

## **Staff Report**

March 1, 2004

**TO:** City Council

**VIA:** Donna Silva, Parks and Community Services Director

**FROM:** Jerilyn Cochran, Social Services Administrator

**SUBJECT:** Cable franchise Update, Franchise Extension, and Land Purchase

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### **Recommendations**

1. Approve the attached resolution extending the existing cable franchise with Comcast, Inc. until May 31, 2004 or until a new cable franchise is approved, whichever comes first. (see Attachment A).
2. Approve the attached resolution (see Attachment B) authorizing escrow to open and to approve the sale of a portion of Yolo County Assessor's Parcel Number 069-020-66 to the Comcast Corporation for use as a hub station and customer service counter for cable and other information/telecommunication services in Davis.
3. Approve the attached resolution (see Attachment C) authorizing execution of an agreement for construction of an institutional network fiber backbone in Davis.

Note: Recommendation #1 above should be considered by Council on March 9. Based on an upcoming meeting with Comcast on March 5, the resolutions and agreements referenced in recommendations #2 and #3 could be amended. The items are sent forward for the March 9 meeting because Council does not meet to consider substantive issues again until April 13.

### **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. The purchase agreement would yield \$185,000 for the city of Davis, which is proposed for use in developing the city of Davis share of the institutional network. The city share of the construction of the I-Net will be funded through the use of city conduit, through a previously-approved contribution from the cable fund and through the proceeds from the sale of the hub parcel, as needed.

### **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 March 31, 2004, per a six month extension of the ordinance approved by Council in December 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 May 31, 2004 is attached (see Attachment A.) Without an extension, Comcast is not technically liable to meet their commitments under the existing ordinance.

**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 spring. The Telecommunications Task Force supports the extension of the franchise and is working closely with the negotiation team.

While as of the writing of this report no list of primary deal points is yet available from the negotiations, progress toward meeting some of the major needs has been made. City staff are meeting with Comcast on Friday morning March 5, 2004 and may have more progress to report at the Council meeting. The primary areas of concern mentioned in the resolution have seen progress in the informal negotiation process as follows:

<b>Area of interest from Resolution</b>	<b>Progress to date in negotiations:</b>
Upgrade cable infrastructure to meet the community’s need for true broadband services including high-definition, interactive television and high-speed Internet;	Comcast has engineered a rebuild of the Davis cable system, meetings have been held with city staff about the timing of the rebuild and the customer service/neighborhood standards expected during the rebuild. Comcast is currently completing a pre-rebuild “tap” audit.

	Comcast has prepared plans for cable system hub site.
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"> <li>• additional channels required to meet identified needs</li> <li>• future conversion of PEG channels to full high-definition, interactive, on-demand capability on par with the capabilities of commercial broadcasters.</li> </ul>	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. Comcast has completed a survey of Davis residents aimed at gauging the tolerance for charges for capital and equipment of cable customer bills. Some residents have commented about the fairness of the survey questions. Staff meets with Comcast on March 5 and will discuss the questions and survey results. Pending the content and findings from this survey, the city may complete an independent survey in the coming weeks. At the March 5 meeting, staff may also receive a concrete offer from Comcast for 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, 37 city, school district, university and community sites have been engineered for fiber connections. Comcast has given cost estimates for fiber and both the city and school district have provided funding for the fiber installation. A draft I-Net agreement has been attached to this report (see Attachment C) and a final version may be distributed to the Council on March 9, 2004.

**Sale of Land**

One parcel of land is currently proposed for sale to Comcast as their “hub” site in Davis. The parcel is on Research Park Drive, adjacent to I-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 and 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.

In February 2004 staff received Council approval for to enter into negotiations for the use of by Comcast as the HUB site. Separately, staff will need to initiate rezoning of this parcel. Negotiation of this sale is important as it would be used in the imminent rebuild of the Davis cable system.

An appraisal of the property has been completed which resulted in valuation of the parcel at \$185,000. Comcast has agreed to this purchase price as well as the following conditions on the use and maintenance of the agreement.:

- Maintenance of land: Escrow will not close until a maintenance and use agreement is executed. Comcast will agree to maintain the property at the west end of the parcel up to the beginning of the Pole Line Overcrossing maintenance area. As in other transfers of property executed by the city, there will be other maintenance and use conditions placed on the new owners.
- Comcast agrees to provide landscaping on the northern border of I-80 consistent with and in excess of that required by the I-80 corridor landscape plan approved by the City and Caltrans.
- Escrow will not close without planning entitlements and a recordation of a separate parcel.
- The property is exempt under Gov. Code 542216(e)(2) from surplus property requirements based on buildable area of 5000 sq. ft. or less.
- A separate rezoning which has been initiated by Comcast and staff and which will be submitted to Council for consideration in April.



### **Institutional Network**

On February 3, 2004 Council discussed and approved city participation in an Institutional network to be constructed during the upcoming Comcast rebuild. An I-Net typically links community institutions together through a network backbone. Community institutions in Davis include the school district (DJUSD) and all of its facilities (schools), the University of California, Davis campus and their remote (off-campus) sites within the city, other educational institutions, the City of Davis and all of its public facilities, and designated non-profit agencies.

Council approved the following: “Pending approval by the Davis Joint Unified School District of funds adequate to pay for their proportional share of fiber, approve the allocation of up to \$200,000 from the Cable Fund to construct a fiber network between city, school and community facilities during the upcoming cable system rebuild.”

The Davis Joint Unified Schools District approved the allocation of funds adequate to pay for their proportional share of the fiber on three conditions:

1. Assurances that satisfactory contractual protection exists in the agreement between the City and Comcast to protect the district’s interests.
2. Satisfactory completion of a discussion exploring alternative sources/avenues of funding these community-wide improvements.
3. Satisfactory conclusion of partnership discussions amicably reaching agreement in regard to division of franchise fee and PEG revenues.

Staff has been working with District staff to satisfy condition #1 above. The draft I-Net agreement (see Attachment C) has been circulated to district staff and attorneys, and alternative language and comments are expected on March 4, 2004. These comments will be discussed with Comcast on the meeting with staff on March 5, 2004. Assuming there is agreement with Comcast on the agreement, the final draft will be sent to Council on Monday or Tuesday. Since there is not another meeting with Council about substantive items between now and April 13 and because there is a rebuild of the system pending, it is recommended that Council approve the resolution to approve the I-Net agreement with changes as submitted to Council by March 9.

Staff is meeting with District staff next week to discuss issues related to condition #2 above. Staff will work with the district on conditions #3 above during the next month. Based on tentative assumptions about future cable revenues, the Telecommunications Task Force has begun a process to discuss recommendations for division of cable revenues. Since cable franchise revenues could be used for other city services outside of public, education and government television, these discussions have seemed premature before the March election, given the uncertainty in local and state revenues.