

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 21

DATE: January 17, 2006

STAFF: Elizabeth Stroh

SUBJECT

First Reading of Ordinance No. 010, 2006, Granting a Non-exclusive Franchise by the City of Fort Collins to Comcast of California/Colorado LLC and Its Successors and Assigns for the Right to Make Reasonable Use Of, and Erect, Construct, Operate and Maintain Through, the Public Rights-of-way, Easements and Other Public Property Any Equipment Necessary and Appurtenant to the Operation and Maintenance of a Cable System and the Provision of Cable Services to Citizens Within the City.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

The Telecommunications Board has reviewed and discussed the agreement and also recommends adoption.

FINANCIAL IMPACT

The proposed franchise continues to collect 5% of gross revenues, as allowed by the Federal Cable Act. Franchise fees are paid to compensate the City for Comcast's use of the public rights-of-way and generate approximately one million dollars annually.

A new fee is included in the proposed franchise agreement, the purpose of which is to fund capital and facility needs for Public, Educational and Governmental ("PEG") cable television programming. The amount of the fee is 50 cents per month per residential subscriber and will be distributed among the PEG entities as determined by City Council. The estimated annual revenue is \$164,000.

EXECUTIVE SUMMARY

The proposed Cable Franchise Agreement between the City of Fort Collins and Comcast of California/Colorado LLC ("Comcast"), which was provided to the Council under separate cover on January 5, 2006 and which is on file in the office of the City Clerk, is a non exclusive franchise. The main elements of the agreement are:

1. Term. The length of the franchise is nine years
2. Customer Service Standards. The standards will be adopted in February, but are referenced in this agreement. The proposed franchise agreement would establish penalties for non-compliance with these standards.

3. Franchise Fee. Five percent (5%) of gross revenues will be paid to the City for use of rights of way. Federal law allows cable companies to pass this cost through to subscribers.
4. Public Educational and Governmental Programming. A PEG fee of 50 cents per subscriber per month will be dedicated to equipment and facility costs associated with providing PEG programming. Comcast has chosen to pass this fee through to subscribers.

BACKGROUND

The Federal Cable Acts allow cities and cable companies to begin informal negotiations within 36 months of the expiration of the existing franchise. The City began the renewal process in the fall of 2003 with a needs assessment as to the legal, financial and technical capabilities of Comcast to continue to provide cable television services to Fort Collins.

Needs Assessment

Staff used several sources to collect information about the needs of the community, including:

- A statistically valid subscriber/non-subscriber survey,
- An on-line survey,
- A survey of neighborhood groups.
- A telephone call in line for comments,
- A community meeting (publicized with a news release, paid advertising and newspaper articles) which was rerun on Channel 27 during a 4 week period,
- Surveys of City Departments, Front Range Community College, Colorado State University, and Poudre School District, followed by workshops, including a technical briefing,
- Phone calls and/or letters to the City's Franchise Administrator,
- Input from the Telecommunications Board identifying priorities for the community.

In addition, consulting firms were hired to evaluate both the financial and technical capabilities of Comcast's Cable system in the City.

Needs Assessment Results

Based on the results of the needs assessment process, a number of topics were discussed with Comcast during franchise renewal negotiations. The needs assessment indicated that:

- There is a need for a basic package of cable service (with fewer cable channels at a reduced price).
- The current cable system should be sufficient for the community needs for the next 5-6 years. A mid-term technology review of the cable system should occur, with subsequent modifications made as needed to meet the cable-related needs and interests of the community.
- If the cable system is updated, then all connections for City and educational facilities should

be concurrently modified as needed at Comcast's expense. Access equipment/facilities upgrades by the City, public schools (K-12), and CSU resulting from changes in Comcast's system should be at the cable company's expense.

- Free cable drops and Basic and Expanded Basic Service for City buildings, libraries and educational facilities (for example, public schools [K-12]) should be provided. Additionally, Comcast should be encouraged to provide free service to the digital line-up for all key City, School District and school buildings. The City should also encourage Comcast to provide free Cable Internet Service, on a voluntary initiative basis, to key City buildings, public schools (K-12) and libraries.
- The City's Governmental Access Channel, the Public Access Channel, and the Educational Access Channels should be preserved, with additional Access channels being made available based upon trigger mechanisms in the new franchise. Over the life of the new franchise, there is a need and interest in having enhanced studio and production facilities to enable the PEG Access Channels to provide for the community's evolving programming needs
- There may be a need in assigning a small portion of the subscribers' cable bills to support PEG Access facilities and equipment. An Access and I-Net capital grant fund could be established based upon a monthly per subscriber charge to be negotiated with Comcast. In addition, the City could negotiate with the cable company for an initial capital grant for Access and/or I-Net purposes. The up-front capital grant should be sufficient to upgrade or replace aging Access equipment and further enhance digital capabilities for Channel 14. The Access/I-Net payments and provision of facilities and equipment need to be in addition to the franchise fee payments.
- Comcast should construct fiber optic links to all remaining key un-served government sites with reliable and secure capacity for two-way video, voice and high speed data services.
- As the City or public schools establish new or relocated facilities, Comcast, at its expense, should provide network connections to such facilities when requested by the City or other entity.
- There is a need and interest in having comprehensive customer service standards that, among other things, ensure that deficiencies in operator performance that may have occurred in the past do not recur.
- A regional interconnection between the Comcast cable system in the City and other neighboring Comcast cable systems should be effectuated for the purposes of sharing Access programming, furthering E-Government applications, promoting information sharing and enhancing homeland security.
- Comcast's financial position was healthy and stable.

Negotiations

The results of the needs assessment were presented to City Council in February 2004. Council identified the following three top priorities: a low cost basic tier of service similar to those in

surrounding communities; a system that kept pace technically with the industry and was 'state of the art'; and support for PEG access.

The proposed franchise addresses these priorities as follows:

Basic Tier: Although not a part of the franchise agreement, Comcast recently announced the creation of a basic tier of service that will contain 22 channels at a cost of \$13.99 excluding fees and taxes. The basic tier will consist of Denver broadcast channels, Public Broadcast channels (PBS), local PEG channels, and additional channels that will make Fort Collins' basic tier similar in program line up and cost of service in the communities of Greeley, Loveland and Windsor.

State of the Art Technology: The parties were unable to agree to any language in the proposed franchise agreement that would require Comcast to maintain a "state of the art" system. Because of this, and because the technical consulting firm believes that the current system will meet the needs of the community for 5-6 years, the term of the franchise was reduced from the initially proposed 15 years to a 9 year franchise.

Public, Educational and Governmental Access: The availability of bandwidth for PEG programming is mandated by the Federal Cable Act, but cities cannot require cable companies to provide a studio or equipment for public use. Therefore, the City took the path of obtaining a PEG fee to fund local access channel needs, a mechanism that most cities across the nation use. The provisions in the proposed franchise agreement include a fee of 50 cents per residential subscriber per month to be dedicated to capital expenses (facilities and equipment) for PEG entities. Federal law allows cable companies to pass through these costs to subscribers and Comcast has indicated it will do this. Council will decide how to allocate the PEG revenue, limited only by the requirement that the funds be spent on capital (equipment and facility) expenses.

The City is also working collaboratively with Aims Community College Fort Collins Campus and a group of local citizens to facilitate the production of local programming.

ATTACHMENTS

- Comparison between the current franchise and the proposed franchise
- Telecommunications Board January 4, 2006 Meeting Minutes
- PowerPoint slides

Agenda Item Summary Attachment

Cable Television Franchise Comparison Chart

Provision	Current	Proposed	Comment
Term	15 years reduced to 12 if system sold; non-exclusive	9 years; non-exclusive	Technical capacity not included in franchise requirements, resulting in a reduced term. Technical assessment conducted in 2005 shows system will meet needs of community for 5-6 years.
Franchise Fee	5% of Gross Revenues, paid quarterly	5 % of Gross Revenues, paid quarterly	Definition of gross revenues includes provisions to prevent accounting practices to evade or avoid obligation to pay franchise fee. See PEG fee below
Public Access Facilities & equipment	Production studio at Cable Co.'s office, a program for public access needs, a camcorder for public checkout,	Return feed between a Public Access studio yet to be determined and the Comcast facility	See PEG fee below
Customer Service Standards	Consistent with Federal law	Proposed agreement is stronger in this area	Federal Law allows more stringent standards at local level. Added privacy protection.
PEG Fee	No provision	Initial grant of \$164,000 with provision for on-going fee of 50 cents/ residential subscriber/month	This revenue can be distributed between the Public, Educational and Governmental Access channels, and can only be used for facilities or equipment, not operational costs.
Insurance requirements	\$2 million general liability	\$2 million general liability plus \$1 million Commercial Auto Insurance	
Letter of Credit	Maintained at \$100,000, 30 days to replenish after any withdrawal by City,	Maintained at \$50,000, seven days to replenish if City draws on letter of credit	Ability to increase every 3 years based on Denver-Boulder CPI. Decrease in amount because current contract had construction requirements. Staff believes this amount sufficient, as the letter of credit must be maintained at that amount, even after withdrawals for cause.
Programming	Requires diverse programming	Requires diverse programming	Federal law prohibits municipalities from requiring specific programs, but allows requirement for broad categories such as educational, news, sports, etc.

Provision	Current	Proposed	Comment
Assessment for Non-compliance	\$200 per day	Withdrawal from the Letter of Credit	Process outlined for notification of non-compliance and resolving problem
Number of Access Channels	Five	Five	One access channel dedicated solely to Public Access; provisions for additional or fewer channels based on usage.
Connection of public buildings	Provide one outlet of basic service free of charge to City buildings, schools and libraries, install free if standard installation	Provide one outlet of basic service free of charge to City buildings, schools and libraries, install free if standard installation	
Rights of Way	Permits required; drops buried at 6 inches; move cable plant as requested by City, restore property after construction, compliance with Code, safety issues addressed, police powers of City upheld,	Permits required, drops buried at 12 inches, exception process outlined; move cable plant as requested by City, compliance with Code, safety issues addressed, Police powers of City upheld	More stringent construction requirements in alignment with Larimer County Urban Area Street Standards, and other building codes
Cable System Functionality and Standards	An upgrade was required in this franchise based on needs assessment and functionality; density requirements of 25 homes per 5280 cable bearing strand feet	No upgrade is needed at this time. standard installation of 125 ft from existing cable terminus; non-standard drops (over 125 ft) – costs to be shared by subscriber	The technical assessment states that the system currently has the functionality it needs for 5-6 years. With term at 9 years, will be able to address the upgrade issue with new negotiations
Violations	Specific remedies outlined if violations occur	Specific remedies outlined if violations occur	
Revocation, Sale or Transfer of System	Explains process to be followed in the event of sale, transfer or revocation, allows City to purchase when franchise expires	Outlines process for revocation, sale or transfer, allows City to purchase upon termination or revocation	Federal law has specific forms and steps to be followed in the event of revocation, sale and transfer
Service to homes (“line extension”)	No charge for extending cable plant if minimum 25 residences per mile	No charge for extending cable plant if minimum 25 residences per mile	No change; annexations included in line extension.

TELECOMMUNICATIONS BOARD MEETING MINUTES

January 4, 2006

6:00 PM

Council Liaison: David Roy
Staff Liaison: Liz Stroh, Communications and Technology Services; 221-6522
Board Chair: Curt Cramer
Vice Chair: Herb Saperstone

Present: Curt Cramer, Robert Reichenberger, Herb Saperstone, Chip Cushman, David Heiberg, Ted Funk

Absent: Larry Bontempo
Guest: Stan Reifschneider, Comcast
Staff: Kraig Ecton, Eric Dahlgren, Liz Stroh

Chair Curt Cramer called the meeting to order at 6: 00 PM. Ted Funk was introduced; he replaces Board member Tim Tillson.

Public Input: None

Minutes: Robert Reichenberger moved to approve minutes of the November Board meeting, seconded by Herb Saperstone. The motion passed unanimously.

Cable Franchise: Chip Cushman asked about the Comcast announcement of a low cost basic tier coming to Fort Collins. Stan Reifschneider responded that Comcast had decided to provide Fort Collins subscribers with some of the same choices offered in surrounding communities.

Herb Saperstone asked about the Customer Service Standards and asked Stan how subscribers would have access to the information. Stan explained that summary information is provided to new customers. Liz added that the information will also be available on the City's web site.

Curt mentioned that the Board would be interested in receiving information on the percentage of subscribers that take advantage of the low cost tier.

Herb expressed concern that the service provided to the schools will be the basic package. Currently schools have the "extended" basic, and there is programming available on that tier that is used in classrooms. Stan indicated that it is not the intention of Comcast to reduce the level of service to the school district, and suggested that Herb call him for further discussions.

Herb also asked about how PEG access channels would deal with migration to digital technology. Stan explained that the franchise has language that would require Comcast to ensure that the PEG channels are available on the system's basic tier, whether that is digital or analog format.

Board members asked about section 12, which relates to the Cable system design and functionality. A "state of the art" system was one of the Board's and Council's top priorities. Liz explained that Comcast was unwilling to include any specifics related to system capacity. She explained that the technical assessment done as part of the needs assessment reported that the system would serve the needs of the community for the next 5-6 years. Recent improvements implemented in the Fort Collins area, such as High Definition TV (HDTV) and Video on Demand, indicate that the Fort Collins system is keeping pace with system improvements in surrounding communities.

Robert indicated a desire to have more specifics in the agreement related to current practices, such as providing more than one outlet for government and school buildings, providing extended basic to schools, etc.

Chip made a motion to make a recommendation to City Council that the Franchise Agreement be adopted; Robert seconded the motion, which was approved unanimously.

Curt moved to recognize the negotiation team, and applaud the work done over the course of the negotiations. Chip seconded the motion. Vote was unanimous to approve.

Annual Report: Liz presented a draft of the annual report for 2005. Upon review, Herb made a motion to accept the report as written, Chip seconded the motion. The vote was unanimous to approve.

Other Business

Curt asked about whether or not Board members should be available at the Council meeting on January 17. Liz explained that that is usually the case, and will notify the Board of the approximate time that the agenda item will be considered.

Herb reported that he had followed up with the Vocational Education Department with the School District about the 2006 Work Plan item to compile information about telecommunication providers in the area. As a result, two to three students

will work on this as a project, and would be available to report back to the Board in May on the results. Curt thanked Herb for the initiative, and other Board members were enthused that the work would provide valuable information to the community.

Chip asked that Liz arrange for FC-PAN to visit the Board again in March or April

Adjournment:

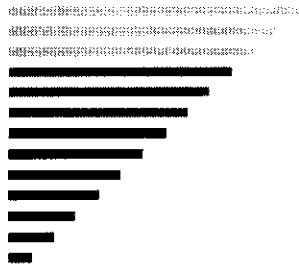
Dave Heiberg moved to adjourn, seconded by Chip. The motion passed unanimously and the meeting was adjourned at 8:00 PM.

Chair	Date
Staff Liaison	Date



Background

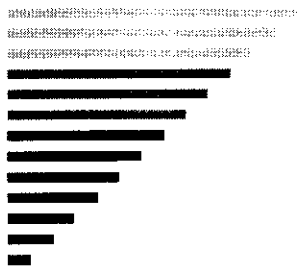
- Current Franchise approved in 1993 for 15 year term, reduced to 12 years upon sale.
- System changed hands several times, and was acquired by Comcast Cable in 2002.



Federal Law-Franchise Renewal

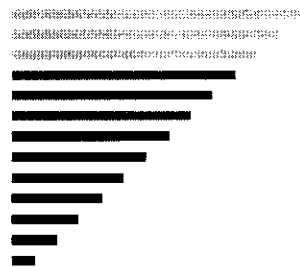
A Cable Franchise must be renewed if:

- The Cable company has the financial, legal and technical capabilities to comply with a franchise that meets the future cable related needs of the community, and
- Has provided adequate service to the community during the term of the previous franchise.



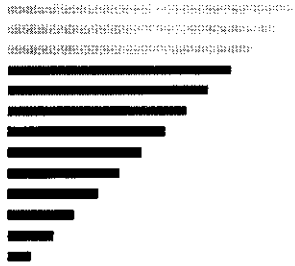
Federal Law-Franchise Renewal, Con't.

- Informal process:
 - Informal process can begin 36 months prior to expiration of current franchise
 - Less structured, more flexibility regarding process and negotiations
- Formal process:
 - Statutory and very specific requirements
 - Often preparatory to litigation



City's Outreach Efforts

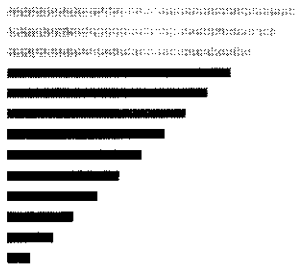
- Random survey to subscribers and non-subscribers
- On-line survey
- Call-in Comment Line
- Community-at-large meeting
- Neighborhood surveys



Outreach Efforts, Con't

- Stakeholder meetings
 - City Department Workshop
 - Educational Constituency meeting
 - Technology focus group

- Telecommunications Advisory Board
 - Review of needs assessment, and
 - Input to City Council on issues



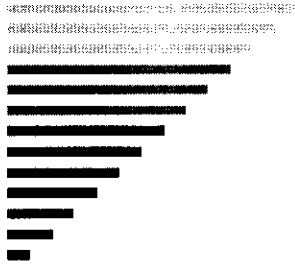
Outreach efforts, Con't

- Technical Review
- Financial Review
- City Council Work Session



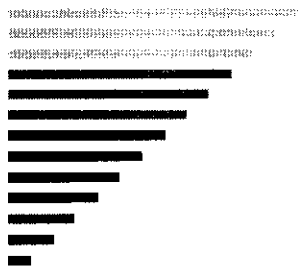
Outreach Results

- Cable Rates
 - Concern about increases in rates and lack of “basic service” package at lower cost
- Lack of Customer Service Standards
- Continued need for Public, Educational, and Governmental (PEG) Access channels



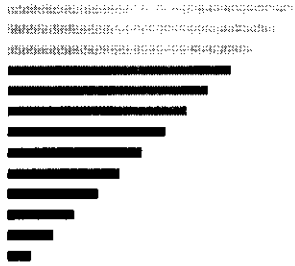
Outreach Results

- Cable Drops and Services for City Facilities, Public Schools, Libraries
- PEG Access capital funding, facilities, channels, digital migration
- Mid-term technology review recommended



Council Work Session

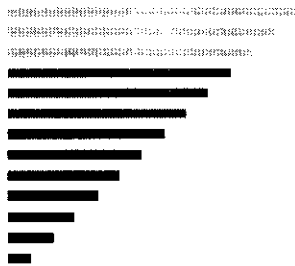
- Council identified priorities and provided direction to negotiating team
- Based on Council direction and outreach results, negotiating team developed franchise document designed to meet future needs of community



Franchise Negotiations

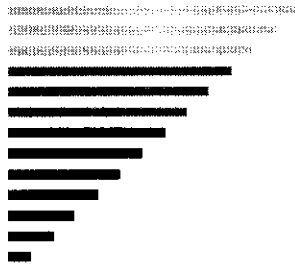
- Submit document to Comcast negotiating team, and commence negotiations
 - Stan Reifschneider, General Manager, North Outer Market Area
 - Jeff Dolan, Senior Manager, Government Affairs

- Periodic updates to City Council



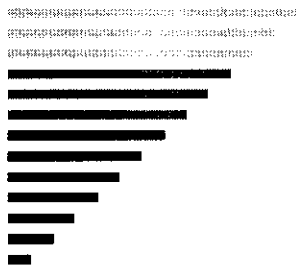
Proposed Franchise

- Technical Capacity: Recent improvements, rapid advance in technology addressed by term of 9 years
- Franchise fee: Five percent (5%) of gross revenues for use of City rights of way



Proposed Franchise

- Public Educational and Governmental Programming (PEG): A fee of 50 cents per subscriber per month for capital expenditures
- Customer Service Standards: Scheduled for Council consideration in February



Conclusion

- Negotiation process required give and take by both parties
- Based on Council's priorities, staff believes the proposed franchise meets cable-related needs of Fort Collins, and recommends adoption.

ORDINANCE NO. 010, 2006
OF THE COUNCIL OF THE CITY OF FORT COLLINS
GRANTING A NON-EXCLUSIVE FRANCHISE
BY THE CITY OF FORT COLLINS TO COMCAST OF CALIFORNIA/COLORADO
LLC AND ITS SUCCESSORS AND ASSIGNS FOR THE RIGHT TO MAKE
REASONABLE USE OF, AND ERECT, CONSTRUCT, OPERATE AND
MAINTAIN THROUGH, THE PUBLIC RIGHTS-OF-WAY, EASEMENTS
AND OTHER PUBLIC PROPERTY ANY EQUIPMENT NECESSARY AND
APPURTENANT TO THE OPERATION AND MAINTENANCE OF A
CABLE SYSTEM AND THE PROVISION OF CABLE SERVICES TO
CITIZENS WITHIN THE CITY

WHEREAS, Comcast of California/Colorado LLC ("Comcast"), is the successor to Heritage Cablevision of Delaware, Inc. and The World Company and currently holds a cable television franchise with the City of Fort Collins ("City"), granted by Ordinance No. 115, on October 19, 1993, and amended by Ordinance No. 169, on October 26, 1998; and

WHEREAS, the cable television franchise was extended by Ordinance No. 116, 2005 on October 18, 2005 until March 17, 2006 or until a new agreement is entered into between the parties, or until the cable television franchise is terminated pursuant to its terms; and

WHEREAS, Comcast and the City have been involved in negotiations for the past several months related to the granting of a new cable franchise agreement to Comcast; and

WHEREAS, these negotiations have resulted in a proposed Franchise Agreement that is being presented to City Council for its consideration and approval (the "Franchise Agreement:), a copy of which is on file with the City Clerk; and

WHEREAS, the Franchise Agreement includes the following major terms and conditions: (1) a term of nine years (2) a requirement that Comcast pay to the City a franchise fee of five percent of the gross revenues that Comcast receives from the operation of its cable system within City rights-of-way; (3) updated customer service standards; and (4) public, educational and governmental funding for public access channels.

WHEREAS, Section 1 of Article XI of the City Charter and Section 6-3 of the City Code set forth notice requirements that must be satisfied prior to the City granting a cable television franchise.

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

Section 1. That the City Council hereby finds that the notice requirements of Section 1 of Article XI of the City Charter and Section 6-3 of the City Code relating to the granting of a cable television franchise have been satisfied with respect to the granting of a cable television franchise to Comcast under the terms and conditions of the Franchise Agreement.

Section 2. That if any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.

Section 3. That all other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 4. That City Council finds that the City's grant of a cable television franchise to Comcast in accordance with the terms and conditions of the Franchise Agreement is in the best interests of the City and its citizens, and will meet the future cable related needs of the community.

Introduced and considered favorably on first reading and ordered published this 17th day of January, A.D. 2006, and to be presented for final passage on the 7th day of February, A.D. 2006.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 7th day of February, A.D. 2006.

Mayor

ATTEST:

City Clerk