




MEETING DATE: 2/2/04
STUDY SESSION

COUNCIL STUDY SESSION REPORT

DATE: JANUARY 29, 2004
TO: MAYOR AND TOWN COUNCIL
FROM: DEBRA J. FIGONE, TOWN MANAGER 
SUBJECT: CABLE TELEVISION FRANCHISE RENEWAL STATUS REPORT

RECOMMENDATION:

1. Accept a status report of cable television franchise renewal activities as it relates to the negotiation process.
2. Provide staff direction to work with KCAT and the consultant to address legal issues related to the existing KCAT board structure.
3. Provide direction to develop a cable television franchise renewal Council ad hoc subcommittee to provide policy guidance and address policy-related issues that may arise during the negotiation process.

PURPOSE:

The purpose of this report is to provide a status of recent cable television franchise renewal activities, including an overview of the assessment of current and future cable-related needs and interests and recommended next steps associated with the renewal negotiation process. This report will also provide examples of cable franchise renewal outcomes negotiated by other communities.

PROCESS:

The study session is designed to inform and educate the Council about the cable television renewal negotiation process, including how the community assessment results help establish the renewal goals to be presented during negotiations. Although staff and the consultant, with policy guidance from a proposed cable television franchise renewal Council ad hoc subcommittee (later discussed in this report) will develop and negotiate provisions of the cable television franchise agreement. Council will make the final decision regarding the contents of the agreement at a future Council meeting.


PREPARED BY: JENNY HARUYAMA, ADMINISTRATIVE ANALYST

N:\MGRU\Haruyama\Staff Reports\renewal update.wpd

Reviewed by: JSJ Assistant Town Manager AK Town Attorney _____ Clerk _____ Finance
_____ Community Development Revised: 1/29/04 1:24 pm

Reformatted: 5/30/02

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

BACKGROUND:

In February 2002, the Council authorized the Town Manager to enter into an agreement with Miller and Van Eaton, a telecommunications consulting/law firm, to assist with the cable television franchise renewal process as described in the attached staff report (Attachment No. 1). Since that time, the Town has been involved in several significant cable-related activities. In Spring 2003, the Council authorized a one-year extension of the franchise agreement, extending the agreement from March 31, 2003 to March 31, 2004 to prepare for negotiations with Comcast.

DISCUSSION

As a matter of federal law, a community's cable-related needs and interests are protected in part through the cable television franchising process. During cable renewal proceedings, a community is permitted to establish basic requirements for cable system capacity, functionality, and customer service, and require operators to provide facilities and equipment and channels for Public, Educational, and Government (PEG) access. A franchise authority, however, is restricted from establishing certain provisions. Some examples include provisions related to television programming, rates, internet service, and the type of technology used for upgrades and other infrastructure improvements. In addition, the cable television franchise fee collected by the Town is limited to a maximum of 5 percent according to federal law. The Town currently collects 5 percent of the cable operator's gross revenues.

The Town, as the franchising authority is responsible for protecting the interests of cable subscribers and the general public through the cable renewal process by identifying cable-related needs and interests, and translating those interests into franchise requirements. These needs and interests can be determined through a cable television community needs assessment process and used as a tool to develop negotiation strategies and renewal goals when negotiating a new franchise agreement with a cable operator.

The following sections will discuss the results of the community cable needs assessment process, recommended next steps associated with the renewal negotiation process, and possible cable franchise renewal outcomes.

Community Cable Needs Assessment Findings

The Town has completed its initial phase of the assessment process to identify the community's cable needs and interest. This process was done through various research methods, including a statistically valid telephone survey and focus group workshops and questionnaires. Existing PEG access resources and strategic plans and other materials submitted by the Town and other local government representatives were also analyzed. Below is a summary of the needs assessment findings to date.

PAGE 3

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

Summary of Findings

Statistically Valid Telephone Survey

Approximately 409 interviews were conducted by telephone survey with a margin of error of 4.9% at a 95% level of confidence. Interviews were administered to a sample of Los Gatos cable subscribers drawn at random from active residential telephone listings. In addition to basic subscriber and demographic information, the telephone survey included questions about cable television reception quality, customer service issues, viewer ship patterns, the importance of local programming, and future services. The following section outlines some of these findings:

- 80% or more of the respondents gave "Good" or "Very Good" ratings to Comcast for providing bills that are accurate and easy to understand, providing cable service with few or no interruptions and the quality of the picture and sound. Much lower percentages gave these ratings to the overall value of the cable service and providing courteous staff who are readily available when you need assistance.
- Of those respondents who had telephoned the cable company during the year prior to the survey and were put on hold, only 7.6% said they were put on hold for less than 30 seconds. Since such a high percentage of affected respondents said they were kept on hold for longer than 30 seconds (thereby exceeding the FCC's standards), further investigation of this matter is warranted.
- Almost half (49.2%) of the respondents who requested a service call were offered an appointment in 24 hours and about two-thirds (65.9%) were offered a choice of morning, afternoon or evening appointments. Under one-fifth (18.2%) said that they were offered a Saturday appointment.
- About half (49.8%) of all respondents said that they had watched KCAT, cable channel 15. Just over one-fifth (21.4%) said they had watched West Valley College cable channel 25.
- Almost three-fourths (72.6%) of the respondents said it is either "important" or "very important" to have local cable TV channels that feature programs about Los Gatos residents, organizations, events, schools and government.
- Just over one-third (34.8%) of the respondents think that more channels should be offered than are currently available, while over half (53%) disagreed.
- Over four-fifths (81.1%) of all respondents said that they had a computer in their home that is used to access the Internet. Of those who access the Internet, about two-thirds (62.3%) do so for 15 hours or less per week. Nearly half (44.2%) of those who use their home computer for Internet access said that they subscribe to the cable company's high speed Internet service.

PAGE 4

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

- When asked how important it was to receive a variety of different government and community services and information through the cable system, respondents gave the highest number of "important" or "very important" ratings to access to public safety information (72.9%); ability to vote, renew your driver's license or obtain government permits from home (59%); electronic access from home to library resources (56.2%); and electronic access from home to government information (56.2%).
- When asked about the importance of receiving several different commercial services from the cable company in the future, about one-third (33.1%) rated movies on demand as "important" or "very important," followed by telephone service (27.9%) and video conferencing (19.9%). More than one-third (37.5%) of those respondents who believe these services to be important or very important said they were willing to pay extra to receive them.

Community Cable Focus Group Workshops

Seven focus group workshops in Los Gatos were held to provide an overview of the cable franchise renewal process; an explanation of how the current cable system works; and an exploration of how individuals, community groups, government agencies, businesses, and schools can benefit from or use the cable communications system. Approximately 62 people attended the workshops. The workshop constituencies included:

- Local government agencies
- Community and civic organizations
- Schools and educational institutions
- Human service organizations
- Arts, culture, and heritage organizations
- Businesses and business organizations
- Members of the general public

Special emphasis was placed on providing an opportunity for discussion and brainstorming by the attendees. A packet of informative materials, including a questionnaire was distributed to the focus group participants. Below is a summary of the brainstorming discussion and questionnaire results:

Community Focus Group Workshop Session

A significant area of discussion during the brainstorming session involved the use of PEG Access. When participants were asked how they could use PEG Access or the cable system to communicate, dozens of program topics and types were specified. Included among them were business e-commerce, children's programming, distance learning, emergency information, environmental programs, event coverage, fund-raising for nonprofit organizations and community projects, health information, high school plays and events, little league, videoconferencing, and local performing arts. When asked what would make it easier to use PEG Access or the cable system to communicate, three primary categories of need were identified:

January 29, 2004

1. PEG Access Equipment, Facilities and Channels (e.g., ability to go live from locations in Los Gatos; user-friendly, state-of-the-art equipment; new facilities that are accessible all day, evenings, and vacation times)
2. PEG Access Management Structure, Policies and Procedures and Funding (e.g., adequate funding for PEG; full-time staff; grant fund for nonprofits; restructure the nonprofit organization/KCAT bylaws for an independent board)
3. Bandwidth/Infrastructure/System Design (e.g., affordable access to Internet service; capacity for video conferencing; emergency override; I-Net connectivity for fire and police; interactive connectivity to contiguous communities)

Community Focus Group Workshop Questionnaire Responses

The following summarizes the result of the community focus group workshop questionnaire responses:

- Of the high percentages of focus group questionnaire respondents who expressed an interest in receiving certain special services via cable (e.g., two-way video teleconferencing, telephone service), 52% said they would and 37% said they might be willing to pay extra for these services.
- When provided a list of services which could be received through their TV or home computer, the following percentages of focus group survey respondents indicated that obtaining these services was "Important" or "Very Important" to them:
 - * 99% - Access to Library resources (card catalog, magazine articles, etc.)
 - * 98% - Ability to vote, renew drivers' license, obtain govt. permits from home
 - * 93% - Access to government information (meeting agendas, reports, etc.)
 - * 91% - Access to public safety information (e.g., police/fire departments)
- Nearly all of the focus group cable subscribers answered either "Yes" (71%) or "Maybe" (23%) when asked if they had seen or would be interested in seeing local cable TV programs about Los Gatos citizens, organizations, community events, schools, or local government.
- Nearly all (91%) of the focus group subscriber-respondents said they were aware of the access programming on channel 15 (KCAT) or channel 25 (West Valley College). Of this group, 90% said they had watched a program (or programs) on one of these channels, and almost all (94%) of those who had ever watched them said they had tuned in between one and five times during the previous month.

PAGE 6

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

- Local programming topics that focus group subscriber-respondents most often selected as ones they were “Very Interested” or “Interested” in seeing included:
 - * Information regarding public emergencies (100%)
 - * Local public safety information (95%)
 - * Local health and wellness programs (95%)
 - * Events and activities sponsored by the Town (90%)
 - * Programs about issues facing Town government (86%)
 - * Programs about Los Gatos arts, history and culture (86%)
 - * Local business news and information (86%)
 - * Town government meetings (86%)
 - * Programs about Town government services (86%)
- When asked how important it was to have cable TV channels that feature programs about Los Gatos residents, organizations, events, schools, and government, 98% of the focus group survey respondents felt it was “Very Important” (52%) or “Important” (46%).
- Three-fourths (75%) of the focus group participants indicated an interest in learning how to make a program to show on a local cable TV channel, using equipment provided free of charge.

Analysis of Existing PEG Access Resources

An analysis of existing PEG Access resources was conducted through on-site visits to the KCAT public access facility and interviews with KCAT staff. Issues identified included the following:

- The present KCAT facility location is considered not conducive to community participation. It is located on the Los Gatos High School campus, in an isolated, unmarked location. Community use of the facility is also limited to weekday evenings and weekends.
- Many of the existing equipment items appear to be more than 15 years old, well past their useful life.
- KCAT’s annual operating budget is estimated to be \$50,000, nearly all of which is provided by the Town through a yearly grant and contractual agreement for video production services. Currently, KCAT receives no funding from the cable company to purchase equipment or support operational activities.
- Given its low annual operating budget, restricted hours of operation, and small staff, the amount of community involvement with and local programming produced through the KCAT facility is considered to be low for the size of communities similar to Los Gatos.

PAGE 7

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

Other Findings

The consultant also identified several concerns regarding KCAT's existing Board of Directors' structure. Currently, the day to day management of KCAT is directly overseen by the Town as the majority of the KCAT Board members are appointed by the Town Council. According to the consultant, such a Board structure is fraught with legal exposure for the Town due to First Amendment claims with respect to Board decisions relative to program content. The consultant strongly recommends that the Town take necessary steps that would lead to the reestablishment of KCAT as an independent nonprofit PEG Access management entity. Upon Council direction, staff will work with KCAT and the consultant to address this issue concurrent to the renewal process.

Recommended Next Steps

In preparation of the negotiation process, staff will be pursuing the following next steps:

Identification of Renewal Goals and Negotiation Strategy

Based on the information and data collected during the cable television community needs assessment process to date, the consultant will assist staff in the identification of renewal goals to be pursued through negotiations, including the development of a negotiation strategy. The consultant and the Town Attorney will also review and update the Town's cable television ordinance to comply with required state and local laws.

Council Ad Hoc Subcommittee

To provide policy guidance or address unforeseen issues that require a public policy perspective during the negotiation process, staff recommends that Council create an ad hoc cable television franchise renewal subcommittee. Staff, with the assistance of the consultant, would lead the negotiations using policy-related parameters established by the subcommittee. Staff would work with the subcommittee to develop these parameters for negotiations. Upon the completion of negotiations, the ad hoc subcommittee would recommend a draft cable television franchise agreement and ordinance for Council's consideration at a scheduled public hearing.

Extension of Existing Cable Television Franchise Agreement.

The Town's existing cable television franchise agreement expires on March 31, 2004. Staff recommends extending the franchise agreement to allow adequate time to continue the renewal negotiation process. The time period required for the franchise renewal process averages about 18 months, if informal negotiations are successful. A proposed extension of the cable television franchise agreement would be brought forward to Council for its consideration in early March.

PAGE 8

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

Outcomes of the Cable Television Franchise Renewal Process

A successful cable television franchise renewal can generate several opportunities for a community to enhance its public communications infrastructure. Examples potential renewal outcomes could include:

- Substantial cable system upgrades
- Significant improvements in the quality of cable service
- Contributions of television channels and facilities and equipment and operating support for PEG access
- Advanced provider networks capable of supporting high speed internet access
- Video, data, and voice facilities that link schools, libraries, and government buildings to allow institutions to communicate more efficiently internally and with the public

Many of these renewal benefits have been obtained in communities without significantly increasing rates to consumers as only a part of the total renewal franchise requirements are eligible for rate pass-through under Federal Communications Commission (FCC) rules. However, it is important to note that as the negotiation process moves forward, staff and the consultant will continue to evaluate any potential impact on subscriber rates as a result of negotiated franchise provisions and/or benefits. Additional examples of recent cable franchise renewal outcomes are attached (Attachment No. 2).

FISCAL IMPACT:

The FY 2003/04 budget allocation is \$80,000 for the franchise agreement renewal project. However, given the technical and lengthy nature of the renewal process and potential for protracted negotiations, additional funding may be required. As the renewal project progresses, staff will evaluate the need for supplemental funding and address it during the FY 2004-2005 budget process, if necessary.

The Town will continue to collect cable television franchise fees from Comcast, which is limited to a maximum of 5 percent by federal law. During FY 2003/04, the Town collected an estimated \$270,000 in franchise fees from the cable operator. The Town collected the maximum amount allowed by federal law.

CONCLUSION:

The Town has completed the initial identification of community cable-related needs and interests in preparation for renewal negotiations with Comcast. Preparation for negotiations will require the development of renewal goals based on the cable assessment results and a negotiation strategy. It is recommended that Council create a cable television franchise

PAGE 9

MAYOR AND TOWN COUNCIL

SUBJECT: STATUS OF CABLE TELEVISION FRANCHISE RENEWAL ACTIVITIES

January 29, 2004

renewal ad hoc subcommittee to provide staff and the consultant policy guidance or address unforeseen issues that require a public policy perspective during the negotiation process. Staff would lead the negotiations using parameters established by the ad-hoc subcommittee. Upon the completion of negotiations, the ad hoc subcommittee would recommend a draft cable television franchise agreement and/or ordinance for Council's consideration at a scheduled public hearing.

Attachments:

Attachment No. 1: February 19, 2002 Staff Report on Cable Television Franchise Renewal Negotiation Process

Attachment No. 2: Outcomes of Recent Cable Franchise Renewals

Distribution:

George Sampson, KCAT, 20 High School Court, Los Gatos, CA 95030

Dr. Cindy Ranii, Los Gatos-Saratoga Joint Union High School District, 17421 Farley Road West, Los Gatos, CA 95030



MEETING DATE: 2/19/02
ITEM NO. 18

COUNCIL AGENDA REPORT

DATE: February 19, 2002

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA FIGONE, TOWN MANAGER *for D.F.*

SUBJECT: CABLE TELEVISION FRANCHISE RENEWAL NEGOTIATION PROCESS
A. CONSIDER REPORT ON CABLE TELEVISION FRANCHISE RENEWAL NEGOTIATION PROCESS
B. CONSIDER ADOPTING A RESOLUTION AUTHORIZING THE TOWN MANAGER TO ENTER INTO AND EXECUTE A CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING SERVICES WITH MILLER AND VAN EATON.

RECOMMENDATION:

1. Consider report on cable television franchise renewal negotiation process.
2. Consider adopting a resolution authorizing Town Manager to enter into and execute a contract for cable television franchise renewal consulting services with Miller and Van Eaton.

BACKGROUND:

The Los Gatos cable system was originally constructed in 1969, and was comprised of three (3) separate franchises granted by the Town of Los Gatos, the City of Monte Sereno, and the County of Santa Clara. The operator of the Los Gatos cable system was Westinghouse Broadcasting and Cable, Inc. (Group W), a subsidiary of Westinghouse Electric Corporation. In 1983, Group W sold its system to Hearst Cablevision (Hearst). On March 31, 1983, the Town approved the transfer of the franchise from Group W to Hearst, and simultaneously granted an extension of the franchise for ten (10) years from the effective date of the transfer, thereby extending the franchise to March 31, 1993.

In January 1990, Brenmor Cable Partners, L.P. (Brenmor) purchased Hearst. The Town approved the transfer of the franchise from Hearst to Brenmor, and simultaneously granted another ten (10) year extension of the franchise, through March 31, 2003. Brenmor subsequently transferred the system to Tele-Communications Incorporation (TCI), and in 1999, TCI transferred the franchise to

PREPARED BY: JENNY HARUYAMA, ADMINISTRATIVE ANALYST *J. Haruyama*

N:\MGRU\Haruyama\Staff Reports\cabletv.wpd

Reviewed by: *DL* Attorney *SC* Finance Revised: 2/14/02 2:18 pm

Reformatted: 7/14/99

ATTACHMENT 1

PAGE 2

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

AT&T Broadband (AT&T). Because no further extensions were granted by way of these transactions, the Town's cable television franchise agreement with AT&T will expire on March 31, 2003. As a result of the various transfers and extensions, the Town has never conducted cable franchise renewal proceedings. The Town's 2003 cable television renewal process will be the Town's first official cable renewal.

DISCUSSION:

The cable television franchise renewal process presents local government with an opportunity to enhance its public communications infrastructure and to advance the quality of life for its community. The outcome of the renewal process not only helps to identify and meet a community's unique cable-related needs, but can potentially influence and improve its future communication abilities via voice, video and data. The following is a brief summary of the required cable television renewal processes.

Cable Television Franchise Renewal Proceedings

Cable television renewal proceedings can be conducted one of two ways: formally or informally. The *formal renewal process* is initiated either by the cable operator who submits a written notice to the franchising authority requesting the commencement of a formal renewal proceeding, or by the franchise authority who initiates the proceedings on its own. The first stage of the formal renewal process involves the identification of cable-related needs. This process is designed to allow the public and franchising authority an opportunity to identify future cable-related community needs and interests and review the past performance of the cable operator. The ascertainment of these needs can be accomplished through a variety of tools, such as public hearings, surveys, focus groups or interviews.

The second stage of the renewal process involves the submission of a renewal proposal upon the request of the franchise authority or upon the initiative of the cable operator. The franchise authority cannot require the submission of a formal proposal prior to the completion of the ascertainment proceedings. Once the proposal is received by the franchise authority, it must decide to renew or preliminarily deny the proposal within four (4) months.

If the renewal proposal is denied, the cable operator can request administrative proceedings, or the proceedings can begin upon the franchise authority's own initiative. If a franchise authority decides to deny the renewal, it must be based on one (1) of four (4) factors:

- If the cable operator has not complied with the material terms of the franchise and applicable law.
- If the quality of the cable operator's service has not been reasonable in light of the community's needs.

PAGE 3

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

- If the cable operator does not have the financial, legal and technical ability to provide the services, facilities and equipment as set forth in the cable operator's proposal.
- If the cable operator's proposal is not reasonable in meeting the future cable-related community needs and interests.

If the franchise authority denies the renewal, the cable operator must file an appeal in federal or state court within one hundred twenty (120) days of the notice of the decision.

The *informal process*, which is how most franchises are renewed, can be conducted at any time. Under this process, the franchising authority does not lose its ability to deny the proposed renewal. Once a successful franchise renewal has been negotiated, the franchising authority must notify the public and provide an opportunity to comment on the renewal before it is finally granted.

The informal and formal processes can and should work in tandem. Under the informal process, a franchise authority can choose to incorporate all, some or none of the requirements under the formal process. After consulting with a reputable cable television legal firm, staff recommends that the Town proceed with the informal renewal process, which is how most franchises are renewed. This process should include an assessment of the community's needs and an examination of the cable operator's past performance. By taking these steps, the Town will be able to obtain the information it needs to be successful at the negotiating table, and will be in a position to comply with formal proceedings if bargaining fails.

Duration of Cable Television Franchise Renewal Negotiations

Cable television franchise renewal negotiations are highly technical, labor intensive, and require special expertise due to the complex laws that govern the process and the many opportunities to enhance services to the community. Understanding this, the Town provided funding in the FY 2001-2002 Operating Budget to support the upcoming negotiations.

As the Council is aware, during the months of August 2001-November 2001, Town staff explored an opportunity to extend its cable television franchise agreement with AT&T in exchange for a video production system. Unfortunately, after four months of discussion, the Town and AT&T were unable to come to an agreement regarding the terms of the proposed extension. As a result, the Town is now prepared to enter into official cable television franchise renewal negotiations with AT&T.

The cable television franchise renewal process can take between twelve (12) months to three (3) years to complete. However, the average cable television franchise renewal process is eighteen (18) months. Given the Town's time frame to conduct and complete its cable television franchise renewal process, staff, with the assistance of a cable television legal firm, has developed an ambitious time line (Attachment 1) to complete the renewal process within twelve (12) months.

PAGE 4

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

However, it is important to note that due to the lengthy, and sometimes unpredictable nature of the renewal process, it may be necessary to extend the cable television franchise agreement if an agreement has not been reached by the March 31, 2003 expiration date. This is not an uncommon occurrence, and if an extension is warranted, staff will advise Town Council accordingly.

It is important to note that in December 2001, AT&T announced its plan to merge with Comcast Corporation (Comcast). The merger would result in a new company, AT&T Comcast, making it one of the nation's largest broadband services network. AT&T Comcast would serve more than 22 million subscribers. The merger is subject to federal regulatory review by the Securities Exchange Commission (SEC) and the FCC, approval by both companies' shareholders, and other legal conditions. If the merger meets federal regulatory criteria and is approved by AT&T and Comcast shareholders, the merger will require the Town Council's consent as required by the Los Gatos Cable Television Franchise Ordinance. The merger is expected to be complete by the end of 2002, and should not adversely impact the Town's cable television franchise renewal process, although it may be a factor that leads to an extension beyond the March 31, 2003 expiration date.

Town costs associated with the transfer of the franchise will be recouped through the Town's non-refundable \$25,000 transfer application fee required by the Los Gatos Cable Television Franchise Ordinance.

Cable Television Franchise Renewal Opportunities and Limitations

Cable Television Franchise Renewal Opportunities

The cable television franchise renewal process presents a number of opportunities for local government to enhance its existing public infrastructure and plan for future communication needs. Adequate planning and preparation is important for the renewal process as many cable television franchise terms range between ten (10) and fifteen (15) years, although some have been as short as five (5) years.

The renewal process helps municipalities ensure that the existing cable system is upgraded appropriately; require channels to be set aside for public, educational and government access; request support for those channels (studios and equipment); and require that the cable operator provide an institutional network (I-Net), which can serve as a modern telecommunications/communications link for schools, libraries and government. Although the Town currently has an I-Net that connects all of its facilities together, the Town would still explore the opportunity to expand its existing I-Net to schools or other appropriate government institutions.

The cable television franchise renewal process can also help a municipality ensure that all parts of the community have access to cable service, and that any future upgrades are done within a reasonable period of time. Los Gatos is one of few communities served by AT&T that has an

PAGE 5

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

upgraded system which provides cable modem internet service. During the renewal process, staff will endeavor to work with AT&T to ensure future upgrades of Los Gatos system, keeping it technologically viable. In addition, franchise duration terms, customer service standards, channel capacity requirements, franchise fee requirements, and procedures for reviewing cable operator performance can be established during the renewal process.

It is important to underscore that the cable operator cannot "pass through" all of the additional and/or enhanced service requests as a result of the renewal process. Cable operators are only entitled to pass through the increase in its external costs to subscribers, and although some franchise requirements, such as PEG (Public, Educational and Government) access and I-Nets are considered external costs, not all are. All renewal franchise requirements do not necessarily result in rate increases, depending in part on what was required under the prior franchise. In several recent renewals with other cities, for example, operators have agreed that only a small part of the total renewal franchise requirements are eligible for rate pass-through under Federal Communications Commission (FCC) rules.

Cable Television Franchise Renewal Limitations

However, there are some things that a municipality cannot require through the cable television franchise renewal process. Examples of these restrictions include the requirement of specific television programs or type of transmission technologies used by the cable operator. Additionally, franchise authorities cannot mandate service rates or franchise fee percentage requirements, other than what is required by the federal government. The franchise fee is currently 5%. It is anticipated that the Town will receive approximately \$245,000 annually in franchise fee revenue for FY 2002-2003.

Cable Television Franchise Renewal Legal and Consulting Services

Cable Television Franchise Renewal Legal and Consulting Contract

To negotiate and bring forward a comprehensive and effective cable television franchise agreement for Council consideration, the Town will need to retain a law firm that specializes in cable television/telecommunication issues. The Town Manager's Office has identified Miller and Van Eaton as a candidate to handle the Town's cable-related legal and consulting services as described above. Miller and Van Eaton has a depth of expertise representing municipalities on telecommunications issues, including cable television franchise renewals and ordinances, public right-of-way (POW) leases, cellular towers, I-Nets and enforcement matters. Present and past clients of Miller and Van Eaton include the cities of Santa Clara, Mountain View, Campbell, Los Altos, Oakland, Union City, Palo Alto, Alameda and San Jose.

PAGE 6

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

Cable Television Franchise Renewal Contract Services

The types of services required for the cable television franchise renewal process will include a number of tasks such as an assessment of cable-related community needs; a past performance review of the cable operator; a technical review of the cable operator; legal assistance regarding cable television franchise issues; development of a new cable television franchise agreement; I-Net planning if applicable; development of a negotiation strategy and assistance with negotiations; and assistance in preparing an updated cable television ordinance.

One of the most important services required for the cable television franchise renewal process is the assessment of cable-related community needs. The needs assessment lays the foundation for the Town's negotiating strategy, and helps to ensure that the community's needs are addressed by the cable operator. Should the Town find that the cable operator's proposal is not reasonable in meeting the future cable-related community needs and interests, it has legal grounds to deny the cable renewal.

As noted in the attached contract, Miller and Van Eaton will be using the services of The Buske Group to perform a cable-related needs assessment. The Buske Group, with oversight and coordination by Town staff, will identify key organizations and individuals outside of the local government who may be affected by the future design and services of the cable system. Such needs and interests may include potential special uses of the cable system as needed by stakeholders such as businesses, schools, non-profit organizations, and other similar institutions. Telephone surveys, focus groups, and questionnaires will be used to identify the proposed uses of the cable system and cable-related needs of the community. It is important to note that if the stakeholders have limited availability, or are unable to efficiently articulate their needs, the renewal time line may be impacted. However, Miller and Van Eaton, The Buske Group, and staff will make every effort to work with the stakeholders' schedule to help identify their cable-related concerns and needs.

Cable Television Franchise Renewal Contract Cost

Approximately \$100,000 was included the FY 2001-2002 Operating Budget for cable television franchise renewal legal and consultant services. The project cost estimate for the renewal process as outlined in the attached proposal (Attachment 2) is between \$87,000 - \$125,000, and is anticipated not to exceed \$100,000. Additional expenses, including travel, photocopies, telephone calls, and computerized legal research expenses are estimated to be no more than \$5,000. Should unforeseen issues or protracted negotiations increase the cost of the contract, additional funding is available in the Town Manager's Contingency Fund.

PAGE 7

MAYOR AND TOWN COUNCIL

SUBJECT: AUTHORIZE TOWN MANAGER TO ENTER INTO AND EXECUTE
CONTRACT FOR CABLE TELEVISION FRANCHISE RENEWAL CONSULTING
SERVICES

February 19, 2002

FISCAL IMPACT:

Funding in the amount of \$100,000 has been included in the FY 2001-2002 Operating Budget for the cable television franchise renewal process. Funding for additional expenses (travel, telephone, and/or additional legal research) is available through the Town Manager's Contingency Fund, and are estimated not to exceed \$5,000.

If unforeseen issues or protracted negotiations increase the cost of the contract, additional funding is also available through the Town Manager's Contingency Fund.

Attachments

Attachment 1: Proposed Cable Television Franchise Renewal Time Line and Process

Attachment 2: Proposal for Cable Television Franchise Legal and Consulting Services (Miller and Van Eaton)

Attachment 3: Resolution Authorizing the Town Manager to Enter into and Execute a Contract for Cable Television Franchise Renewal Consulting Services with Miller and Van Eaton.

Distribution List

Town Department Heads

George Sampson, KCAT

Outcomes of Recent Cable Franchise Renewals

City/State Cable Company No. of Subscribers	Year Renewed	Rebuild Highlights	Institutional Network	PEG Access Channels	Cable Company Funding for PEG Access Equipment and Facilities	Support for PEG Access Services	
						Source	Amount
<p>Santa Maria & Lompoc, CA</p> <p>Comcast</p> <p>25,000 subscribers</p>	2002	<p>860 MHz fiber/coax rebuild -- to be completed within 24 months.</p> <p>Internet capability.</p> <p>Interconnection with other Comcast systems in North Santa Barbara County and all other systems in Cities.</p>	<p>Comcast to provide I-Net to link public buildings for voice, video & data.</p> <p>I-Net to link Cities' media centers to each other.</p> <p>Comcast to provide all hardware to transmit PEG Access and I-Net signals.</p>	<p>Initial: 2 analog channels.</p> <p>After 24 months: 4 analog channels.</p> <p>Thereafter: up to 7 analog channels.</p> <p>After digital transition, up to 20 digital channels.</p> <p>Channel locations may not change more than once per 5 years, unless due to must-carry requirements.</p>	<p>Initial Grant: \$828,000</p> <p>Annual Grants: \$355,000/year for 12-year franchise term (adjusted each year per local CPI).</p>	Cable Company	<p>Included in funding for equipment and facilities.</p> <p>Free program listings in print and electronic program guides.</p> <p>10 free promotional spot insertions per week.</p> <p>Free annual billstuffer.</p> <p>\$2,000/access channel if re-located.</p>
<p>Oceanside, CA</p> <p>Cox</p> <p>50,000 subscribers</p>	2002	<p>750+ MHz fiber/coax rebuild completed at time of renewal.</p> <p>Internet capability.</p> <p>Fiber links between PEG Access center, headend and 3 sites.</p> <p>Interconnection with other systems in City to exchange PEG Access programming.</p> <p>Interconnection with City of Vista system to exchange Educ. Access programming.</p>	<p>City may use portion of the "Telecom./Technology Grants" to construct an I-Net.</p>	<p>Initial: 3 analog channels.</p> <p>Thereafter: up to 4 analog channels.</p> <p>After digital transition, up to 8 digital PEG Access channels.</p>	<p>"Telecom./Technology Grants" (for PEG Access and I-Net equipment and directly related services):</p> <p>Initial: \$1.4 million</p> <p>After 12 months: \$1.35 million</p> <p>After 24 months: \$1.35 million</p> <p>Ongoing: 35¢ per sub per mo.</p>	<p>Cable Company</p> <p>-----</p> <p>City</p>	<p>Partially included in funding for equipment and facilities.</p> <p>Free PEG Access listings in electronic program guide.</p> <p>Free annual billstuffer.</p> <p>Up to \$10,000/access channel if re-located.</p> <p>-----</p> <p>\$426,000 in 2003 (determined each year by City Council)</p>

Outcomes of Recent Cable Franchise Renewals

City/State Cable Company No. of Subscribers	Year Renewed	Rebuild Highlights	Institutional Network	PEG Access Channels	Cable Company Funding for PEG Access Equipment and Facilities	Support for PEG Access Services	
						Source	Amount
<p>Healdsburg, CA</p> <p>AT&T (now Comcast)</p> <p>3,500 subscribers</p>	2002	<p>750+ MHz fiber/coax rebuild.</p> <p>Internet capability.</p> <p>Interconnection with other systems in City.</p> <p>Interconnection of City's I-Net with the City of Santa Rosa's I-Net within one year.</p>	City to fund, build, own and operate its I-Net.	<p>Initial: 1 analog</p> <p>After one year: 3 analog</p> <p>Thereafter: up to 5 analog</p> <p>After digital transition, up to 20 digital PEG Access channels.</p>	<p>Initial: \$150,000</p> <p>After 12 months: \$100,000</p> <p>Ongoing: 65¢ per sub per mo.</p>	<p>Cable Company</p> <hr/> <p>City</p> <hr/> <p>School District</p>	<p>Included in funding for equipment/facilities.</p> <p>Free program listings in print and electronic program guides.</p> <p>Free annual billstuffer.</p> <p>\$2,000/access channel if re-located.</p> <hr/> <p>Will allocate portion of franchise fees (\$\$\$ to be determined).</p> <hr/> <p>Built new media center for PEG Access use.</p>
<p>Brunswick & Brunswick Hills Township, OH</p> <p>Adelphia</p> <p>10,000 subscribers</p>	2001	860 MHz fiber/coax rebuild.	Yes	<p>Initial: 3 analog</p> <p>After rebuild: 4 analog</p> <p>Thereafter: up to 5 analog</p> <p>After digital transition, up to 20 digital PEG Access channels.</p> <p>Channel locations may not be changed without City consent, unless required by federal law.</p>	<p>Year 1: \$400,000</p> <p>Year 4: \$100,000</p> <p>PEG Access facility renovated and provided rent-free for life of franchise.</p>	<p>Cable Company</p> <hr/> <p>City</p>	<p>\$800,000 litigation settlement fee paid to the City, which will use these funds to support PEG Access and the City's cable administration.</p> <hr/> <p>100% of franchise fees will be used to support PEG Access and the City's cable administration.</p>

Outcomes of Recent Cable Franchise Renewals

City/State Cable Company No. of Subscribers	Year Renewed	Rebuild Highlights	Institutional Network	PEG Access Channels	Cable Company Funding for PEG Access Equipment and Facilities	Support for PEG Access Services	
						Source	Amount
Gilroy/Hollister/ San Juan Bautista, CA Charter 15,000 subscribers	2000	Within 24 months: 750 MHz fiber/coax rebuild. Interconnection with adjacent systems.	Yes	Initial: 1 After rebuild: minimum of 4 Thereafter, up to 7 analog	Initial: \$700,000 Ongoing: \$209,782 or 3% of gross revenues per year, whichever is less.	Cable Company ----- Cities	Included in funding for PEG Access equipment/facilities. Free program listings in print and electronic program guides; free annual billstuffer. ----- Gilroy: 20% of franchise fees Hollister: \$18,800/yr. + 50% of <u>additional</u> franchise fee revenues (compared to FF revenues received in 2000).
Ventura, CA Adelphia, Avenue 27,000 subscribers	1999	750 MHz fiber/coax rebuild. By Jan. 1, 2002: Internet service available. Interconnection with adjacent systems within the City.	Yes	Initial: 1 After 2 Years: 3 analog Thereafter: up to 10 (maximum of 5 analog) Channel locations may not be changed without City consent, unless required by federal law.	Initial: \$500,000 Year 2: \$400,000 Year 3: \$140,000 Ongoing: <u>Adelphia</u> : \$1.04 per sub per mo. <u>Avenue</u> : \$1.20 per sub per mo.	Cable Company ----- City	Included in funding for PEG Access equipment/facilities. ----- Minimum of 20% of franchise fees.

Outcomes of Recent Cable Franchise Renewals

City/State Cable Company No. of Subscribers	Year Renewed	Rebuild Highlights	Institutional Network	PEG Access Channels	Cable Company Funding for PEG Access Equipment and Facilities	Support for PEG Access Services	
						Source	Amount
Monterey, CA TCI (now Comcast) 11,500 subscribers	1998	Initial: digital upgrade (to add 36 video and 10 audio channels). Within 2 Years: (a) fiber/coax rebuild, (b) Internet service available. Interconnection with adjacent systems.	Yes	Initial: 1 After 1 Year: 2 After 2 Years: 4 Thereafter, up to: (a) 6 analog, or (b) 24 digital plus 12 MHz, or (c) 6 HDTV.	Initial: \$800,000 Ongoing: 35¢ per sub per month.	Cable Company	70¢ per sub per month (City may increase this amount.). 30 free promotional spot insertions per month; free video and print program listings; free annual billstuffer. \$2,000/access channel if re-located.
Montgomery Co., MD Prime Cable (now Comcast) 200,000 subscribers	1998	750 MHz fiber/coax rebuild.	Yes	13 analog Up to 10% of digital spectrum.	Year 1: \$2,000,000 Year 2: \$1,200,000 Thereafter: \$200,000 per year, adjusted for CPI.	Cable Company	\$1,500,000 per year, adjusted for CPI.

Outcomes of Recent Cable Franchise Renewals

City/State Cable Company No. of Subscribers	Year Renewed	Rebuild Highlights	Institutional Network	PEG Access Channels	Cable Company Funding for PEG Access Equipment and Facilities	Support for PEG Access Services	
						Source	Amount
Tucson, AZ TCL (now Cox) 100,000 subscribers	1997	550 MHz fiber/coax rebuild. Internet capability.	Yes	Initial: 7 (until upgrade is completed). Thereafter: up to 9 analog or 20 digital, plus data capacity.	40¢ per sub per month.	Cable Company	2% of gross revenues for support of PEG Access and I-Net. 75 free promotional spot insertions per month; free video and print program listings. Up to \$5,000/access channel if re-located.
Mountain View, CA InterMedia (now Comcast) 16,000 subscribers	1996	750 MHz fiber/coax rebuild.	Yes	4-6 analog Up to 12 analog and digital.	\$2.6 million over 10 years (includes funds for I-Net equip- ment and PEG Access services).	Cable Company ----- City	Included in funding for PEG Access equipment/facilities. ----- 70% of franchise fees.
Cincinnati, OH Time-Warner 60,000 subscribers	1996	750 MHz fiber/coax rebuild.	Yes	9 channels	(Included in support for Public Access services.)	Cable Company ----- City	96¢ per sub per month (for Public Access). ----- Annual allocation for Government Access made during City budget process.
Santa Rosa, CA Cable One (now Comcast) 50,000 subscribers	1995	550 MHz fiber/coax rebuild. Within 30 months: Internet service available. Interconnection with adjacent systems.	Yes	Initial: 2 After 2 Years: 4 Thereafter: up to 7.	Initial: \$1,200,000 Replacement: \$1,300,000	Cable Company ----- City	\$150,000/year ----- \$350,000/year (37% of franchise fees).

