

PRE-COUNCIL MINUTES
RE: CABLE TELEVISION FRANCHISE AGREEMENT
NOVEMBER 7, 2005

The City Council met at 9:50 a.m. Council members present were Chair Ken Svoboda, Jon Camp, Jonathan Cook (arrived at 10:10), Robin Eschliman, Dan Marvin, Annette McRoy, Patte Newman. Others in attendance were Steve Huggenberger, Assistant City Attorney; Vince Mejer, City Purchasing Agent; Dana Roper, City Attorney; Don Herz, City Finance Director; Mark Bowen, Mayor's Office; Diane Gonzolas; Citizen Information Center; Beth Scarborough and Ann Shrewsbury, Time Warner.

Steve Huggenberger addressed the Council regarding the Cable Television Franchise Agreement. Attached is a summary.

Newman requested Huggenberger address the dissenting opinions of the Cable Advisory Board, in particular Stuart Long. Huggenberger addressed two issues that Mr. Long had involving digital conversion and management of public access. Newman then inquired about Time Warner contributing towards a new access studio. Huggenberger responded that there is now an education government grant which will be used to establish an educational access studio facility. Camp expressed his concern about the 41¢ per subscriber per month fee increase. Cook responded that the money will pay for facilities and equipment needed to provide programming.

Huggenberger then summarized the annual and total values of the 2005 Franchise Agreement. Attached is a table showing those estimated values.

The meeting adjourned at 10:15 a.m.

Minutes by City Law Department/skb

CABLE TELEVISION FRANCHISE AGREEMENT SUMMARY

Section 1. Definition sections

Standard definitions with the exception of the Gross Revenues definition. The determination of gross revenues will ~~not~~^{now} be guided by GAAP principles (Generally Accepted Accounting Principles) but with specific inclusions. Part of this definition was agreed to in conjunction with the settlement of the audit case that is presently underway in federal court.

Section 2. Grant of Agreement

- 15 year nonexclusive franchise
- Section 2.6 significant. Other cable franchises required to have same burden taken as a whole as this agreement.
 - Same service area, same contribution to city fiber, same PEG
 - No discrimination against Time Warner if LES gets into the business
 - City retains police power abilities
- Obligation to offer service to every person within the City

Section 3. Franchise Fee

- Franchise Fee will continue to be 5% of gross revenue
- Audits can occur no more than once every 3 yrs. If audit identifies an amount owed greater than 4%, TW pays for audit

Section 4. Administration and Evaluation

- Performance evaluations may be conducted annually by City or City's designee

Section 5. Financial and Insurance Requirements

- Insurance requirements updated
- Letter of Credit raised to \$100,000
- Method for calling on letter changed slightly

Section 6. Customer Service Standards

- Continuation of using the Federal Customer Service Standards

Section 7. Reports

- Access to TW records still maintained
- TW to provide semi-annual reports on 7.3 (B)
- Annual reports of plant miles, home passed, basic subscribers
- Previous requirement of annually audited financial statements discontinued

Section 8. Programming

- Continued requirement for broad categories of programming on the system
- Continued free basic service to government offices, schools and libraries

Section 9. PEG channels

- Continuation of the existing 5 access channels, plus Fire Department training channel
- Agreement for triggers for additional channels
 - Educational access after 10 years if fully programmed
 - Government access anytime after fully programmed
 - Triggers 9.5, 9.6, 9.7
- All digital conversion alternative for access channels, 12 MHz band instead of various channel requirements with triggers

- 9.9 Public Access, \$600,000 support for capital needs
- Access Advisory Group for capital expenditures recommendations
- Government/Educational Grants
 - Up front payment of 1.75 million
 - Monthly sub fee for access support, .41/sub/month
 - Initially imposed on directly billed basic customers
 - Attempt to incorporate bulk accounts over time
 - Up to 5 cents of access fee may be used for operating costs
 - True up accounting over multiple yr period
- City allocates grant between Education and Government
- City Fiber grant of \$750,000
 - Must be used for extension of City fiber system or electronics associated with that system
- None of access payments are to be construed as franchise fees

Section 10. General Right of way use

Generally same requirements for cable as are in place for other ROW users, 5.17 LMC

Section 11. System Design

- 860 MHz system, two way activated
- Regular evaluation of need for new programming or new technology. Evaluation can occur by TW or by City through annual evaluations

Section 12. Technical Standards

- FCC standards
- City has right to examine tests results or order other tests

Section 13. Service Extension

- Exempting downtown from service obligation for competitors
- Density requirement for extension of service, 25 homes per mile
- Service outside of density limit on cost sharing basis

Section 14. Standby Power

City to have override capability for local emergency alerts

Section 15. Termination of Agreement

-Uncured Breach of any material provision allows City to terminate agreement

Section 16. Abandonment

If TW abandons system, City has variety of options to continue service.

Section 17. Transfer

-Transfers to affiliated entities allowed without City approval

-Transferee has to agree to franchise and ordinance obligations

Section 18. Miscellaneous

-TW expressly reserves the ability to pass through any costs to customers. Cable companies already have this right under federal law.

-As part of overall settlement of variety of issues with TW, (audit, lawsuit, gross revenues definition, consultant fee issues, franchise, ordinance) City agreed TW would not have to pay application fee or consultant costs associated with this renewal.

2005 Franchise agmt values

City of Lincoln - Time Warner Cable

	Annual	Franchise total
PEG support fee	320,000	4,797,000
PEG channels, Currently 5 channels with triggers for more 1 analog channel- \$75,000	375,000	5,625,000
Public access support	600,000	600,000
Fiber contribution	750,000	750,000
Training channel	75,000	1,125,000
Training channel Modems-50	3000	45,000
Free govt & school bldg service Currently about 100 gov bldg School 60 bldg Average basic - \$40	76,800	1,152,000
Produce Council and County Bd show 2 pp/3 hrs/twice a week	12,480	187,200
Franchise fee 5% of gross	3,000,000	45,000,000
	Without Franchise Fee	14,281,200
	With Franchise Fee	59,281,200