



Legislation Text

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Department of Information Technology

Reference: Comcast Franchise Agreement

To: Mayor Richard N. McLean and Members of City Council

Through: Philip Rodriguez, City Manager

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PURPOSE

Renewal of the Comcast Franchise Agreement and the Colorado Communications and Utility Alliance (CCUA) Customer Service Standards.

BACKGROUND

On December 20, 2016 by Resolution 2016-138, the City extended its 2001 cable franchise agreement with Comcast in order to allow for sufficient time to complete a negotiation process for a new franchise. The City Attorney's Office, Staff, outside counsel, and Comcast have completed a recommended renewal Franchise Agreement with Comcast for City Council's consideration.

Approval or denial of a cable franchise renewal requires an ordinance of the City and an associated public hearing. It is important to note that federal law presumes that an incumbent cable operator has a right to a renewal of its franchise if it proposes and has the legal, financial, and technical capability to comply with a franchise that meets the future cable-related needs of the community, taking into account the cost of meeting those needs.

Review criteria by which a renewal of a cable franchise may be denied are set forth in federal law and include:

1. The Cable Operator does not have the financial, technical or legal qualifications to comply with the terms of a franchise that meets the future cable-related needs of the community, taking into account the costs of meeting those needs;
2. The Cable Operator will not provide adequate public, educational and governmental access channel capacity, facilities or financial support;
3. The Cable Operator's proposed terms do not comply with applicable federal, state and local laws and regulations, including but not limited to local customer service standards or relevant existing contractual obligations of the City; or
4. The Cable Operator has a record of violations of its obligations under its existing franchise with the City.

The City and Comcast have conducted what are considered "informal" negotiations under federal law. If Council decides to deny this proposed franchise renewal agreement the City and Comcast would then commence "formal" negotiations

under the federal Cable Act. After following the more stringent regulatory requirements in the federal statutes, Council would have another opportunity to accept or reject Comcast's proposed franchise.

The recommended Franchise Agreement (attached) is based largely on the Colorado Communications and Utility Alliance ("CCUA") model agreement, which has been the basis for negotiations between Comcast and other Colorado municipalities. The City of Brighton has been a long standing member of CCUA.

1. If approved, this would grant a ten (10) year Cable Franchise Agreement to Comcast.
2. **Discussion:** Franchise agreements allow private companies to make use of public-rights-of-way for private purposes. Components of franchise agreements include items such as terms, franchise fees, buildout requirements, among other important topics. A Cable Operator pays franchise fees as compensation for the use of public property - similar to paying a lease for City rights-of-way. The franchise fee is equivalent to 5% of gross revenues derived from the operation of the cable system within the City. Franchise fees may be passed through directly to subscribers by the Cable Operator.
3. The recommended Franchise Renewal Agreement with Comcast is attached. Key provisions of the proposed agreement include:
 - a. Term: The franchise would run from 2017 for ten (10) years until 2026.
 - b. Franchise Fees: In return for the non-exclusive right to use portions of the public rights- of-way, Comcast will remit franchise fees in the amount of 5% of gross revenues to the City. This is the same franchise fee as in the previous Comcast franchise with the City.
 - c. PEG Fees: Collection of PEG fees to support the City's PEG operations.
 - d. HD PEG Channel: The Franchise allows the City the ability to activate an HD channel for its PEG operation 120 days from the execution of the franchise.
 - e. Support for Web Streaming of PEG Content: The Franchise allows for a one-time grant of \$12,500 to buy a server and related equipment to stream PEG content. Comcast will also provide the City one "gratis" business class broadband connection to support the streaming operation.
 - f. Compliance with federal, state and local laws: Comcast is required to fully comply with all equal employment or non-discrimination provisions and requirements of federal, state, and local laws.
 - g. Rate Discrimination: Comcast is required to establish rates without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the City. Rates must be established in a non-discriminatory manner in accordance with federal, state, and local laws.

CUSTOMER SERVICE STANDARDS

The City has the authority under its police powers to adopt 'customer service standards' related to the Comcast franchise which can be adopted and enforced without Comcast's consent. However, Comcast has the legal authority to pass through to subscribers the costs of complying with local regulations. Notwithstanding the fact that the City can adopt these standards without Comcast's consent, the general practice is to discuss and negotiate the standards during the negotiations of the Franchise, in the hope of reaching consensus. To that end, the City and Comcast agreed that the model Customer Service Standards adopted by the CCUA be used.

REPEAL OF MUNICIPAL CODE ARTICLE 5-28

When the Comcast Franchise was approved in 2001, certain provisions were added to the Municipal Code (Article 5-28) to address the franchise. Those provisions are not essentially archaic and no longer needed. Therefore, the City Council will be asked to approve an ordinance repealing Article 5-28.

PROPOSED APPROVAL PROCESS/TIMELINE

The Colorado statutes and the Federal law have specific requirements regarding the approval of a cable franchise, most importantly addressing publication of a notice and requiring a public hearing. To that end, Staff is recommending the following process/timeline:

- 9/27/19 draft of the Cable Franchise Agreement and Customer Service Standards to the City Council Study Session for review and comment
- 9/27, 10/4 and 10/11 publish the NOTICE in the Blade
- 10/17 - introduce Franchise ordinance on first reading
 - introduce the Customer Service Standards
 - Introduce ordinance to repeal Article 5-28
- 10/25 and 11/1 ordinances published in the Blade
- 11/21 - second/final reading and public hearing on the Franchise ordinance
 - second/final reading and public hearing on ordinance to repeal Article 5-28
 - resolution approving Customer Service Standards
- 11/29 ordinances published in the Blade
- 12/4 - per Charter, ordinances are effective 5 days after publication

FINANCIAL IMPACT

There is no direct fiscal cost associated with the Franchise Agreement. The exact amount of the Franchise fee revenues the City receives from Comcast are dependent upon gross revenues.

STAFF RECOMMENDATION

Staff recommends approval, granting a cable television franchise to Comcast.

OPTIONS FOR COUNCIL CONSIDERATION

Approve or Deny the ordinance approving the Franchise Agreement with Comcast.

Approve or Deny the resolution adopting the Customer Service Standards from CCUA.

Approve or Deny the ordinance repealing Article 5-28 of the Brighton Municipal Code.

ATTACHMENTS

Brighton Comcast Franchise (Final Draft 9-8-17).pdf

CCUA Customer Service Standards.pdf