

Staff Report

July 21, 2005

TO: City Council

VIA: Jim Antonen, City Manager
Donna Silva, Parks and Community Services Director

FROM: Jerilyn Cochran, Social Services Administrator

SUBJECT: First Reading of Ordinance--
Cable Franchise Renewal Agreement with Comcast of California, X.

Recommendations

1. Hold a public hearing on the proposed “Ordinance Of The City Council Of The City Of Davis Granting Comcast Of California X, Inc. Renewal Of Its Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communications System Within The City Of Davis Subject To The Terms And Conditions Set Forth In The Franchise Renewal Agreement.” (see Attachment A--Franchise Resolution, Attachment B--Franchise Agreement, Attachment C--Exhibit 1, Attachment D--Exhibit 2 and Attachment E-- Exhibit 3)
2. Approve the attached side letters to the agreement:
 - Settlement (see Attachment F—Side Letter Settlement)
 - Interconnection (see Attachment G—Side Letter Interconnection) ¹
 - Institutional Network (see Attachment H—Side Letter Institutional Network)

Fiscal Impact

The Franchise renewal will have a number of fiscal impacts:

- 1) Five percent of gross revenues from cable-related services in Davis, as defined in the agreement, will be paid to the city of Davis. These gross revenues currently total approximately \$380,000 annually. Currently, revenues are reserved by the Council for Public, Educations and Government (PEG) Access programming and services and Franchise oversight.

¹ Not available as of the writing of this report. Letter will be presented at the meeting, if available, or will be included on the consent calendar on August 1.

- 2) A PEG capital up-front grant of \$350,000 which must be used to for PEG equipment and facilities, and which will most likely be used to upgrade out-of-date video equipment and facilities for local PEG channels.
- 3) An up-front settlement grant of \$225,000 which is not required to be used by Council for a capital grant, but for which the Telecommunications Task Force has helped negotiate to support up-front community media needs.
- 4) An Institutional Network, linking most of the staffed city facilities and all of the schools in the Davis Joint Unified School District. It is unlikely the City and Schools would have installed this 6-strand fiber network without the cooperation of Comcast. The value of the I-net fiber, as described in the Agreement is approximately \$2.5-3.0 million. The city and schools will jointly fund the fiber installation at a total of \$650,000. The city and school district also plan to fund the start-up equipment for the I-Net through contributions of at least \$150,000 each.
- 5) Monthly per-subscriber PEG capital funding charge averaging .73 per customer. This PEG capital funding charge will total approximately \$108,000 per year in funds to assist the PEG studios and equipment to stay up-to-date. These capital funding charges must be matched by city franchise fees for PEG purposes throughout the life of the grant. The city is unlikely to have a problem matching the PEG capital funding with franchise fees since all of the current franchise fees are allocated for PEG and community media purposes.
- 6) The granting of four Public, Educational and Government (PEG) Access channels immediately, one additional channel in year three and three more when digital services are fully implemented to all cable customers in Davis. The valuation of these channels is hard to determine, but Comcast has valued such channels at more than \$2 million each in 2004 court proceedings.
- 7) Numerous in-kind services such as interconnection of the PEG channels to nearby communities and connecting the Davis I-Net to the University of California, Davis.
- 8) Portions of the city Cable fund are proposed to be used in conjunction with the agreement:
 - The resolution on the August 1, 2005 consent calendar recommends forgiveness of a loan to Davis Community Television (DCTV) in the amount of \$30,375 in the cable fund. The funding was loaned to Davis Community Television at the beginning of the franchise agreement.
 - A portion of the cable fund will be used to pay the city's share of the Institutional Network Expenses. This set-aside has been reserved by the city Council in March 2004.

Council Goals: The negotiation of the new cable franchise is related to at least two Council goals: **1) Fiscal Stability:** Effective negotiation of the new cable franchise will result in funding which the city can use to provide high quality city services that meet the needs of residents, specifically for public, educational and government television, for the development of an institutional network and for oversight of the franchise related to city right-of-way; **2) Telecommunications:** The Council Tier Two goals related to Telecommunications specifically reference completing the cable contract, assuring that cable modems are available in Davis and development of an institutional network.

Executive Summary:

A five year process to renew the cable franchise in Davis has resulted in a varied franchise agreement with provision for more access channels, a system rebuild in Davis, and Institutional Network linking government, schools and community sites and support for equipment upgrades and operations of community media. This report describes

- the process used to formulate the agreement
- the elements of the agreement
- the standards by which the agreement can be judged
- remaining issues
- next steps to completing the agreement and using the resources to improve community media in Davis.

Background and Analysis

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 September 30, 2005. The current agreement provides annual revenues of approximately 5 percent of franchise fees and in-lieu fees for operation of the city cable program, including studio and network equipment.

Cable Franchise Negotiations

The City of Davis grants right-of-way to the local cable provider (Comcast) for infrastructure to enable cable service in Davis. In exchange, the city receives compensation in the form of cash, equipment and in-kind services from Comcast. This exchange is enumerated in the cable franchise agreement.

Since 2000, staff and the Council appointed Telecommunications Task Force (TTF), a group of residents and organizational representatives, have met regularly to prepare various analyses and documents to be used to renew the cable franchise in Davis and to meet a variety of community cable-related needs. A summary of the major milestones in the renewal process is attached. (see Attachment J-Milestones.) A primary milestone of the process is the development of the Report of Cable-Related Needs and Interests in Davis. An abbreviated summary of that report is also attached (see Attachment K-Needs Summary) The entire report can be referenced at <http://www.cityofdavis.org/pcs/telecomm>.

Franchise Agreement

The Franchise agreement is made up of several components:

- “Ordinance Of The City Council Of The City Of Davis Granting Comcast Of California X, Inc. Renewal Of Its Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communications System Within The City Of Davis Subject To The Terms And

Conditions Set Forth In The Franchise Renewal Agreement.” (see Attachment A--Franchise Resolution, Attachment B--Franchise Agreement, Attachment C--Exhibit 1, Attachment D--Exhibit 2 and Attachment E-- Exhibit 3)

- Approve the attached side letters to the agreement:
 - Settlement (see Attachment F—Side Letter Settlement)
 - Interconnection (see Attachment G—Side Letter Interconnection)
 - Institutional Network (see Attachment H—Side Letter Institutional Network)

A summary of the agreement is also included in this report to highlight the section by section components (see Attachment L-Agreement Summary.)

One public hearing was held on the draft agreement on June 1, 2005. The minutes from that meeting are attached (see Attachment M-Minutes from June 1, 2005.) While most of the hearing attendees were supportive of the agreement, some issues were also raised for the record. In the spirit of compromise, both staff and the Task Force recognize not all of these points could be settled to the satisfaction of the city, but nonetheless attention to the various issues is warranted.

On July 21, 2005 and by consensus, the Telecommunications Task Force unanimously supported a recommendation to approve the Ordinance Of The City Council Of The City Of Davis Granting Comcast Of California X, Inc. Renewal Of Its Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communications System Within The City Of Davis Subject To The Terms And Conditions Set Forth In The Franchise Renewal Agreement.

Standards

While the Report on Cable-Related Needs and Interests in Davis serves as the basis and foundation for negotiations, there are two other standards that have been raised during the negotiation period. In December 2003, Council approved highlighting the most significant points of interest in negotiations. This chart lists the main negotiating issues:

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 completed the bulk of the rebuild and is now offering high-speed internet services throughout Davis.
Provide service throughout the city, including to businesses and the downtown	Comcast has completed the bulk of the rebuild and is now working to provide services downtown. Comcast will begin serving downtown businesses at the conclusion of the rebuild.
Allocate adequate channels, cable system capacity and functionality for local Public access, Educational and Government (PEG)	The agreement specifies eight access channels in Davis: The three existing channels, one new channel at the beginning of the agreement, one

<p>broadcast and Institutional Network (INET) purposes, including:</p> <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. 	<p>new channel at year three and three additional channels at the conclusion of the digital conversion of the cable system.</p>
<p>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.</p>	<p>The amount of community media capital and operating support was of significant issue during the franchise. The agreement and side letter make a total of \$640,000 available for upgrades to equipment and facilities and makes nearly \$110,000 per year available for capital equipment during each year of the franchise.</p>
<p>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.</p>	<p>Comcast has completed the bulk of the rebuild and has also installed most of the Institutional Network fiber during this rebuild. The agreement and side letter contain significant requirements for the I-Net.</p>

The second standard adopted by the Council was a statement of the expected baselines to be met in the agreement. The negotiations yield many of these basic elements, but Comcast would not agree to the “bottom line” per se. The following is a summary of the expected baseline and the resulting items in the agreement:

Element	Outcome
Comcast agrees to a 10-year franchise agreement	13 year franchise
Gross Revenues compromise language to be proposed by legal staff	Gross Revenue language compromise, \$50,000 of additional settlement funding resulted from Gross Revenue language negotiations
Complete upgrade of existing cable system throughout Davis and periodic upgrades throughout life of franchise	Comcast has completed the bulk of the rebuild and is now offering high-speed internet services throughout Davis. Comcast agrees to a 860 MHz system and to periodic discussions about the capabilities and upgrades of the system.
\$350,000 PEG/I-Net initial equipment capitalization	\$350,000 PEG/I-Net initial equipment capitalization
Comcast agrees to capitalizing the PEG system another \$100,000 before year 5; \$250,000	\$225,000 in additional upfront and \$65,000 in per subscriber fees through year three

Matching grant that can be used for community media center (Total \$350,000)	(Total \$290,000, but larger sum is available up-front and no matching is required.)
Ongoing PEG/I-Net capitalization of \$.70 per subscriber per month, increasing to \$.75 in year 10	Ongoing PEG/I-Net capitalization of \$.73
Provide I-Net fiber installation to 39 locations for a fixed cost of \$650,000	Provide I-Net fiber installation to 39 locations for a fixed cost of \$650,000

While many of the standards are met in this agreement, it is important to note that in no way does the agreement comprehensively meet all of the needs identified in the Report on Cable-Related Needs and Interests in Davis.

Remaining Issues

There are three of pending issues: Task Force Expectations, Level Playing Field and CWA labor practices issues.

Task Force. The Telecommunications Task Force acknowledges that there are community expectations and concerns not specifically included or adequately covered in the renewal agreement due to it's nature of being a contract between the franchise authority (City of Davis) and a cable services provider (Comcast) and also due to the give and take nature of contract negotiations. However, the TTF does not want the City, School District, DCN, DCTV or the community to lose site of the issues or concerns that though part of the renewal and negotiation process, are not specifically reflected in the agreement. While most of the Task Force expectations are delineated throughout the report, the TTF delineates the following expectations for the record:

- The City conducted a cable needs assessment of the community in 2002-2003 that produced a clear expectation of community cable needs including a cable system upgrade, high-speed internet access, and community media and PEG access needs. Though the TTF is recommending adoption of this agreement, it is important to note that the stated community media needs have not been met by this agreement.
- The TTF realizes that this agreement is not the appropriate document to delineate community expectations on how the upfront settlement grant of \$225,000 will be utilized. At the same time, the TTF wants to note their expectation that these funds will be used for community media needs. Said needs to be determine through discussion with the appropriate community partners.
- The agreement includes provision that the City will match the PEG capital pass-through funds with part of the city's franchise fees. However, the provision allows for varying options to meet the match requirement in the event the city loses franchise fees.
- There is There have been adjustments in the Cable Fund in the past, including a \$30,375 loan to DCTV and for funding the installation of the I-Net. The TTF recommends these

be moved into consideration at this time and that the City forgive the DCTV loan. This will enable them to begin the new franchise period with a clean slate and in a healthier fiscal state. It is also important to note that the City has set-aside at least \$450,000 in city resources to pay for the fiber and equipment for the I-Net.

- The agreement contains provisions that will require periodic or ongoing review of the cable franchise. Additional review, discussion and/or recommendations will be necessary throughout the franchise to monitor and maintain the I-Net, determine how to distribute cable grant funds for community media needs, conversion to digital, other emerging technologies and additional channels and, potential legislative changes or challenges to the city's franchise authority. The City needs to incorporate review of cable issues part of its ongoing operations. The TTF will be coming forward at a future date with its recommendation on how to assume this function.
- There were many other issues raised for the record at the hearing on June 1, 2005. The Task Force desires to see the city monitor some of these concerns during the life of the franchise.

Level Playing Field. In early June, Comcast asked the city to consider language recognizing the competitive environment in California, especially with respect to 1) telephone companies planning on attempting to offer cable services through IP technology and in local communities without a franchise and 2) proposed state actions to grant franchises at the state level; with lower franchise fee requirements. The language first proposed by Comcast was unacceptable. It was reviewed by Miller-Van Eaton and the city attorney. The city refused the language. Comcast countered by requesting language allowing, but not requiring suspension of single provisions of the Agreement in the case that entities offered cable services in Davis without a franchise granted by the city. The Task Force agreed to language similar to that appearing below. Subsequent to the Task Force meeting, the negotiators had another meeting with Comcast, and agreed to the language now appearing in the agreement as 2.7(d)(the changes from that which appeared before the task force are noted in bold:

In the event an entity begins providing video programming or cable services in Davis using the public right-of-way without a franchise from the City, **and at the Grantee's request** the City and the Grantee **shall** meet and confer to discuss the impact of the competition on the existing franchise. As a result of the meet and confer process, and subsequent to a public hearing on the matter, the City Council may suspend any provision(s) of this agreement temporarily or permanently. Temporary or permanent suspension of any provision of this agreement would not constitute a reopener of the entire Agreement. No temporary or permanent suspension of any provision in this Agreement will be retroactive. The City shall not be liable to reimburse any previous payments from the Grantee or provision of service by the Grantee related to the suspended provision. The City agrees to respond to a meet and confer notice within 10 business days. The City and the Grantee agree to complete the meet and confer process within 20 business days. The City agrees to present meet and confer recommendations to the City Council

within 30 days from the conclusion of the meet and confer process, unless the meet and confer process concludes near the City Council recess in August or during the traditional winter holidays in December. (Note: the following was deleted subsequent to the task force meeting: ***Notwithstanding the authority to suspend provisions, the City Council is not required to suspend any provision as a result of the meet and confer process.***)

On July 21, 2005, Comcast requested further strengthening of the language, requiring that the city suspend Franchise provisions in the event an entity begins providing video programming or cable services in Davis using the public right-of-way without a franchise from the City. They did not specify which provisions, but would be most worried about 1) franchise fees, 2) PEG capitol funding and 3) Customer Service provisions.

It is understood that if an entity offers cable service in Davis without a franchise, without paying franchise fees and without paying PEG pass-through, Comcast may have serious trouble competing. It is likely the city would want to meet and confer to discuss potential disparate impact of a cable provider without a franchise in Davis. The city may decide it is in the best interest of the community to temporarily suspend or amend provisions of the franchise. But, the agreement should not include language agreeing to suspend provisions.

Staff asked for Miller-Van Eaton to comment on the request. MVE soundly recommends against language that forces the city to change franchise provisions.

As of this writing, it is not clear if Comcast will accept the language as currently in the agreement or not. The negotiators have offered to meet with the Council subcommittee before the Council meeting in an attempt to settle the issue.

Union Resolution. Following the July 5 Council meeting, the negotiators met with representatives of Communication Workers of America (CWA) to discuss a draft resolution about labor practices. After the meeting, staff expected to get a revised draft resolution. Staff has not received the changes as of the date of this report.

Next Steps

If Council approves the agreement and if Comcast signs the agreement, there are several next steps to expand, improve and enhance community media in Davis:

- Commission: The Task Force will meet in August to discuss recommended language for the formation of a Telecommunication Commission.
- Resources: Staff from community media: The city, School District, DCTV and Davis community network will formulate recommendations for the allocation of resources.
- I-Net: Planning for the I-Net will also begin soon after the approval of the agreement in anticipation of the I-Net fiber being ready in February.

- Plans for new channels: The Task Force and/or the staff liaisons will formulate recommendations about uses for the additional channel to be offered immediately after the franchise is approved.
- Facilities planning: If upfront funding is used for facility upgrades and improvements, some facilities planning must also take place in the next few months.

Summary:

Because of the widespread support for approval of the Franchise and because of the many advantages to the city in the Franchise, both staff and the Telecommunication Task Force recommend:

1. Hold a public hearing on the proposed “Ordinance Of The City Council Of The City Of Davis Granting Comcast Of California X, Inc. Renewal Of Its Nonexclusive Franchise To Construct, Operate And Maintain A Cable Communications System Within The City Of Davis Subject To The Terms And Conditions Set Forth In The Franchise Renewal Agreement.” (see Attachment A--Franchise Resolution, Attachment B--Franchise Agreement, Attachment C--Exhibit 1, Attachment D--Exhibit 2 and Attachment E-- Exhibit 3)
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² The Telecommunications Task Force did not have the opportunity to review this side letter, as Comcast had not revised language in the letter. The negotiators concur with the language in the letter.