

Staff Report

December 8, 2003

TO: City Council
VIA: Donna Silva, Parks and Community Services Director
FROM: Jerilyn Cochran, Social Services Administrator
SUBJECT: Cable franchise Update, Franchise Extension and Needs Summary

Recommendations

1. Approve the attached resolution extending the existing cable franchise with Comcast, Inc. until March 31, 2004 or until a new cable franchise is approved, whichever comes first. (see Attachment A)
2. Receive the "Preliminary Report on Community Cable-Related Needs and Interests" prepared and approved by the Telecommunications Task Force (see Attachment B)
3. Approve the attached "Resolution by The City Council Setting Standards for Meeting Community Needs in the Franchise Contract Between the City Of Davis and Comcast" to guide the remainder of informal negotiations
4. Approve appraisal of land and conduit to be used to rebuild the cable system

Fiscal Impact

Under the extended terms of the Franchise, the city would continue to receive 5 percent of gross cable revenues and DCTV would continue to receive a pass-through of \$75,000 annually for equipment and facilities.

Background and Analysis

The City of Davis has managed the right-of-way for cable company access since the advent of cable services in Davis in the late 1970s. The Cable Communications Policy Act of 1984 granted local governments the right and responsibility to govern access to their right of way for cabling systems.

In Davis, the access is currently authorized via Ordinance No. 1483, the "Davis Cable Communications Franchise Ordinance" (1988) which articulates the terms by which right-of-way

is granted in Davis. A current cable franchise for this right-of-way is held by Comcast, Inc. a company formed by a recent merger between AT&T Broadband and Comcast. Ordinance No. 1482 specifically lists the terms of the current cable franchise, including the termination of the agreement on December 31, 2003, per a six month extension of the ordinance approved by Council in June 2003. The current agreement provides annual revenues of approximately 5 percent of franchise fees and in-lieu fees for studio and network equipment.

In 2001, AT&T/Comcast requested that the city consider renewal of the current franchise through an informal renewal process. It is hoped that through the informal approach to cable franchise negotiations a new franchise can be approved by the city without complicated legal hearing processes. Since 2001, a Telecommunications Task Force has been meeting at least twice a month, a new cable ordinance has been approved, a draft needs assessment of community cable-related needs has been completed, and franchise negotiations have begun.

Because the negotiations are taking longer than originally estimated it is necessary to extend the current agreement for a short period of time. A resolution extending the term of Ordinance 1482 through March 31, 2003 is attached (see Attachment A.) Without an extension, Comcast is not technically liable to meet their commitments under the existing ordinance.

Community Cable Related Needs

Attachment B is a substantive document enumerating the Davis community cable-related needs and interests. The document is necessarily long and detailed, and represents over 2 years of data gathering and assessment on the part of the Telecommunications Task Force, staff and numerous consultants. The purpose of the report is to describe community needs and to link the identified issues and problems to cable-related needs and interests. Thus, each chapter enumerates issues, problems and needs found in each area of study. The primary areas of study were:

- Section B: surveys of residents and businesses
- Section C: community-based focus groups
- Section D: review of strategic plans and other community documents
- Section E: description and evaluation of the PEG system
- Section F: description and evaluation of Institutional Networks (the way in which government, schools and community institutions link together)
- Section G: evaluation of system maintenance and past-performance.

Within each section, issues and problems are described. At the end of each section, cable-related needs indicated by each of the issues and problems are discussed. Since considerable space is given in the report to link each issue, problem and need indicated by the problems, these will only be summarized for this staff report.

The general and specific issues summarized in the report are:

- Access to service, adaptability of service, geographic availability of services,
- Lack of broadband availability in Davis hindering education, residents, governments and business
- Budget cuts threatening local public, educational and government channels

- Cable services are bundled poorly, and the local cable system lacks high definition, on-demand, cable modem and channel blocking services; the system often has low quality of picture and sound
- Distance learning is limited on the current cable system
- Economic development is inhibited by lack of broadband in the downtown and commercial districts in Davis
- Government efficiency is limited by a lack of connected city facilities, lack of a high-speed institutional network, and lack of interconnection between the county, the university, the schools and the city
- Public safety is limited from a lack of training opportunities available through an institutional network, the lack of connectivity necessary to connect police, fire and other public safety groups on the institutional network and by lack of a state-of-the-art emergency notification system
- The pressure to build additional housing could be relieved by more home-based telecommuting
- Local news is not adequately covered in Davis by regional stations and newsgroups; local cable channels can add to the insight, depth and breath of local news coverage, while also broadcasting local sports and community events via remote broadcast capabilities
- Local non-profits are have increasing difficulty communicating with constituents, clients and other organizations
- The cable company has had serious customer service and system performance issues in the past. Most notably, the system ground and maintenance is substandard, the customer service standards have been inconsistent, the institutional network promised for construction under the last franchise was not built, and franchise fee payments are unaudited
- The Public, Educational and Government (PEG) channels have out-of-date equipment, infrastructure problems, technical support problems, and shortages of adequate staff and space. This problem will only be complicated in the future as production standards increase and transfer to digital and other emerging technologies
- The PEG channels are at risk of losing viewership if the cable company moves the location of the channels and especially if the channels are moved to other than the lowest tier of service
- The cable penetration rate in Davis is low compared with other cities in the region, largely due to the poorly performing system, poor customer service and lack of upgrades sought by cable customers, including high-speed internet
- Numerous businesses have trouble accessing high-speed internet and obtaining adequate phone service. While the city cannot expressly require these services through the cable contract, it is important to make these community needs known to the company
- Cable rates have continued to climb in spite of poor system performance
- The system does not adequately meet the needs of visually, hearing or physically impaired residents, especially on the PEG channels

In response to these and other problems stated in the report, the task force has identified certain cable-related needs which should be addressed by the cable franchise. These needs are

summarized in each section of the report, are far too many to list in this short staff summary, and include the need for:

- A rebuilt cable system including high-speed broadband services, high definition television and video on-demand.
- All cable services available to both commercial and residential customers throughout all of Davis
- Facility, equipment and programmatic upgrades for public, educational and government channels
- Additional cable channels dedicated for local use, as well as cable system capacity and functionality adequate to support public, educational, government and institutional network uses within the city
- Fiber optic capacity and links to all schools, to the University, to all city facilities and to key community institutions
- Improved technical support, customer service and consumer choices in products, services and channels.
- Flexible and adaptive technologies which encourage a state-of-the-art system for residents, PEG channels and the INET throughout the life of the franchise
- Interconnected bulletin board systems and user-friendly recording processes that will allow even more nonprofit groups to use the PEG system for community outreach
- Remote video origination sites that will allow recording and broadcast of meetings, classes and events throughout all of Davis
- Connections between various video and cable systems that will allow Davis residents to take advantage of distance learning opportunities with CSU Sacramento, UCD and other regional colleges and universities

Resolution Setting Franchise Standards:

Attachment C: the “Resolution by The City Council Setting Standards for Meeting Community Needs in the Franchise Contract between the City Of Davis and Comcast” is designed to encourage a franchise outcome which meets community cable needs and interests.

The resolution had been drafted by a local community group called Friends of Community Media, which is made up of the Board of Davis Community Television and of other local community members interested in a franchise outcome favorable to meeting community needs. The group postulates that a resolution will serve as further documentation to the significant public support for a strong franchise.

Staff, the Telecommunications Task Force and the city attorney have reviewed the resolution and concur that it generally and fairly addresses community needs and recommends approval of the ordinance to be presented to Comcast as needed to aid in negotiations.

Progress on Negotiations

While the informal negotiations have taken longer than originally anticipated, there is reason to believe the negotiations can be concluded in the early spring. The Telecommunications Task Force supports the extension of the franchise and is working closely with the negotiation team. The City has contracted with nationally-known negotiating consultants, Miller-Van Eaton and

the Buske Group to aid in negotiations and the needs assessment has documented specific and necessary enhancements to the current cable system.

While no list of primary deal points is yet available from the negotiations, progress toward meeting some of the major needs has been made. The primary areas of concern mentioned in the resolution have seen progress in the informal negotiation process as follows:

| Area of interest from Resolution | Progress to date in negotiations: |
|---|---|
| Upgrade cable infrastructure to meet the community's need for true broadband services including high-definition, interactive television and high-speed Internet; | Comcast has stated publicly that they are engineering a rebuild of the Davis cable system, negotiations will include discussions of the timing of the rebuild and the customer service/Neighborhood standards expected during the rebuild. |
| Provide service throughout the city, including to businesses and the downtown | Comcast is currently engineering the rebuild and is currently determining if they will accommodate all areas of Davis |
| Allocate adequate channels, cable system capacity and functionality for local Public access, Educational and Government (PEG) broadcast and Institutional Network (INET) purposes, including: <ul style="list-style-type: none">• additional channels required to meet identified needs• future conversion of PEG channels to full high-definition, interactive, on-demand capability on par with the capabilities of commercial broadcasters. | Comcast has offered an additional number of channels for current broadcast use and is continuing discussions to determine the number of channels and capacity to be available to Davis after a digital conversion. Discussion of expanding capacity in the system will be part of negotiation over the term of the franchise. |
| Provide PEG and INET equipment and facilities funding sufficient to revitalize facilities and equipment to provide for a transition to high-definition digital, high-speed voice, data and video transfer and on-demand transmission. | Funding for INET and PEG are of significant discussion during the negotiations. There is no current concrete offer from Comcast, though the company has been participating in vigorous and creative discussions about how to get necessary equipment and support for the PEG and INET systems |
| Provide, as the cable infrastructure is upgraded, fiber-optic capacity and fiber-optic links dedicated for use as a high-speed Institutional Network connecting major public-access, educational and governmental sites. | As engineering for the system has progressed, 35 city, school district, university and community sites will be engineered for fiber connections and capacity. The city will negotiate with the company and potential INET partners for operating support and equipment for the INET. |

Appraisal of Land and Conduit

Inherent in the rebuild of the Davis cable system and in the construction of the I-Net (the institutional network with fiber-optic links between schools, the city, the county and key community institutions) is the use of some city-owned conduit and possibly of some city land. The use of land and conduit needs to be appropriately valued in order to negotiate a fair price for use of the conduit and land. Comcast has proposed using existing conduit in downtown Davis, east Davis and in over freeway over crossings. One parcel of land is currently proposed for possible use by Comcast as their “hub” site in Davis. The parcel is on Research Park Drive, adjacent to 1-80 and immediately east of the Pole Line Road over crossing. While the parcel is across the street from Playfields Park, it was actually acquired by the city in the transaction for Playfields Park. The parcel is currently and informally used as seasonal overflow parking for the park. This parcel is marked on the map below.

A “hub” is used by a cable company to send signals throughout the local cable system. There are no aerial devices and signals are net only through hard wires. The hub structure is likely to be a 20’ x 30’ building, with grounding wires up to 16 ft. below the ground. There will also be parking for staff to occasionally use when they are working at the hub. A diesel generator will serve as backup power at the site, and will be operated for 15-20 minutes once a week and in power emergencies.

Staff is seeking Council approval for appraisal of this parcel for purposes of further discussions with Comcast. At a later date, staff will share the findings of the appraisal with Council and will make recommendations about the possible negotiation of sale of the parcel, if appropriate.



RESOLUTION NO. _____, SERIES 2003

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING ORDINANCE 1482, THE CABLE TELEVISION FRANCHISE THROUGH
MARCH 31, 2004**

WHEREAS, the provision of cable services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, provision of cable services necessitates an agreement for use of city right-of-way between the City of Davis and all cable providers; and

WHEREAS, the City has an existing cable franchise with Comcast Corporation; and

WHEREAS, the Comcast has requested that the city cooperate in informal negotiations to renew the franchise with the City of Davis; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive cable services under the current franchise terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, Ordinance No. 1482, the current cable franchise, should be amended as follows:

Section 1. Extension of the term of the agreement through March 31, 2004.

The City hereby agrees and consents to extend the current cable franchise, Ordinance No. 1482, through March 31, 2004 or until a new cable franchise is approved by the City Council and Comcast, whichever occurs first, subject to the terms and conditions set forth below.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in the Franchise Agreement:

A. All terms and conditions of the cable franchise shall remain in full force and effect during the extension period.

B. The extension shall have no adverse effect on Franchisee's compliance, nor shall the extension be grounds for any change or modification in the remaining terms, conditions and obligations of the franchise. Further, the extension of the franchise agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of the cable system.

C. The City's agreement to extend the Franchise Agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the franchise, whether those rights arose before or after the change in control to Comcast and the fact that such deficiencies may have existed prior to the change in control shall not be a defense against correction of the deficiencies or non-compliance.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2003, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Susie Boyd, Mayor

ATTEST:

Bette Racki, City Clerk