

SUMMARY MINUTES

CITY/COUNTY TELECOMMUNICATIONS COMMISSION Work Session Wednesday, March 20, 2024

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, Maas, Nygard, Rogers

EXCUSED: Green

ABSENT: None

STAFF PRESENT: Demmon, Hallvik, Archer, Driskill, Robinson

II. WORK SESSION – Review of Draft Negotiated Comcast Franchise Agreement

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 and answer Commission questions.

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.

Demmon reminded the Commission that the County cable franchise only covers unincorporated Clark County. The smaller jurisdictions – Camas, Washougal, Battle Ground – have their own cable franchises.

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.

Demmon 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.

Demmon added that the negotiating team spent a great deal of time on the definition of gross revenues. He said this is important because the franchise fees and, most likely, PEG fees are based on Comcast's gross revenue.

Franchise Renewal Process Review

Demmon provided a review of the franchise renewal process. 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 Cable Needs Ascertainment study and to provide negotiation support. He added that Tom Robinson from CBG was attending the meeting remotely.

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. They also visited the PEG provider facilities. The final Ascertainment Study was released in December 2021.

Dicker asked how the responses from non-cable subscribers in the survey were used to determine the needs of a new cable franchise.

Robinson responded that most of the non-cable subscribers, mostly in the county, indicated that service was unavailable in their area. This led to discussions with Comcast relating to changing the system buildout requirements. He said that some of the non-subscribers responded that they were once Comcast customers and cancelled their services, usually related to price or indicated service or billing issues. That information was used to support strengthening the customer service standards in the negotiated franchise.

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.

Demmon stated that workshops were help with the Commission, City Council and County Council late last year to get feedback on the negotiated priority issues. The negotiation team then went back to finish work on some issues and completed a draft.

Demmon said that the draft of the County franchise was included in Commission packets. He said that staff has sent this version out to City and County staff for review and that Comcast has also sent the draft for their staff to review. He added that there could be some additional revisions that need to be made quickly and incorporated into versions of the franchises with any major revisions noted in a separate document that will be sent the Commission.

Demmon stated that a list outlining the negotiated priority issues and where to find them in the current and negotiated franchises was included in Commission packets (attached).

Update on Priority Issues

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.

Nygaard said that he was aware that Comcast has been working to upgrade their system to fiber optic and wondered how far along in the process they are and if the outages referred to were on the old cable plant.

Ridderbusch responded that Comcast has been making a number of investments in the network to create more capacity. She stated that she will provide the Commission with information on the progress of those upgrades here in Vancouver/Clark County. She added that the network is the same and Comcast is making improvements.

Maas commented that when he had an issue with a pedestal in his yard that it was easier to go into the local Comcast office to resolve than calling their customer service number.

Demmon responded that Comcast has grown the number of customer service stores in the area and make improvements. He did mention that there are provisions in the franchise that if Comcast were to close their stores, they would be required to provide a way for customers to return and receive equipment.

Nygaard wanted to know if there was a mechanism in the franchise to charge Comcast with a violation if they continually miss scheduled appointments.

Demmon responded that there is a mechanism in the franchise to handle violations of the franchise agreement. He said that the City and County would work with the Comcast to remedy the issues but could potentially seek liquidated damages if the violations were not corrected.

Demmon stated that 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 residences per cable mile for aerial neighborhoods in the County is being reduced from 30 residences per cable mile to 25 and down to 20 for the City. He said that the underground requirements would move to 40 residences per cable mile in both the City and County franchises. 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 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. He said that he has notified the fire chief of the decision.

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.

Dicker wanted to know that if there is a future community need for a public access channel how that would be accommodated if we're losing a channel.

Demmon responded that the franchise only dictates that five channels be set aside for PEG use, not how many channels are allocated to each provider. The Commission would have to come to an agreement with TV ETC and CVTV on releasing a channel.

Nygaard wanted to know if by giving up an On-Demand option, that viewers would miss an opportunity to watch a program, for example a City Council meeting, that they missed.

Demmon responded that CVTV has never utilized the On-Demand opportunity. He said that CVTV has a vibrant website where viewers can watch any programming produced. There are also links on the City's and County's websites to Council meetings. He stated that TV ETC has utilized the feature, but is willing to give it up to receive an additional HD channel.

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 approximately 32 percent of the

amount of funds collected from 2020, \$732,000 to \$552,000 in 2023. 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 decreased 5.5 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.

Nygaard asked if there was a cap on how much money a subscriber would pay.

Demmon responded that there has never been a cap on the 5 percent gross revenue amount paid by a subscriber and there would not be a cap on the PEG fee. He added that the current PEG fee is only collected from residential cable subscribers and does not include bulk account, such as apartment complexes that include cable as part of the rent. By changing to a 1 percent of gross revenue it would spread it across all cable subscribers.

Demmon stated that staff was unable to negotiate language to offset the costs of Comcast Business Services for public agencies from the PEG fund due to concerns about the impacts of FCC Order 621, which restricts the use of PEG funds and the entire I-NET section was pulled from the negotiated franchise agreement. He said that all the affected agencies have been notified of this change. He said that staff is proposing that one final reimbursement payment be made to the affected agencies as there are adequate reserves collected in the fund under the current franchise. He stated that this will help the agencies prepared for the impacts to their budgets. A resolution will come before the Commission at the April 3 meeting to make this recommendation to the elected officials.

Dicker asked for clarification on how the PEG funds are used to offset the Comcast Business Services costs.

Demmon explained how the agencies are using Comcast Business Services and that they are reimbursed at the end of the year for a portion of the cost of the service. He also explained history of I-NET services in the past franchise agreements.

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 TV ETC was also interested in having their listings on the channel guide. He said that staff initially proposed using PEG funds to help pay for this service, but was

unable to do so due to restrictions from the FCC Order 621. CVTV and TV ETC will need to cover these costs from their operational budgets. A side-letter will be attached to the franchises with language on this issue.

Nygaard asked if staff had reached out of the other local jurisdictions that have franchises with Comcast.

Demmon responded that staff did not reach out to the other jurisdictions. He said that generally they will reach out to us when they get ready to negotiate.

Hinds commented that he thought the side-letter to address the FCC 621 order regarding the channel guide was reasonable and indicative of the good working relationship between the City, County and Comcast. He thanked staff for including data privacy requirements into the negotiated franchise.

Next Steps

Demmon stated that the Commission will consider a resolution to make a recommendation to the City and County Councils to approve the proposed franchise agreement on April 3. He reminded the Commission that the proposed franchise is currently out to City, County and Comcast staff for review and if there are any significant revisions, the Commission will receive those in a separate document.

The proposed franchise will go before the City Council for adoption on April 22 for first reading and on June 3 for a second reading and public hearing. It will go before the County Council on May 3 for adoption.

Demmon reminded the Commission that the next meeting will be on July 17 which will include election officers and the redesignations of the PEG access providers. He stated that staff is requesting guidance on how often the PEG providers are designated. He said that staff is suggesting that they take place every three years – this is in line with the review of the cable operator's performance in the proposed franchise agreement.

After staff and Commission discussion, it was agreed that the PEG provider redesignations would occur every three years, unless there was an issue that needed to be addressed before that time.

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III. NEXT MEETING DATE: Wednesday, April 3, 2024

IV. ADJOURNMENT – 4:27 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