

CITY COUNCIL COMMUNICATION



MEETING DATE: July 9, 2024

ITEM NUMBER: 9.{{item.number}}

SECOND READING: July 23, 2024

{{customfields.ResoOrdNumber}}

TYPE OF ITEM: Consent

PRESENTED BY:

Sandi Seader, City Manager's Office, Sandra.Seader@longmontcolorado.gov

SUBJECT/AGENDA TITLE: A Bill For An Ordinance Approving The Grant Of A Cable Franchise To Comcast Colorado IX, LLC, Approving A Cable Franchise Agreement Between Comcast Colorado IX, LLC, And The City Of Longmont, Colorado, And For An Ordinance Amending Chapter 6.26 Of The Longmont Municipal Code On Cable Television Franchises

EXECUTIVE SUMMARY: The City's ten-year agreement with Comcast for the use of the City's rights-of-way became effective in 2014 and was set to expire in May of 2024. The agreement provides for a franchise fee in exchange for the use of City rights-of-way and also provides for a fee for Public, Educational and Government (PEG) programming in the City. We have asked Longmont Public Media (LPM) for their feedback as part of this process. After negotiations with Comcast, the attached agreement is presented for Council consideration.

COUNCIL OPTIONS:

1. Approve the agreement
2. Request amendment of the agreement
3. Do not approve the agreement

RECOMMENDED OPTIONS: Approve the agreement

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION:

Franchise fees are projected at \$560,000 and PEG fees are projected at \$80,000 for 2025.

BACKGROUND AND ISSUE ANALYSIS: A cable franchise is a contract between the cable operator and the local government that the cable operator serves. In consideration for a cable operator's right to locate its facilities in the public rights of way, the City requires the cable operator to enter into a franchise agreement. While Federal law requires a company providing cable service to have a franchise in order to do so, it also places limitations on what issues can be addressed in that franchise and the kinds of consideration that the City can require.

The franchise addresses only the provision of cable (video) service within the City. The City is preempted under state law from requiring a franchise or from collecting franchise fees or other consideration from Comcast or other entities related to the provision of internet and telephone services. Moreover, under federal law, the City may only collect franchise fees on the portion of Comcast's business that is derived from cable television.

Under federal law, a cable operator is entitled to a franchise renewal if it offers and has the legal, technical, and financial ability to comply with a franchise agreement that meets the future cable-related needs of the community. Since Comcast clearly has the legal, technical, and financial capability to comply with almost any franchise condition, the foundational question becomes whether Comcast will agree to a franchise document that will meet the City's future cable-related needs. Most franchise agreements focus on key issues such as public, educational, and governmental ("PEG") access channels, City local control of its rights-of-ways, cable operator compliance with various safety codes, and other cable operator compliance obligations with the franchise, particularly its financial obligations.

The biggest change to the agreement as compared to the previous franchise is that staff is presenting an ordinance that would remove the franchise provisions from the municipal code, because its inclusion there is just a remnant of a past practice that we have been advised is no longer the general practice among Colorado municipalities, and because our municipal code already adequately addresses the use of city rights of way. Other than that, there are no significant changes to the agreement, but many small changes to bring our agreement in alignment with the Colorado Communications and Utility Alliance (CCUA) model standards. A summary of changes is below.

Changes that benefit the City

- Changes language to strengthen our ability to make operational changes with respect to our rights of way, consistent with the City's police powers under the agreement
- Updates the definition of "rights-of-way" in which cable facilities may be installed to clarify that certain public property including parks, trails, and open space are not included in the definition of rights-of-way, unless there is a preexisting public utility easement located on the subject property.
- Provides additional reimbursable funding for an annual audit based on increased costs (from \$5,000 to \$7,500)
- Adds "Colorado sports" as a general category requirement of programming (though specific channels are outside our authority to require)
- Changes the Public, Educational, and Government (PEG) programming fee calculations – changing the PEG fee from \$0.75 per customer to a percentage. Staff looked at the PEG fees over the past 5 years, averaged 0.70% of the total gross revenue so PEG fees will be calculated based on gross revenue starting with this contract

- Changes to the administrative process that was required before a default or termination could be declared, provides 30 days to cure any issues
- Changes the letter of credit amount in the agreement to match the customer service standards
- The city will continue to receive channel capacity for four channels, including three standard-definition (SD) and one high-definition (HD) channel. Under the new franchise, we have negotiated an option for the City to convert one of the SD channels to HD upon 120 days' notice to Comcast at no additional charge.

Changes that benefit Comcast

- Changes the payment schedule from 30 to 45 days
- Changes in FCC franchise fee regulations allow the cable providers to charge for non-monetary benefits to the City or deduct from the franchise fees. At present, they have agreed to continue to provide the services at no cost, but if they want to charge, they have to give the City 120 days to decide if we want to continue the service.
- Removes free service for schools (the school district no longer uses this service)
- Changes insurance requirements for consistency
- Removes local employment efforts to maintain consistency

ATTACHMENTS:

- Att 1 - Ordinance
- Att 2 - Agreement