



STAFF REPORT

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AUTHORIZING CITY MANAGER TO EXECUTE 5 YEAR EXTENSION OF CONSTRUCTION DELAY AGREEMENT WITH RCN OF CALIFORNIA FOR FAILURE TO CONSTRUCT CABLE TV SYSTEM IN BELMONT

Mayor and City Council of the City of Belmont

Summary

The proposed second amendment to the Cable System Franchise with RCN would provide the company with a second 5 year extension for its construction requirements under the original franchise document. This amendment is due to the inability of RCN to meet the current construction schedule. In exchange for this second extension, the company would agree to the additional terms with the City of Belmont, defined within the proposed Second Amendment as detailed below. Staff recommends Council approve the attached resolution approving a 5 year extension to RCN.

Background and Discussion

In November 2000, the City Council approved a Cable TV franchise agreement with RCN Corporation to provide Cable TV services to the residents of the City of Belmont. Under the terms of the franchise, RCN needed to construct the first group of 10 nodes by April 25, 2002. Due to the downturn in the economy and stock market, RCN was unable to meet this requirement.

To address this issue, Belmont and two other cities facing the same situation (San Carlos and Millbrae) developed an agreement with RCN which is known as the First Amendment to the Franchise Agreement with RCN. The key provisions of that agreement are that RCN provided each City with a \$50,000 cash deposit in lieu of the letter of credit provided for in each franchise. For each year that RCN fails to start construction, each City can withdraw funds from the \$50,000 cash deposit. The settlement also provides for additional action if RCN fails to start construction on the Cable TV system.

After executing the settlement, the City of Belmont received its \$50,000 payments and those funds were placed in a deferred revenue account (101-3913). In each of the last three years (2002, 2003 and 2004), the City has transferred \$10,000 from this deposit account and placed it in the general fund.

Proposed Second Amendment to RCN Cable System Franchise

Earlier this year, representatives of RCN indicated to the City that they planned to enter into a packaged bankruptcy proceeding. As part of that proceeding, the company wished to further amend its Cable System Franchise with the City of Belmont as well as San Carlos and Millbrae.

1. At the end of the term of the First Amendment to the Cable System Franchise, RCN would provide to the City an additional cash payment of \$50,000. The City would draw \$10,000 per year from this payment until either a) significant cable system construction occurred or b) the end of the term of the second amendment.
2. If the construction of the Cable System is not completed by June 20, 2007, the remaining term of the Franchise will be reduced by one month for each month after June 20, 2007 that the Cable System has not been completed. This has the potential to move up the expiration date of the RCN franchise with Belmont from December 28, 2011 to June 28, 2009.
3. RCN agrees to provide a Multi-Jurisdictional Fiber Network (MJF) to the cities of Belmont, Millbrae, San Carlos and Redwood City. This network will also provide connections to San Mateo County (full SONET connection) and the City of San Bruno (fiber only connection). Depending on the outcome of negotiations with other agencies, the MJF may also be included in similar franchise amendments between RCN and the cities of Burlingame, San Mateo and Daly City.

The fiber network (MJF) will consist of 2 strands of optical fiber, lateral connections from the RCN fiber along El Camino Real to each City Hall location and SONET terminal and activation equipment at each participating City and at the County along with a fiber only connection to San Bruno. The SONET equipment at each site will include an OC-12 card for 100 mb/sec Ethernet service and a DS-1 voice service card. It will be made available to the participating agencies for a 25-year period for \$1 per year.

A major benefit to the City's MJF network is the ability to transmit data between police agencies along the peninsula. Citywide examples of use of this system could be the transmission of live programming through PenTV, training of fire and police personnel, video conferencing throughout multiple cities.

4. RCN will provide 2 additional strands of dark fiber following the same path as the MJF network above for possible use in the future as a Homeland Security and/or Emergency Communications network. The 2 strands of dark fiber will be made available to the participating agencies for a 25-year period for \$1 per year.

Providing Belmont with a Emergency Communications network would enable the City to not be totally dependent on the public or cellular telephone system which could be vulnerable systems should there be a local, state or national emergency.

5. The City agrees not to use RCN's delay in construction as a criteria to deny renewal of the Cable System Franchise or consideration of an Open Video System (OVS) Agreement upon expiration of this agreement.

Fiscal Impact

Approval of the Second Amendment to the Cable System Franchise with RCN has the potential of adding \$50,000 in additional fine revenue to the City budget. These funds can be used to continue to enhance the audio/visual capabilities for Council Chambers or other citywide technology priorities.

There may be some maintenance costs associated with the City's participation in the Multi-Jurisdictional Fiber Network between the cities of Belmont, Millbrae, Redwood City, San Carlos and San Mateo County. However, staff feels the value of this multi-agency fiber optic network far outweighs any nominal maintenance costs we would incur.

Recommendation

Staff recommends that the City Council authorize the City Manager to execute the Second Amendment to the Cable System Franchise between the City of Belmont and RCN.

Alternatives

1. Refer matter back to staff for more information.
2. Decline to adopt the resolution

Attachments

1. Resolution

Respectfully submitted,

Valerie Harnish
Information Services Manager

Daniel Rich
Interim City Manager

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT
AUTHORIZING INTERIM CITY MANAGER TO EXECUTE 5 YEAR EXTENSION OF
CONSTRUCTION DELAY AGREEMENT WITH RCN OF CALIFORNIA FOR
FAILURE TO CONSTRUCT CABLE TV SYSTEM IN BELMONT**

WHEREAS, RCN currently has a franchise to construct and operate its system in Belmont; and,

WHEREAS, RCN has informed the City that it will not meet the construction schedule contained in the first amendment of the Franchise Agreement; and,

WHEREAS, RCN has proposed an extended construction schedule; and,

WHEREAS, the City of Belmont, in exchange for the added consideration offered by RCN, agrees to the extended construction schedule; and,

WHEREAS, it is in the best interest of the City to extend the Franchise Agreement; and,

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Belmont hereby authorizes and directed the Interim City Manager to execute said agreement for a Second Amendment to the RCN Franchise Agreement,

NOW, THEREFORE, BE IT BE FURTHER RESOLVED, that the Franchise Agreement be bound by conditions set forth in the Second Amendment, and the Fine Revenues to be set aside for enhanced audio visual capabilities to Council Chambers or other citywide technology priorities.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on September 28, 2004 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

APPROVED:

CLERK of the City of Belmont

MAYOR of the City of Belmont

