



Staff Report

RESOLUTION ADOPTING NON-EXCLUSIVE CABLE FRANCHISE AGREEMENT WITH COMCAST OF CALIFORNIA IX, INC.

Honorable Mayor and Council Members:

Summary

The City of Belmont, along with seven (7) other SAMCAT agencies, has been in negotiations with Comcast for a successor cable franchise agreement since before the expiration of the previous agreement with TCI Cablevision (subsequently transferred to AT&T Broadband, then to Comcast) in October 2003. After nearly three (3) years of negotiations, the City staff and Comcast have reached an agreement on the terms of a successor cable franchise agreement.

The proposed non-exclusive cable franchise agreement is attached to this staff report. The agreement allows Comcast to operate its cable system in Belmont, and to use the City's rights of way in providing those services to the residents and businesses in Belmont. As compensation for the use of our rights of way, the City shall receive 5% of gross revenues generated by its cable TV operations from Comcast. The City will also receive:

- PEG capital grants for totaling close to \$431,661 over the life of the agreement of which nearly 83% will be received within the first five (5) years of the agreement.
- Construction of an institutional network to connect various City, county, and public school facilities for video, voice and data communications (construction and equipment costs valued at \$373,076) within a period from the date of agreement not to exceed four (4) years.
- The ability to use up to four (4) PEG channels to meet the community's needs for public, educational, and/or government access
- Reimbursement for all legal and consulting costs associated with the franchise renewal process.

Comcast reserves the right under Federal law to pass through the costs associated with this agreement on a pro-rata basis based upon the number of subscribers from year-to-year. Comcast has agreed that the pass-through in the first year starting January 1, 2007 will not exceed 55

cents per subscriber per month. After that time, Comcast has the right to change that monthly rate based on the number of subscribers at that time. Changes were also made to the financial security required in the event Comcast is found in default of the agreement. In addition, customer service provisions were strengthened to the extent allowed by Federal law.

Given the value of compensation received as part of the renewal, the City has tentatively agreed to a term of fifteen (15) years. However, given the nature of current federal legislation, Comcast and the City have agreed to a clause that indicates that if federal or state legislation strips local cities of the ability to franchise cable or open video service providers, the franchise agreement will be terminated early, but at a period that is no shorter than eight (8) years. Nearly 83% of PEG capital grants, and 100% of the I-Net and other funding, will have been received by the City at that time.

Background & Discussion

The City joined forces with seven (7) other SAMCAT agencies¹ in 2002 to commence franchise renewal negotiations with the incumbent cable operator at that time – AT&T Broadband. The agencies represent close to 78,000 cable subscribers based on 2004 data. The agencies hired Moss & Barnett, LLC, to take the role as lead negotiator. Four (4) of the eight agencies represented the others at the negotiating table: Brisbane, San Carlos, San Mateo, and Foster City.

A Community Needs Ascertainment (Survey) study was conducted at that time, which included phone surveys and community-based focus groups representing residential, business, educational, and local government users. A technical review of AT&T's cable plant was conducted, as well as a legal review of existing franchise agreement in conjunction with current federal and state law.

Negotiations continued as Comcast Corporation took over AT&T Broadband's operations in 2003.

In June 2005, the cities and Comcast reached a tentative agreement in relation to the financial terms and conditions of a franchise agreement. Since that time, legal counsel for the SAMCAT agencies and Comcast met to work out final language that represented the deal negotiated at the table. The resulting documents are attached to this staff report and include:

- Non-Exclusive Cable Franchise Agreement – the base document for the agreement between the City and Comcast, including supporting exhibits.

¹ The agencies that took part in this renewal process were: Belmont, Brisbane, Millbrae, Redwood City, San Carlos, San Mateo, San Mateo County, and Foster City.

- Institutional Network Agreement – spells forth the details with respect to construction, implementation, and maintenance of the I-Net provided by Comcast as part of the master franchise agreement (included as Exhibit F to the master agreement).
- Side Letter – captures various elements that we mutually agreed to incorporate into a side letter by reference in the master franchise agreement: PEG channel re-location cost reimbursement, PEG channel carriage on basic cable service tier, technical grant to cover the cities' legal consulting costs for the renewal, and reimbursement for any future cable transfers.

Towards the conclusion of the negotiations with Comcast, a national trend has been occurring whereby national and state legislators throughout the country have been considering legislation that would create national or statewide master franchise agreements – in essence, stripping away local franchising with cable and open video services operators. This trend has cloaked the franchise negotiations by creating an incentive for the cities to complete the deal with Comcast and seek reasonable protections in the agreement to the extent that national or California law would preclude or override this franchise agreement.

Fiscal Impact

The total financial package across the eight (8) agencies totals \$7.7 million. Comcast reserves the right under federal law to pass-through these costs to its subscribers, as evaluated on an annual basis, over the term of the agreement. Over a 15 year period, the total package equates to an estimated 55 cents per subscriber per month. Comcast has indicated that they will begin passing these costs through to subscribers effective January 1, 2007 as a separate line item on the bill. The average cable bill, based upon industry surveys and informal surveys staff conducted in the surrounding area, is approximately \$55 per month. This pass-through represents about 1% of the average cable subscriber's total bill. What the subscriber gets is local coverage of news, events, and issues that affect San Mateo County, and each city individually, through its government access channels and Peninsula TV. The subscriber also gets the ability to receive live, accessible information from the County Emergency Services team, and each individual city's emergency operations center, as a method of communicating with residents during a disaster event. In addition, there will be over 86 sites throughout the County that will be interconnected to allow for events / meetings to be aired live over local government access channels or PenTV (e.g., live coverage of local events; simultaneous town hall meetings could be held throughout the County and broadcast on one countywide program on PenTV; studio talk shows from PenTV studios in San Carlos could be broadcast live to any city). The public will receive valuable information and programming over the next several years.

It is important to understand that these costs are being assessed on Comcast as compensation for using our rights of way, not being charged directly to the subscribers by the cities. It is Comcast's decision whether or not to pass these costs onto subscribers, not dissimilar to how they pass on costs to their subscribers for other programming from national networks.

The total package was distributed on a pro-rata basis based on the number of subscribers. Belmont had a subscriber base of just over 8000 subscribers as of 2004. The total number of subscribers for the 8 agencies was close to 78,000. Belmont's portion of the total financial package represents nearly 10%, or \$804,737, represented as follows:

Institutional Network Construction Costs ²	
Belmont sites ³	\$268,040
Countywide feeds via PenTV	4,749
Edge Switching Equipment Technical Grant ⁴	<u>100,287</u>
<i>Subtotal – I-NET construction credits</i>	373,076
PEG Capital Grants	
Peninsula TV	
<i>Subtotal – PEG Capital Grants</i>	431,661
<i>Grand Total Financial Package</i>	<u>\$ 804,737</u>

Beyond the financial package, there were several other key issues that were addressed as part of the negotiations with Comcast. Those issues, and an overview of the process, have been discussed in the form of a memo from Moss & Barnett, LLC, by Brian Grogan, who was our lead negotiator and legal consultant on this project. This memo is attached to this Staff Report. The Information Technology Advisory Committee in the past has reviewed the deal points associated with this agreement and provided advisory input on issues that should be covered in the agreement. ITAC has expressed some reservations about the 15-year term of this agreement, but otherwise has expressed support for the financial terms of this deal. Staff is recommending the 15-year term based upon several factors:

- The financial package in this deal, which we receive the bulk of in the first 5 years of the agreement, is significant and unprecedented in the Bay Area.
- Comcast has the right to pass these costs through to their subscribers – a shorter period would yield a much higher per-month pass through, something that is not in Comcast's interests, nor in the cities' political interests.

² The I-Net will allow for entities to share video, voice and data from the various sites connected. Comcast has agreed to 86 sites throughout the eight (8) agencies. This gives the County the potential to share services as they pertain to data or voice applications, emergency communications, and the ability to "go live" throughout the County from anyone of those sites on Peninsula TV or on the local government access channels.

³ 9 sites were identified for Belmont locations: City Hall (existing, will be the "hub" for all sites)

⁴ This allows the I-Net to function and transmit video, voice and data between sites.

- A 15-year deal, given the political and regulatory environment, would lock Comcast into strict technical, customer service, and financial security terms. Any potential “take aways” of local control in federal legislation is negated, to the extent that such legislation does not automatically override existing franchise agreements.
- Several communities in California have renewed franchise agreements with Comcast in the past 12 months – of which nearly all have been 15-year terms.

Public Contact

Posting of City Council agenda.

Recommendation

Staff recommends that the City Council adopt the attached resolution approving the agreement with Comcast of California, IX for this Non-exclusive Franchise Agreement, along with the proposed Side Letter and Institutional Network Agreement.

Mr. Grogan will be available via teleconference during the Council meeting to address the Council on the negotiations process, the deal points, and matters of law as it relates to this agreement. Staff will also be available to clarify the deal points and answer Council’s questions regarding this franchise agreement.

Alternatives

1. Request further information.

Attachments

- A. Memo from Brian Grogan, Moss & Barnett LLC, “Summary of Cable Television Franchise Renewal” dated October 25, 2005
- B. Cable System Franchise Agreement between City of Belmont and Comcast of California IX, Inc., including all exhibits
- C. Resolution Adopting Non-Exclusive Cable Franchise Agreement with Comcast of California IX, Inc.
- D. Draft Side Letter to the Franchise Agreement between City of Belmont and Comcast of California IX, Inc.

Respectfully submitted,

Valerie Harnish
Information Services Manager

Jack Crist
Interim City Manager

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT,
CALIFORNIA AUTHORIZING EXECUTION OF A NON-EXCLUSIVE CABLE
SYSTEM FRANCHISE AGREEMENT WITH COMCAST OF CALIFORNIA IX, INC.**

WHEREAS, on or about _____, _____, the City of Belmont, California (“City”) granted a Cable Television Franchise (“Franchise”) to TCI Cablevision of _____, 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 Franchise is currently held by Comcast of California IX, Inc. (“Comcast”).

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

**NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY
OF BELMONT, CALIFORNIA:**

1. The City of Belmont, California (“City”), pursuant to local, state and federal law, is authorized to grant one (1) or more nonexclusive franchises to construct, operate, maintain, and reconstruct cable systems within the City.
2. The City has reached an agreement with Comcast to renew its Franchise for the construction, operation, and maintenance of a cable system in the City.
3. The adoption of the Franchise is, in the judgment of the City Council, in the best interests of the City and its residents.
4. By this Resolution, the City hereby approves the execution of the Franchise granting a cable system franchise to Comcast for the purposes and under the conditions defined therein and authorized the Mayor to execute the Franchise on behalf of the City.

* * * * *

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 November 22, 2005 by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont