

II. COMMUNITY CABLE-RELATED NEEDS AND INTERESTS

A. RENEWAL INFORMATION

WHY RENEWAL IS IMPORTANT, AND WHY AN ASSESSMENT OF COMMUNITY NEEDS IS NECESSARY

Renewal of a cable franchise affords a city the opportunity to review the performance of the cable provider, and through negotiation of a new or renewal franchise, to ensure that the cable provider will meet the cable-related needs and interests of the community into the future. At the time of renewal, cities can legally establish requirements for system upgrades to ensure their community has adequate infrastructure to meet the community's needs and interests related to cable services. Cities can ensure that everyone has real opportunities to create as well as receive programming. Cities can ensure that service will be reliable and that the cable provider will be in a position to bring the benefits of advances in cable technology into the homes and schools of their communities.

Cable systems, which once served only to retransmit broadcast television signals, have been redesigned to develop into electronic information highways with the potential to provide users access to vast quantities of information, services and entertainment in a variety of forms. As a result, a local government has a compelling interest in ensuring that a cable system is adequately designed and constructed to help satisfy the community's cable-related needs and interests, that good service is provided for the price paid, that services are available to all, and that the flow of information is not monopolized by the companies that own the cable networks. These interests, which are reflected in federal, state and local laws, are particularly strong because in order to operate, cable systems must occupy scarce and valuable public property, which the public pays to acquire and maintain.

AT&T Comcast's cables are on poles and underground in city-owned rights-of-way throughout Davis. As trustee of the public's interest in this property, the City of Davis has a compelling interest in ensuring that companies use this public property in a way that benefits the entire community, that public property is used in optimal ways, and that the public receives fair compensation in the form of franchise fees and other conditions, for the use of its' public property to provide cable services.

The actions of the City of Davis throughout the cable franchise renewal process must be understood in the context of the Cable Communications Policy Act of 1984, as amended through 1996, hereafter called the "Cable Act," which governs franchise renewal proceedings between cable operators and local franchising authorities. Specifically, Section 626 of the Cable Act establishes the conditions for both "informal" and "formal" renewal proceedings

There is no requirement to conduct an informal process; however, the informal process is initiated at the request of the cable operator. Absent such notice from the cable operator, the city would be engaged in the formal process. Under the informal process, a city and a cable provider meet informally and attempt to resolve franchise issues through negotiation. If the issues are resolved, a city can adopt a renewal franchise after providing the public with an opportunity for comment. An informal proposal can be rejected by either party at any time should it appear the issues cannot be resolved. Under the informal process, there is no requirement to conduct a needs assessment or an ascertainment report. However, the City of Davis determined that it would be in the best interests of the community to conduct the ascertainment proceedings prior to, and in conjunction with, the informal renewal process to facilitate the proceedings, and if necessary to be prepared in the event a formal process is required.

FORMAL RENEWAL PROCESS

The statutory formal renewal process can be requested by either party during the period between 36 and 30 months from the expiration date of the franchise. It is designed to afford the cable provider an opportunity for a fair hearing on its renewal proposal and it provides the basis under which a city may deny renewal. Under the Cable Act, the formal renewal process involves four stages: an ascertainment process, request for renewal proposals, submission of renewal proposals, and an administrative proceeding if renewal is preliminarily denied and the cable provider requests the proceeding. These are described in more detail below:

First, a city must conduct a proceeding to identify future, cable-related needs and interests of the community, and to review the past performance of the cable operator(s) serving the community.

Second, once that proceeding is complete, the city may issue a request for renewal proposals ("RFRP"). Because each renewal proposal must be evaluated on its own merits, this RFRP cannot be a competitive bidding document. The Cable Act allows the city to establish requirements in an RFRP, including:

- (1) "**Channel capacity . . . for public, educational or government use**, and channel capacity on **institutional networks . . . for educational or governmental use**, and . . . rules and procedures for the use of channel capacity . . ."
- (2) "**Facilities and equipment.**" The legislative history explains that this includes requirements for institutional networks, studios, equipment for public, educational and government use, two-way networks, and so on.
- (3) The Cable Act also states that: "A franchising authority may establish and enforce **customer service requirements** of the cable operator and **construction schedules** and other construction-related requirements. . ." This language permits the city to establish these requirements unilaterally in a regulatory ordinance, along with various other requirements established pursuant to the city's police and other governmental powers.

- (4) The Cable Act states that a city may **not**, “establish requirements for video **programming** or other information services.”
- (5) The Cable Act also states that: “Except as otherwise permitted by [the PEG access and leased access provisions of the Cable Act], a franchising authority may **not** require a cable operator to provide any **telecommunications service or facilities**, other than institutional networks as a condition of...a franchise renewal.”

Third, operators must submit a renewal proposal in response to the city’s RFRP. Under the Cable Act, “any such proposal shall contain such material as the franchising authority may require.” If an operator submits a timely and proper response, the city has four months to evaluate the proposal and to decide whether to grant renewal based on the proposal, or to preliminarily deny renewal.

Fourth, if renewal is desired by the operator but denied by the city, the city must commence an administrative proceeding. In evaluating renewal under the formal process, 47 U.S.C. 546 allows consideration of only the following four criteria:

CRITERION A: *Whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law,*

CRITERION B: *Whether the quality of the operator’s service, including signal quality, response to customer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs,*

CRITERION C: *Whether the operator has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the operator’s proposal, and*

CRITERION D: *Whether the operator’s proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting such needs and interests.*

This Preliminary Report on Community Needs, therefore, fulfills the initial obligations of the City of Davis under stage one of the formal federal renewal/non-renewal process. Should the formal renewal process be implemented, the City will complete a final ascertainment report of future needs and interests, as well as past performance, and recommend City Council adoption. Upon adoption, the City of Davis would issue a request for renewal proposals (RFRP) to AT&T Comcast. If the Comcast proposal does not satisfy the federal criteria, the City will not renew the franchise. AT&T Comcast must then submit a proposal that responds to the RFRP in a manner that satisfies the criteria set forth in 47 U.S.C. 546. If the proposal does satisfy the federal criteria, then the City would renew the franchise.

The essence of the formal process is a determination by the City Council, reviewable by a federal court, of whether or not AT&T Comcast’s formal renewal proposal responds to the RFRP in a manner that satisfies the criteria set forth in 47 U.S.C. 546.

It is important to understand that the renewal/non-renewal process established under federal law is not a competitive process. The City of Davis cannot deny AT&T Comcast’s proposal

because some other entity is willing to provide more than AT&T Comcast is willing to provide. Nor can the City refuse to act on AT&T Comcast's renewal request and allow the franchise to expire. However, the formal process does require AT&T Comcast to submit a proposal "reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." Thus, by identifying cable-related needs and interests accurately and completely, the City of Davis places itself in a position to demand that AT&T Comcast submit a proposal satisfactory to the community -- or face non-renewal.

As required by federal law, this report identifies future *cable-related* needs and interests. It was made clear during this part of the ascertainment process that the businesses and residents of Davis have many important communications-related needs and interests which may be provided by a cable company, but which do not come under the regulatory authority of a municipality. While this report is not intended to minimize those needs and interests, the federal law requirement is for the City of Davis to focus on identifying *cable-related* needs and interests.

Under federal law, there are subjects for which a municipality may establish requirements in a cable TV Request for Renewal Proposal ("RFRP"), subjects for our municipal requirements and subjects on which a municipality may act unilaterally. The city may not: 1) negotiate most rate charges by the company other than the lowest cost tiers of service; 2) require or prohibit the carriage of specific programming services other than PEG access; 3) require a specific transfer technology, but the city may require cable system capacity and functionality.

The city may act unilaterally on consumer satisfaction, franchise fee, franchise enforcement and administration, renewal term, and transfer of ownership. In addition to the matters set forth in this preliminary report on community needs, the City of Davis proposes to require cable operators to satisfy the requirements contained in the City's cable franchise ordinance (attached to this ascertainment as Appendix I.). The provisions included in the cable ordinance are justified by, and consistent with, the needs and interests of the Davis community. However, in the City's view, these requirements are not subject to a "needs and interests" test, since setting the requirements of the basic regulatory structure for cable TV in Davis involves an exercise of the City's basic police and governmental powers.

To protect the City's position in the federal renewal/non-renewal process with AT&T Comcast, the City of Davis will seek to negotiate similar franchises with all potential competitors, based on this preliminary report of community needs, or if developed, a final ascertainment report. However, the City takes the position that initial franchises are not subject to the renewal/non-renewal procedures of federal law and shall not be compared to any renewal franchise.

METHODOLOGY

Pursuant to 47 U.S.C. 546, the City of Davis has conducted a rigorous public ascertainment process to determine community cable-related needs and interests under the terms of the Cable Act. In determining the city's future cable needs and interests and assessing AT&T Comcast's

past performance and future capabilities, the Telecommunications Task Force and city staff gathered information from a variety of sources. Data from the following sources was compiled and analyzed by staff and form the basis for the needs and interests identified in this preliminary report on community needs. All of the documents listed below comprise a significant part of the ascertainment record to date and are available for inspection in the City Clerk's Office:

- Technical Analysis Report. The Kramer firm was hired to perform a complete technical analysis of the condition of the current cable system. They performed an onsite, three-day/one week review of the current system.
- City Web Site Survey. An Internet telecommunications survey was available on the City of Davis web site throughout June 2002. This was a “self-selecting” survey to which 393 citizens responded.
- City Business Survey. In December/January 2001. A telecommunications survey of the Davis business community included the return of approximately 713 completed surveys. A response of 33 percent is extraordinary and represents a strong interest in cable services by the business community. The survey determined their opinions regarding a number of current and future services that could be offered by a cable operator.
- Telecommunications Task Force. In 2001, the Davis City Council appointed a citizens’ task force to hold administrative hearings intended to provide feedback concerning the results of the telephone and printed surveys.
- Community Focus Groups. Nine focus group workshops were conducted with citizens representing various community organizations and interests, including leaders in technology, business organizations, educators, and representatives of major arts organizations.
- Historical Complaint Data. Data was compiled through early 2000.
- Public Meetings. Between 2001 and October 2002, numerous public meetings were held to gather community input from all segments of the population. These meetings included special focus group meetings as well as neighborhood meetings and Telecommunications Task Force meetings.
- Other Public Documents: Staff collected and analyzed strategic and long-range plans, technology plans, general plans and communications plans prepared by government agencies, educational institutions, non-profit organizations, and businesses. These provided another avenue to assess the current and future cable needs of this community.
- Educational Access Strategic Plan. In a series of meetings from February to September 1994, Davis Community Access TV (DCTV) staff met with various school officials, administrators and teachers to brainstorm about the Davis Joint Unified School District's (DJUSD) needs and visions vis-à-vis educational uses of its cable channel. The result was a DJUSD Statement of Priorities. In addition, DJUSD developed a District Comprehensive Technology Plan for 2000 through 2005.

- Public Access Strategic Plan. In 1998, DCTV, the city's public access coordinator, conducted a survey and held public hearings to determine the city's public access cable needs. DCTV developed a strategic plan for 1999-2003.

The Davis cable TV franchise renewal process has included a great deal of participation from the public. The following is a summary of the opportunities that the public has had to participate in the development of the preliminary report on community needs and the cable renewal process:

- A Telecommunications Task Force was appointed in March 2001 to advise the Davis City Council on matters related to the franchise renewal and the ascertainment process. The Task Force represents the University of California, Davis (UCD), the Davis Joint Unified School District (DJUSD), the City of Davis, local small businesses, Davis Community Television (DCTV) and the Davis Community Network (DCN). The Task Force has met at least 60 times. All of the meetings have been public. They have been properly noticed and the agendas and informational materials have been posted on the city website at: <http://www.city.davis.ca.us/pcs/telecomm>
- A business survey was sent to over 2000 local businesses, yielding over 700 responses. These business responses are included in this preliminary report on community needs.
- An online survey was administered for Davis residents. This survey was advertised in the *California Aggie* (UCD student newspaper), through a publicity photo, an editorial and advertisement in the *Davis Enterprise* (local newspaper), through announcements on Channels 5 (DCTV), 7 (Government) and 14 (Education), and through announcements at City Council meetings. Over 340 residents completed the survey and the results are included in this preliminary report on community needs.
- A community workshop on the franchise renewal process was held in December 2000. This workshop was videotaped and replayed on the PEG Government Channel 7.
- Over 150 Davis residents participated in community focus group workshops. These workshops were advertised in the *Davis Enterprise*, and participants were formally invited to attend by Task Force members, city staff and community leaders.
- Updates about the negotiation process, this preliminary report on community needs, the ascertainment process and the cable ordinance have been on City Council agendas at least 6 times during the past two years. The progress made by the Task Force has been verbally reported at council meetings, by the primary council liaison to the Task Force, Sue Greenwald.

The process of identifying the community's cable-related needs relies on a variety of information-gathering techniques. By utilizing multiple techniques, the City of Davis is able to ensure that the preliminary report on community needs reflects input from a broad cross-section of the community and that the City obtains informed opinions. The methods used included a citizens' survey on the City of Davis web site, focus group workshops and surveys,

a survey of the city's businesses, collection and analysis of strategic planning documents from the City of Davis and the community, public discussions with the Davis City Council, and public meetings held by the Telecommunications Task Force.

This preliminary report of community cable-related needs and interests is based on information derived from the focus group workshop brainstorming sessions, feedback staff has received from the public, the Telecommunications Task Force, and the surveys and strategic planning documents. The report identifies issues that are important to the community as well as stated needs and interests of the community for cable services.

LEGAL LIMITATIONS AND ISSUES

An assessment of community needs cannot be completed properly if ideas, desires and requests of local residents are censored during the process. The task force has been open to ideas, opinions and stated needs presented by a wide variety of groups and individuals. Invariably, these open discussions have led to discussion of community needs outside the possible scope of the cable franchise renewal. It is also important to clearly state the responses of residents and organizations to questions asked as part of this summary. In one case, for example, "world peace" was discussed during one of the focus groups. This is an issue for which the local cable system can have only a peripheral or supporting role in solving.

But, other seemingly related cable issues are also currently out of the control of local jurisdictions. The provision of cable modem or high-speed internet services are one important example of a service over which the City has no regulatory authority. Under federal law, there are three distinct categories of services: cable services, telecommunications services, and information services. The current scope of cable TV franchise renewals for which a municipality has regulatory authority, only covers services under the "cable services" category. Cable modem service has been designated an information service, and other broadband services might be so designated in the future as well. Furthermore, under California law, the City's ability to obtain compensation for use of its property by telecommunications providers, or to regulate the activities of such providers, is severely constrained. It is not the intention of this report to express a desire by the City to regulate activities that are outside the scope of its authority under state and federal law. Instead, the task force is simply stating the community needs for the interest of the cable company in providing high-demand services to the community.

The report also describes a stated need within the community for a cable and internet system built with so called "open access" Unfortunately, the law does not consider cable modem service a "cable service", and thus this topic falls outside the proper scope of City regulation. The stated desire of the community to see open access when possible in the cable modem system should not be construed as an assertion of the right to regulate open access on the part of the City. The City clearly identifies open access as a non-cable matter not subject to franchise requirements.

It is also important to note that the term “cable needs” is used often in this report. Although it is convenient to use shorthand in this needs report, it is important to remember that the Cable Act uses the term “future cable-related community needs and interests,” not just “needs”. In general, we recommend that the references to “cable needs” throughout the document be read to mean “cable-related needs and interests”.

The legal name of the entity with whom the city will negotiate the franchise renewal is _____ . The most recent transfer documents from this company state that the company will be known as “AT&T Comcast.” That name is used throughout the report.

However, most Davis residents know the current provider as “Comcast,” which is the name that appears on common communications from the provider such as bills and advertisements.