC video content packages are unavailable until the City becomes a member of NCTC, and license fees may vary based on the terms of master licenses between NCTC and video content producers; and

WHEREAS, based on prior content license fee data provided by NCTC and the experience of other NCTC members, current estimated monthly license fees are in the range of \$60 per subscriber for national video content; and

WHEREAS, NCTC members have reported approximately 25% lower monthly expenses for content licensing through NCTC, compared to license fees charged by other content aggregation services or through independent negotiations with content producers; and

WHEREAS, sufficient funds to apply for NCTC membership and pay annual content license fees have been budgeted by Connexion; and

WHEREAS, Section 8-161(d)(1)b. of the Code of the City of Fort Collins authorizes the Purchasing Agent to negotiate the purchase of supplies and service without utilizing a competitive process where the Purchasing Agent determines that although a particular material or service is available from more than one responsible source, a competitive process cannot reasonably be used, or, if used, will result in a substantially higher cost to the City, will otherwise injure the City's financial interests or will substantially impede the city's administrative functions or the delivery of services to the public; and

WHEREAS, the Purchasing Agent has reviewed of the NCTC membership and service options consistent with the requirements of Section 8-161(d)(1)b. of the Code and City practices for exceptions to the competitive process; and

WHEREAS, the Purchasing Agent has determined that due to the numerous advantages offered by NCTC, the existing service compatibility of NCTC's services with the network operated by the Video Host selected under Request for Proposals #8720, and the limited availability of wholesale video content rights for Connexion, a competitive process cannot reasonably be used and, if used, would result in a substantially higher cost to the City and may result in the impairment of the City's delivery of services to the public, requisite justifications for which determinations the Purchasing Agent has submitted to the City Manager for approval; and

WHEREAS, the City Manager has reviewed and approved the justification for the acquisition of video content aggregation services through NCTC; and

WHEREAS, Section 8-161(d)(3) of the Code requires approval of this purchasing method by the City Council for expenditures costing more than Two Hundred Thousand Dollars (\$200,000) prior to procurement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the Purchasing Agent is authorized to purchase membership in and video content licensing services through the National Cable Television Cooperative (NCTC) for up to five years as an exception to the competitive purchasing process requirements in the following amounts:

- up to \$35,600 for membership; and
- up to \$70/month in licensing fees per subscriber for national video content.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 19th day of February, A.D. 2019.

Mayor

ATTEST:

City Clerk