



STAFF REPORT

UPDATE ON STATUS OF NEGOTIATIONS WITH COMCAST, AND CONSIDERATION OF RESOLUTION GRANTING COMCAST OF CALIFORNIA IX, INC. A FRANCHISE EXTENSION TO JUNE 30, 2004

April 27, 2004

Mayor and City Council of the City of Belmont

Summary

On March 23, 2004, Council directed Staff to provide an update on the status of negotiations with Comcast, in light of the additional request for a franchise extension.

It is my recommendation that the City Council adopt the attached Resolution, which will extend the cable television franchise agreement with Comcast, to allow additional time for negotiations.

Background and Discussion

On February 12, 1991, the Belmont City Council approved a Cable TV Franchise Agreement with TCI for a period of 12 years. Although negotiations have been ongoing for a franchise renewal agreement, proposed terms for a new agreement were not agreed upon prior to the expiration date of the Franchise Agreement. On December 9, 2003, the City Council adopted a resolution granting an extension to Comcast to operate the cable TV system in the City of Belmont until March 31, 2004. On March 23, 2004, Council requested an update from SAMCAT legal counsel as to the status of negotiations and legal ramifications of extending or not extending the franchise agreement any further.

In negotiation for renewal, Belmont has worked with its partners in SAMCAT on a group franchise renewal process. This process has included a technical audit, legal review and community needs assessment of Cable TV services and needs in Belmont.

Negotiating the franchise renewal with the seven other SAMCAT agencies is beneficial to Belmont since it enables members to share the cost of hiring contract legal and technical assistance at a fraction of the full cost. The City and Comcast pursuant to 47 U.S.C. §546(h), are conducting franchise renewal negotiations informally in an attempt to reach a mutually

acceptable franchise agreement. This avoids the lengthy and cumbersome “formal” process required under the code.

The seven other agencies, Belmont and Comcast are interested in continuing informal discussions and negotiations regarding franchise renewal and desire to further extend the current franchise term. The process has been moving along but it has taken longer than expected due to the earlier need to review and ultimately come to a negotiated settlement on the recent AT&T/Comcast merger and transfer of operations, the complexity of establishing a comprehensive community needs assessment and the need to coordinate a negotiating strategy, once the needs were assessed.

Additional Cable TV Franchise Extension

Each of the eight SAMCAT member agencies currently in franchise negotiations with Comcast has prepared a needs assessment which addresses unique local needs and interests with respect to PEG access programming, interconnection, institutional services and related matters. Rather than attempt to incorporate these unique issues into eight (8) different documents, Brian Grogan, Special Counsel to SAMCAT, focused on creating a Model Franchise with provisions common to all 8 agencies. On behalf of the 8 agencies, Mr. Grogan submitted to Comcast a draft Model Franchise dated November 19, 2003. Brian Grogan is of the opinion that absent an affirmative denial of an extension, the franchise payment obligations and conditions will continue. The extension will act as a formal extension and avoid an ambiguity as to the status of the franchise. If the franchise is not formally extended, the obligations will continue, subject to termination by either Comcast or The City. With the extension, neither party will be able to terminate without cause.

Comcast has been reviewing the initial proposal from the eight SAMCAT members, which resulted in informal telephone conferences and an initial face to face meeting on April 7, 2004. From that meeting, a negotiation schedule was established, involving a subcommittee of SAMCAT members, Special Counsel Brian Grogan and Legal Counsel Gregory J. Rubens and Comcast. Comcast is to provide its written comments to the subcommittee on or before April 27, 2004. Thereafter, two telephone conferences are set for May 6 and May 13, 2004. After additional comments a revised draft, including discussion of the particular needs assessments will be further negotiated at a meeting on May 20, 2004. Negotiations will likely continue if agreement is not reached in May 2004.

A proposed City Council resolution is attached which would grant another franchise extension allowing additional time for continuing franchise negotiations. The attached resolution was developed by Gregory J. Rubens, the SAMCAT Legal Counsel.

Fiscal Impact

Comcast will continue to operate per the terms of the original Franchise Agreement, including the payment of a 5% franchise fee during the renewal negotiation period. Also, franchise obligations, such as the Belmont Community Channel space (cable channel 27) and Peninsula TV (cable channel 26) will continue uninterrupted.

Recommendation

City Council approval of the additional extension to Comcast until June 30, 2004.

Alternatives

Contact Special Counsel Brian Grogan for further reporting after the May negotiations, before formally extending.

Attachments

1. Summary of SAMCAT Cable Television Franchise Renewal Process
2. Resolution

Respectfully submitted,

Gregory J. Rubens
SAMCAT Legal Counsel

SUMMARY OF SAMCAT CABLE TELEVISION FRANCHISE RENEWAL PROCESS

<u>Date</u>	<u>Description</u>
March 21, 2003	Moss & Barnett completed the franchise fee desk review and issued its report.
April 21, 2003	Brian Grogan met with the SAMCAT agencies to discuss the needs assessment and draft franchise document.
May-July 2003	Finalize draft franchise document.
July 3, 2003	Moss & Barnett submitted a Model Franchise to Comcast and requested a written response no later than July 31, 2003.
August–September 2003	Work on tailoring each agency draft franchise document.
October/November 2003	Moss & Barnett gathered approval from all 8 agencies to submit needs assessment and draft franchises to Comcast.
November 19, 2003	Moss & Barnett submitted the SAMCAT Needs Assessment, including a draft franchise for each agency to Comcast asking Comcast to provide a written response on or before January 5, 2004.
December 31, 2003	Brian Grogan contacted the negotiation subcommittee to schedule a conference call to discuss negotiation strategies with Comcast.
January 12, 2004	Conference call was held with the negotiation subcommittee.
January 20, 2004	Brian Moura emailed Kathi Noe regarding Comcast's response to SAMCAT's franchise renewal proposal.
January 22, 2004	Kathi Noe emailed Brian Moura to say she only had a partial response from the legal folks at Comcast headquarters. Their target date for a reply was January 15, but she said that will not be met now.
January 22, 2004	BTG sent a letter to Kathi Noe asking when SAMCAT could expect Comcast's response.
January 29, 2004	Kathi Noe informed Brian Moura of the following: <ol style="list-style-type: none">1) Kathi Noe and John Aragon from Comcast will represent the company in the negotiation talks2) Comcast has had to reschedule the company conference call on the proposal to 2/2/04, but would expect to provide a reply by 2/10/043) Comcast would like to talk about how the process will work4) Comcast has questions about how all of the points in each draft franchise can be addressed given that each agency has some

<u>Date</u>	<u>Description</u>
	unique points
February 3, 2004	Brian Grogan emailed Kathi Noe proposing a phone call to cover some of the basic issues so that SAMCAT can come prepared to the first face-to-face meeting.
February 17, 2004	Conference call with Brian Grogan, Kathi Noe and John Aragon of Comcast.
February 19, 2004	Brian Grogan forwarded a memo to negotiation subcommittee describing above-mentioned conference call which included proposed face-to-face meeting dates of March 16 or 17, 2004. Terri Hammer emailed Kathi Noe to schedule and confirm the face-to-face meeting in San Carlos on Tuesday, March 16, 2004 starting at 9 AM. Kathi Noe emailed Terri Hammer stating that she and John just found out about a mandatory meeting in Denver the week of March 14 th . She proposed meeting on April 6 or 7 and said that John Aragon is out of the country for the rest of the month.
February 20, 2004	Terri Hammer emailed Kathi Noe asking if Comcast could meet prior to March 14 th .
February 24, 2004	Terri Hammer emailed Kathi Noe asking if she had to wait until John was back in the country to discuss meeting prior to March 14 th . Kathi Noe responded that she left messages for John and hoped to hear from him today.
March 1, 2004	Terri Hammer emailed Kathi Noe regarding a meeting date for SAMCAT franchise renewal.
April 7, 2004	Initial fact to face meeting with Comcast representatives to establish procedure and meeting schedule for informal negotiation process

~ END OF MEMORANDUM ~

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
GRANTING COMCAST OF CALIFORNIA IX, INC. A FRANCHISE EXTENSION
TO JUNE 30, 2004**

WHEREAS, on or about February 12, 1991, the City of Belmont, California (“City”) granted a Cable Television Franchise (“Franchise”) to TCI Cablevision of California, Inc., thereafter providing services as AT&T Broadband (“AT&T”).

WHEREAS, pursuant to Section 47 U.S.C. §546(a) AT&T provided notification to the City of AT&T’s intent to seek renewal of the Franchise under 47 U.S.C. §546(a-g).

WHEREAS, pursuant to Section 47 U.S.C. § (a) the City and AT&T properly commenced franchise renewal proceedings.

WHEREAS, the City adopted Resolution No. 9263 on June 25, 2002 approving the change of control of AT&T to Comcast Corporation.

WHEREAS, the Franchise is currently held by Comcast of California IX, Inc. (“Comcast”).

WHEREAS, the City adopted Resolution No.9359 on February 11, 2003 extending the term of the Franchise until August 30, 2003.

WHEREAS, Comcast executed said Resolution No. 9359 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City adopted Resolution No.9461 on August 31, 2003 extending the term of the Franchise until December 31, 2003.

WHEREAS, Comcast executed said Resolution No. 9461 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City adopted Resolution No.9494 on December 31, 2003 extending the term of the Franchise until March 31, 2004.

WHEREAS, Comcast executed said Resolution No. 9494 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City adopted Resolution No.9517 on March 23, 2004 extending the term of the Franchise until April 30, 2004.

WHEREAS, Comcast executed said Resolution No. 9517 and agreed to continue complying with the Franchise, as amended by the Resolution.

WHEREAS, the City and Comcast pursuant to 47 U.S.C. §546(h), are conducting franchise renewal negotiations informally in an attempt to reach a mutually acceptable franchise agreement.

WHEREAS, the City and Comcast are interested in continuing informal discussions and negotiations regarding franchise renewal and desire to further extend the current franchise term from April 30, 2004 to June 30, 2004.

WHEREAS, both the City and Comcast desire to expressly reserve all of their respective rights under state and federal law.

WHEREAS, the City and Comcast can re-enter the formal renewal process pursuant to 47 U.S.C. §546(a-g) at any time upon written notice to the other party.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Belmont, California hereby resolve as follows:

1. Pursuant to Section 2.3 of the Franchise, the Franchise is hereby amended by extending the term of the Franchise from April 30, 2004 through and including June 30, 2004.

2. Except as specifically modified hereby, the Franchise shall remain in full force and effect.

3. This Resolution shall become effective upon the occurrence of both of the following conditions: (1) The Resolution being passed and adopted by the City Council of the City of Belmont and (2) Comcast's acceptance of this Resolution and the Franchise for the term specified in paragraph (1) above, provided Comcast accepts and agrees to each and every term of this Resolution and the Franchise within fourteen (14) days from the date this Resolution is passed and adopted.

Adopted by the City Council of _____, California, this ___ day of April, 2004.

CITY OF _____, CALIFORNIA

ATTEST:

By: _____

City Clerk

Its: _____

CERTIFICATION

I, _____, City _____ of the City of _____, California, the custodian of its records, do hereby certify the above is a true and exact copy of a Resolution passed, adopted and approved by the City Council of said City on April _____, 2004.

DATED: April _____, 2004

By: _____

Its: _____

ACCEPTANCE

Comcast of California IX, Inc., ("Comcast"), hereby acknowledges the City of _____, California Resolution No. _____ ("Resolution"), attached hereto and referenced in the Resolution and hereby accepts each and every term, provisions and recital of the

Resolution and agrees to be bound by the terms and provisions of the Franchise in accordance with the Resolution.

DATED: _____, 2004

COMCAST OF CALIFORNIA IX, INC.

By: _____

Its: _____

SWORN TO BEFORE ME this
____ day of _____, 2004

NOTARY PUBLIC