



Staff Report

Post City Council Meeting
November 11, 2013



SUBJECT: Comcast Franchise Agreement Renewal

Prepared By: David Puntenney, Information Technology Director

Recommended City Council Action

Review the recently negotiated ten year Comcast Franchise Agreement and customer service standards and provide feedback for staff in preparation for first reading and public hearing at the November 25 City Council meeting.

Summary Statement

In 1995, the City granted a cable TV franchise agreement to Mountain States Video, with Comcast later assuming the franchise agreement due to acquisition of Mountain States Video. The franchise agreement expires December 31, 2013. Staff has been working closely with an outside legal expert, Ken Fellman, and Comcast to negotiate a new ten year franchise agreement for City Council's consideration. Negotiations are completed and this item has been added to the November 25 City Council meeting for first reading and public hearing. Staff is requesting City Council review and input regarding the negotiated agreement.

Council may find several provisions of the new agreement to be of interest, including:

- The definition of gross revenues has been amended to ensure that the 5% franchise fee generates the greatest possible revenue to the City that is permitted under federal law.
- Franchise language has been updated to address competitive equity issues.
- Public, Educational and Government (PEG) channel provisions and fees were updated to include the ability to meet future community needs.
- Web-based video on demand as an alternative to or in addition to PEG program delivery has been added.
- Customer service standards have been updated to ensure that Westminster citizens receive appropriate levels of service and responsiveness from Comcast.
- The term of the agreement is through December 31, 2023.
- Comcast is in concurrence with the terms and conditions as set forth in the attached agreement.

Expenditure Required: N/A

Source of Funds: N/A

Policy Issue

Should the City continue to grant a franchise agreement to Comcast to provide cable TV services in the City of Westminster?

Alternative

- The current franchise agreement includes a provision that would permit the City to let the current franchise agreement expire and then purchase the cable system at fair market value. Staff is not recommending this alternative as Comcast has successfully fulfilled their obligations under the current franchise agreement, and recognizes that Comcast is much better positioned to manage a cable system than the City of Westminster.
- Delay approval of the Comcast agreement, and request that staff seek City Council authorization for an extension of the current agreement if City Council desires to have additional provisions negotiated into the agreement.

Background Information

To provide cable services to subscribers, cable companies must locate facilities within public rights of way, either on utility poles or underground. In consideration for a cable operator's right to utilize the City's rights of way, the City requires the cable operator to enter into a franchise agreement. Federal law allows local governments to negotiate cable franchise agreements with cable providers, and dictates what rights and limitations of local governments. A cable franchise sets the terms of the provision of cable services, including service standards; requirements of compliance with conditions under which work in the rights of way can be conducted; franchise fees; compliance with federal technical standards; variety of cable services provided; public/educational/government (PEG) programming requirements; system standards; procedures for addressing franchise transfers; procedures for remedying franchise violations; and franchise termination. Under federal law, Comcast is *entitled* to a franchise renewal if it offers and has the legal, technical, and financial ability to comply with a franchise agreement that meets the future cable-related needs of the City. It is important for City Council to understand the rights and limitations of a franchise authority as dictated by federal law. The following table summarizes those rights and limitations.

Rights and Responsibilities
<ul style="list-style-type: none">• Require specific cable system capacity and functionality.• Require support of PEG access through facilities, equipment, and channels (spectrum).• Establish customer service standards, including ones related to answering telephones calls, response to complaints, and imposition of late fees.• Require a specific definition of gross revenues.• Regulate the video portion of services offered.• Negotiate in good faith with additional cable companies.• Require placement at a specific channel location for public access channel(s) (PEG).• Require cable right of way work to be completed in a manner that does not create unreasonable disruption. Require company to apply for and be issued all necessary construction and occupancy permits.• Establish franchise fees in accordance with federal law.• Require compliance with technical standards.• Establish procedure for addressing franchise transfers.• Establish procedure for remedying franchise violations.• Establish franchise termination provisions.

Limitations

- Cannot require a specific transmission technology (e.g. fiber to the home).
- Cannot use the franchise to negotiate for any communications services that are not considered cable services under federal law (telephone, high speed internet).
- Cannot specify which channels are or are not carried.
- Cannot specify which channels are on which tier of service (other than PEG access).
- Cannot regulate rates beyond what is applicable by federal, state and local laws.
- Cannot require franchise fees of more than 5 percent of gross revenues, as defined in the franchise agreement.
- Cannot regulate any voice (telephone) services (regulated by state Public Utilities Commission).
- Cannot regulate data services, including Internet services.
- Cannot specify engineering performance standards in those areas where FCC has preemptive authority.
- Cannot grant an exclusive franchise.

In 1995, City Council adopted ordinance No. 2355 approving the grant of a 15 year nonexclusive Franchise Agreement to Mountain States Video, with Comcast later assuming the franchise agreement due to acquisition of Mountain States Video. At the July 26, 2010 meeting, City Council passed Councillor's Bill No. 40, extending the Franchise agreement to December 31, 2013.

David Puntteney, Jane Greenfield, and Dan Hord have been working closely with Ken Fellman (legal counsel for Colorado Communications and Utility Alliance (CCUA) and local expert on franchise agreements), and Comcast representatives to negotiate a new franchise agreement for the City of Westminster. During negotiations, Staff from various department were asked to review and provide input on specific sections of the franchise agreement that would involve their operations. Requested changes from those departments were addressed during negotiations with Comcast. Negotiations are now complete, and staff has scheduled first reading and public hearing for the November 25 City Council meeting. The new franchise agreement and customer service standards are based on a framework from a model agreement negotiated by the CCUA and the City of Denver. That model franchise agreement sought to 1) maintain favorable provisions and benefits in the current franchise agreement, 2) eliminate regulatory provisions that are no longer relevant, 3) address issues of changing technology and regulations in a manner that benefits the City and its citizens.

Several highlights from the new franchise agreement include:

1. Definition of Gross Revenues (Franchise section 1.29) – The City is compensated by Comcast by the receipt of a franchise fee, which is 5% of the gross revenues generated from the provisions of cable services in the City. The wording from the definition of gross revenues in the new agreement has been amended from the current franchise agreement to ensure that the 5% franchise fee generates the greatest possible revenue for the City that is permitted under federal law. In 2012, the City of Westminster received \$1,172,276 in franchise fees from Comcast.
2. Competitive Equity (Franchise section 2.6) - This provision used to be called “level playing field” and required the franchise authority to impose comparable terms and conditions on any new entrant requesting a franchise within the City. A new provision, allowed by the FCC to promote competition and known as “competitive equity,” generally indicate that the City can offer a new franchise to any other operator on any terms and conditions it chooses, but if those terms and conditions are more favorable than the incumbent cable operator’s franchise, that incumbent would have the right to force the City to change the terms of its franchise to match the terms offered to the new competitor. The CCUA and the City of Denver were able to negotiate language into the model agreement that is more equitable for cities. The negotiated new

agreement for Westminster contains these same provisions, which provides that if a new cable operator is given a franchise that Comcast believes is a better deal, then Comcast will be obligated to demonstrate in writing why they view the deal is better, and then provide specific language that it deems appropriate for a franchise amendment. The parties are required to negotiate, and there is no obligation that the City accept Comcast's position. If there is a dispute that cannot be resolved, either party can seek a determination in Court on whether the new terms for the existing franchise are required.

3. Public, Educational and Government (PEG) provisions and fees (Franchise sections 9.1 – 9.4 and section 9.6) – The new franchise agreement includes specific provisions that offer opportunities to meet future public, educational and government programming needs. The agreement provides the City with the option to have two SD channels and two HD channels. Upon execution of the agreement, Comcast will provide one SD channel for PEG use. At any time following execution of the agreement and with 120 day notice, Comcast will provide one additional SD channel. Additionally, with 120 day notice following execution of the agreement, Comcast has agreed to provide one HD channel for PEG use. Thirty-six months from the execution date of the agreement, Comcast will provide a second HD channel. There are franchise provisions that govern use and minimum programming requirements for PEG HD channels. While there are no PEG HD channel needs within Westminster today, these negotiated provisions provide the City with future options for public, educational or government programming. Section 9.6 of the franchise agreement provides the option for the City to initiate a PEG fee to be paid by subscribers in an amount not to exceed \$.50/month to fund capital costs related to PEG access channels.
4. Web-based Video on Demand and Streaming (Franchise section 9.5) – the new franchise agreement provides the City with a no cost business class broadband connection and all necessary hardware to enable the City to deliver web based PEG content programming in addition to or as an alternative to PEG channel delivery. Under the terms of the new agreement, Comcast will provide the City with a one-time grant of \$7,500 to purchase a video on demand server for facilitating web-based access programming.
5. Language and compliance with Westminster City Code - The new franchise agreement removes obsolete language and updates verbiage to comply with standard practices and Westminster City Code.

Staff is confident that the negotiated franchise agreement will effectively meet the City's current as well as future cable-related needs.

Attached are the new proposed franchise agreement and customer service standards for City Council review. Staff will be in attendance to provide a brief overview and answer City Council member questions.

Execution of this new franchise agreement will support the City Council strategic plan goal of "Financially Sustainable City Government Providing Exceptional Services."

Respectfully submitted,

J. Brent McFall
City Manager

Attachments