

SUMMARY MINUTES

CITY/COUNTY TELECOMMUNICATIONS COMMISSION Work Session Wednesday, October 18, 2023

VANCOUVER CITY COUNCIL CHAMBERS
415 W 6th Street, Vancouver, Washington

APPROVED AGENDA

I. CALL TO ORDER – 3:30 p.m.

A. Roll Call

PRESENT: Dicker, Hale, Hinds, Rogers

EXCUSED: Green, Shephard

ABSENT: None

STAFF PRESENT: Demmon, Halvik

II. WORK SESSION – Cable Franchise Negotiation Update

Demmon reviewed the talking points for the work session. He said that staff will provide an overview of the current Comcast franchise, provide information on local legal authority that dictates the renewal process, review the steps taken during the franchise renewal process, share an update on where the negotiations are on the franchise priority issues, review next steps in the renewal process and get Commission feedback the priority issues.

Current Comcast Cable Franchise Overview

Demmon reminded the Commission that the City and County have separate, but almost identical, 10-year cable franchises. In order to provide time to complete negotiations, the City and County extended their franchises for another year and they will now expired June 30, 2024.

Demmon stated that as of December 2022, Comcast has 50,405 cable subscribers which are split roughly 54 percent County residents and 46 percent City residents.

Local Legal Authority

Demmon stated that the cable franchise renewal process, as well as what can be negotiated in a new cable franchise, are governed by federal law, specifically the Cable Act of 1984 and as amended in 1992 and 1996. He added that the Federal Communications Commission (FCC) has also adopted rules and orders that govern the implementation of the Cable Act.

Demmon stressed that under both the Cable Act and the City and County charters, cable franchises are non-exclusive. This means that any company could seek a cable franchise from the City and County. The most recent company that sought and had a cable franchise with the City and County was CenturyLink.

Demmon provided an overview of what cannot be negotiated as part of a cable franchise. He said that the City and County have no local authority to negotiate the rates that the cable operator charges for their services. He added that the Cable Office regularly receives requests for Comcast to provide a “senior” discounted rate, but we have no authority to require Comcast to provide a discounted rate.

Demmon said that the City and County cannot dictate in the cable franchise which channels the cable operator provides to their customers, except for the public, educational and government (PEG) access channels. Also, it cannot be dictated in the franchise how the cable operator provides their services, such as technical capacity or operational requirements, except those required by the FCC such as Emergency communications.

Dicker reminded the Commission that the City and County only have jurisdiction over the cable television services provided by Comcast and not other services such as broadband or telephone services.

Demmon said that items that can be negotiated include the PEG channel capacity – how many local community channels we have; how much Comcast collects for PEG capital funding; enhanced customer service standards; the length of the franchise term; and specific wording and definitions.

Franchise Renewal Process Review

Demmon provided a review of the franchise renewal process to date. He stated that the renewal process was started in August 2020 when the Cable Office received a letter from Comcast requesting that the informal renewal process begin. CBG Communications was contracted to assist the Cable Office with implementing a Needs Ascertainment study and to provide negotiation support.

The Needs Ascertainment Study began in May 2021 and included randomly selected mailed surveys, an online survey and focus group meetings with a variety interested groups including youth, seniors, and neighborhood associations. The final Ascertainment Study was released in December 2021.

Demmon stated that based off the Needs Ascertainment Study findings, CBG provided a recommended list of priority items that should be addressed in a renewed franchise. These priorities were shared with the Commission in January 2022. After Commission feedback, a red-lined version of the existing franchise was created and reviewed by the Commission in June 2022. This red-lined document was the starting point for negotiations which began in August 2022.

Demmon said that the City/County negotiation team, Taylor Hallvick from the City Attorney's Office, Stephen Archer from the County Prosecutor's Office, CBG Communications and himself, have been holding negotiation sessions twice a month with Comcast. The Comcast negotiation team includes Tim Goodman and Samantha Ridderbusch.

Update on Priority Issues

Demmon stated that since negotiations are nearly complete, staff wanted to provide the Commission with an update on where the negotiations are with the priority issues and seek their feedback. He stressed that the priority issues are still part of the full franchise negotiated and may change.

Demmon said that there is expanded customer service language, based on wording in the recently approved Clackamas County, Oregon franchise, that includes language for complaint handling, service response and credits for outages. There is also added language to expand the ability to request testing and reports for any areas of concern.

Demmon stated that in the cable system buildout requirements in the current County franchise for unincorporated Clark County are confusing, and new language has been added to provide more clarity. In the new language the number of residents per quarter mile for aerial neighborhoods is being reduced from 10 to 5. He said that Comcast is still waiting to confirm this language, so it may change. He said that the underground requirements would move from 10 to 8 residents per quarter mile. He said that there is also improved language on the cost-sharing between Comcast and residences for any extensions over 125 feet from the cable plant. He added that although it is not in the cable franchise, Comcast has been working with Clark County on applying for broadband grants to further expand their services in rural areas.

Demmon said that during the PEG channel negotiations staff was dealing with the needs of providing more PEG viewing options versus the desire of Comcast to capture more bandwidth for their other services. He said that staff was able to negotiate two additional High-Definition (HD) channels for TV ETC in exchange for discontinuing the Video-on-Demand provisions in the current franchise. He said that TV ETC was the only provider utilizing the service and they indicated that they would be willing to give this service up in order to have their other two channels in HD.

Demmon stated that the discreet channel that CVTV was using mainly for fire and paramedic training was given up as the channel is no longer used for those trainings.

Demmon reminded the Commission that there has not been a local public access provider for several years and Channel 11, the local public access channel, has been airing the Community Access Network (CAN) from Portland. Some of the previously local producers use the public access facilities in Portland, which airs their program on CAN – this was a way to get their programming aired in Vancouver. Staff proposed during negotiations to keep the channel in the event another public access provider stepped forward, but Comcast only agreed to keep Channel 11 in standard definition as long as CAN is still operating; otherwise, the channel will be lost.

Demmon stated that Comcast currently collects \$1 per month from residential cable subscribers for the PEG capital fund which is used by the designated access providers to pay for capital equipment needed to produce programming. The fund is also used to offset a portion of the cost of Comcast Business Services for local non-profits, including the City, County and Library District. The PEG fee

collected has not changed since it was established in 1998. He said that the Ascertainment Study identified the need to increase the amount collected. He said that staff initially suggested an increase to \$1.38 but in taking a closer look at the decline in residential cable subscribers, the PEG fee lost 15.46 cent of the funds collected between 2020 and 2022. Staff also looked to determine the rate of decline in the franchise fee, which is 5 percent of gross revenue. It was discovered that the franchise fee increased 1.37 percent over the same period. So, staff is proposing moving the PEG fee collected to 1 percent of gross revenue to better stabilize the fund in the future. This would mean that customers with lower priced packages would be paying less for the PEG fee than those with higher priced packages.

Demmon stated that staff is negotiating a couple of issues regarding the PEG fee, including language to offset the costs of Comcast Business Services from the PEG fund. He added that the current franchise requires Comcast to purchase the electronic channel listing for two PEG channels which is currently used by CVTV. He said that Comcast is no longer willing to continue paying for the service. Staff is currently proposing to use PEG funds to cover the cost the service for all the PEG channels amounting to \$36,000 a year. He said that staff believes the cost for the channel listings could be considered a capital cost since your exporting data from a playback servicer, purchased with PEG funds, to an outside service that connects to cable boxes in the customers' homes. Comcast has verbally indicated that they wouldn't challenge using the funds for this cost, but doesn't want it specifically called out in the franchise agreement or side letter. He said that staff will likely present a resolution to the Commission to recommend setting aside the money for the guide services after the franchise is approved. This would be similar to the PEG funds currently set aside for emergency equipment repair.

Dicker responded that he has some concerns about use PEG funds for a channel guide listing as it's not what he would consider capital equipment.

Demmon responded that it would be similar to the PEG Committee allowing the purchase of extended warranties with PEG funds. He added that Comcast has verbally agreement that they wouldn't contest the Commission allocating the PEG funds for this purpose.

Dicker wanted to make sure that it was within the Commission's prevue to make those allocations.

Demmon responded that the FCC has provided much greater flexibility in the use of PEG funds; for example, the funds can now be used for leasing of a building. Staff is looking to carve out PEF funds for Comcast Business Services and the electronic channel guide listings, which Comcast has verbally stated they would not oppose.

Hinds asked for more information as to why Comcast no longer wishes to continue to pay for the electronic channel guide listings.

Demmon responded that under the FCC 621 Order, in-kind services, such as paying for channel guide listings, would not be allowable.

Hinds stated that seeking PEG funds for paying for the guide services then mitigates going against the FCC 621 Order. He wanted to know if there were any restrictions on the use of the PEG funds.

Demmon stated that there are restrictions on the use of PEG funds. They can only be used by the designated access providers for the purchase of capital equipment to produce programming to air on the PEG channels. He stressed that the decision to use the PEG funds for the channel guide listings would be at the discretion of the Commission. Staff would bring forward a resolution seeking the Commission's recommendation for use of the funds.

Next Steps

Demmon stated that staff will be providing the County Council with an update on the negotiations at a work session on November 8 and the City Council on November 20. Staff will continue to address any remaining issues with Comcast during negotiations. He said that staff hopes to have a work session with the Commission early next year to bring forward the finalized franchise draft and answer any questions the Commission may have.

The Commission would then consider a franchise recommendation at the March 6, 2024, meeting with City Council and County Council approvals in April and May.

Commission Feedback

Dicker asked what the process would be if the franchise negotiations were not completed before the current franchises expire on June 30, 2024.

Demmon responded that staff would likely seek another extension to allow time to complete negotiations.

Hinds stated that it seems like CAN programming is at risk and asked why Comcast would not continue that service for those local producers producing content in Portland.

Demmon responded that Comcast will continue to hold Channel 11 for CAN programming, but if the network decided it was no longer going to continue airing programming, then the channel would go away. Staff and Comcast have no control over whether CAN continues to provide programming.

Dicker asked if staff has brought up in negotiations a requirement that Comcast provided information about how customers can receive a refund for outages.

Demmon responded that he will take a look at the customer service section and see if there is a way to incorporate that but wasn't sure if Comcast would accept that provision.

Hinds stated that in his review of the current franchise there are no protections for customers' data on their viewing habits not being sold by Comcast. He wanted to know if this was discussed during negotiations. He added that as a Comcast customer he's not aware of what they can do with that data or a way that a customer can opt out of their data being used for other purposes.

Demmon stated that it was a discussed during negotiations. He said that there is a section that states Comcast must follow state and federal regulations when it comes to customers' privacy.

Rogers stated that using a 1 percent gross revenue model for the collection of PEG fees is a more equitable way to collect the fees. It make those customers paying for more services pay a higher fee.

Hinds asked if inflation was considered when negotiating the PEG fee amount collected and if that amount would be sufficient for the needs of the PEG providers.

Demmon responded that inflation was taken into account and when the Ascertainment Study was conducted there was a section on the future needs of the access providers that included inflation. He added that the 1 percent gross revenue model adds a greater stability to the fund. He said that included in the gross revenues are fees collected by Comcast such as the Broadcast TV Fee and the Regional Sports Fee.

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Hinds asked if the definition of gross revenue was in the current franchise or if an update definition is in the negotiated franchise.

Demmon responded that the definition of gross revenue has always been included in the franchise agreement and that it has been updated in the negotiated franchise.

III. NEXT MEETING DATE: Wednesday, December 6, 2023

IV. ADJOURNMENT – 4:25 p.m.

AN AUDIO RECORDING OF THIS MEETING IS ON FILE IN THE CITY CLERK'S OFFICE; A VIDEO RECORDING OF THIS MEETING IS ON FILE IN THE CITY/COUNTY CABLE TELEVISION OFFICE.

Attachments:

1. Franchise Negotiation Update PowerPoint presentation

Approved _____
Date

Paul Dicker, Chair
City/County Telecommunications Commission