

Staff Report

June 9, 2004

TO: City Council

FROM: Jerilyn Cochran, Social Services Administrator

SUBJECT: Cable Update, Franchise Extension

Recommendations

1. Approve the attached resolution extending the existing cable franchise with Comcast, Inc. until September 30, 2004 or until a new cable franchise is approved, whichever comes first. (see Attachment A).
2. Approve the attached resolution (see Attachment B) to approve an amendment to the current Davis Joint Unified School District Contract for Educational Cable Services to extend cash and in-kind contributions for educational cable access to Davis Joint Unified School District (DJUSD) until December 31, 2004.
3. Approve the attached resolution (see Attachment C) to approve an amendment to the current Davis Community Television Contract for Public Cable Services to extend cash contributions for public cable access to Davis Community Television until December 31, 2004.
4. Assign the City/School 2 x 2 the task of recommending allocation of franchise revenues and other funding for the new cable franchise. It is envisioned that the 2 x 2 Committee would also include 2 representatives of Davis Community Television in their deliberations about the use of the revenue.

Fiscal Impact

Under the extended terms of the Franchise, the city would continue to receive 5 percent of gross cable revenues and DCTV would continue to receive a pass-through of \$75,000 annually for equipment and facilities.

Extending the contract between the City and DCTV extends to provision of sixty percent of the cable franchise revenues to DCTV. For the first half of 2004-2005 sixty percent of the franchise revenue will be approximately \$200,000. Thus, DCTV revenue in that period would be approximately \$120,000.

The contract extension will be based on half of the annual city cash contribution of \$10,000 to DJUSD. In addition, the city will contribute in-kind services, primarily staff time, equipment and

resources to broadcast DJUSD School Board meetings. The costs of the contract will be paid from the Cable fund and are in the current 2004-2005 city budget. During the period of the contract extension, DJUSD will receive approximately fifteen percent of the annual in-kind and cash contributions.

Background and Analysis

The City of Davis has managed the right-of-way for cable company access since the advent of cable services in Davis in the late 1970s. The Cable Communications Policy Act of 1984 granted local governments the right and responsibility to govern access to their right of way for cabling systems.

In Davis, the access is currently authorized via Ordinance No. 1483, the "Davis Cable Communications Franchise Ordinance" (1988) which articulates the terms by which right-of-way is granted in Davis. A current cable franchise for this right-of-way is held by Comcast, Inc. a company formed by a recent merger between AT&T Broadband and Comcast. Ordinance No. 1482 specifically lists the terms of the current cable franchise, including the termination of the agreement on June 30, 2004, per a one month extension of the ordinance approved by Council in May 2004. The current agreement provides annual revenues of approximately 5 percent of franchise fees and in-lieu fees for operation of the city cable program, including studio and network equipment.

In 2001, AT&T/Comcast requested that the city consider renewal of the current franchise through an informal renewal process. It is had been hoped that through the informal approach to cable franchise negotiations a new franchise could be approved by the city without complicated legal hearing processes. Since 2001, a Telecommunications Task Force has been meeting at least twice a month, a new cable ordinance has been approved, a draft needs assessment of community cable-related needs has been completed, and franchise negotiations have proceeded with mixed results.

Staff and the Telecommunication Task Force will report to Council on July 6, 2004 on the specific terms offered by Comcast resulting from the informal negotiations process. At that time, recommendations related to formal negotiations will also be presented, as needed. Even if a formal process is recommended, an extension of the current agreement is in the interest of the city in order to collect revenues appropriately.

Because the negotiations are taking longer than originally estimated it is necessary to extend the current agreement for a short period of time. A resolution extending the term of Ordinance 1482 through September 30, 2004 is attached (see Attachment A.) Without an extension, Comcast is not technically liable to meet their commitments under the existing ordinance.

Extensions for Davis Joint Unified School District and Davis Community Television

The City of Davis grants right-of-way to the local cable provider (Comcast) for infrastructure to enable cable service in Davis. In exchange, the city receives compensation in the form of cash,

equipment and in-kind services from Comcast. This exchange is enumerated in the cable franchise agreement.

As part of the current cable franchise agreement, public, educational and government (PEG) channels are available for use locally. In Davis, the City manages the government channel, Davis Community Television (DCTV) manages the public channel and Davis Joint Unified School District (DJUSD) manages the educational channel. For the past eight years, an agreement and subsequent extensions have been in place to provide part of the cable revenue to DCTV to provide public access and programming and to DJUSD to provide educational access and programming.

If it is possible for the franchise negotiations draw to a conclusion soon, a new agreement for public programming and educational services will also be proposed for Council approval.

Council agreed in May 2004 to extend support of the public access channel and the educational channel. This proposed contract extension will continue the city commitment to December 31, 2004. The contract extension will essentially allow for continuation of current public and educational programming until a new franchise agreement can be developed. While the extension of the Comcast agreement is only through September 30, 2004, the DJUSD and DCTV contracts are recommended for extension until December 31, 2004 for two primary reasons. First, six months is adequate for the programs to budget and plan into the new fiscal year. Second, the extensions allow for preparation of new DCTV and DJUSD contracts when and if the new Comcast Franchise is approved.

Allocation of Franchise Revenue

The Telecommunications Task Force has recommended that the city, schools and DCTV attempt to determine the best allocation of revenue anticipated under a new cable franchise. The Task Force recommends that the City/Schools 2 x 2 Committee, with participation by two representatives of DCTV, attempt to make a recommendation about the use of cable revenue.

The Task Force envisions that the 2 x2 committee would receive a report about the stated community needs, review of the types of broadcast and media programs offered by the public, educational and government stations, possibly review proposals from the DCTV, the School District and the City in the use of the funds and make a recommendation about allocations under the new franchise.

In some ways, the assignment of this task may be premature, as the cable franchise negotiations are not complete. The Telecommunications Task Force nonetheless recommends proceeding with allocation of the potential revenue to save time once the negotiations are complete and to agree on the core principles which will guide the allocation of revenues in the future. It is envisioned that the 2 x 2 committee would report back to the Council before the end of the DCTV and DJUSD Contract extension agreements.

The school district is also forwarding the Task Force recommendation to the School Board, and DCTV, as evidenced in discussions with the Telecommunications Task Force, has agreed to the proposed process.

RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING ORDINANCE 1482, THE CABLE TELEVISION FRANCHISE THROUGH
SEPTEMBER 30, 2004**

WHEREAS, the provision of cable services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, provision of cable services necessitates an agreement for use of city right-of-way between the City of Davis and all cable providers; and

WHEREAS, the City has an existing cable franchise with Comcast Corporation; and

WHEREAS, the Comcast has requested that the city cooperate in informal negotiations to renew the franchise with the City of Davis; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive cable services under the current franchise terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, Ordinance No. 1482, the current cable franchise, should be amended as follows:

Section 1. Extension of the term of the agreement through September 30, 2004.

The City hereby agrees and consents to extend the current cable franchise, Ordinance No. 1482, through September 30, 2004 or until a new cable franchise is approved by the City Council and Comcast, whichever occurs first, subject to the terms and conditions set forth below.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in the Franchise Agreement:

A. All terms and conditions of the cable franchise shall remain in full force and effect during the extension period.

B. The extension shall have no adverse effect on Franchisee's compliance, nor shall the extension be grounds for any change or modification in the remaining terms, conditions and obligations of the franchise. Further, the extension of the franchise agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of the cable system.

C. The City's agreement to extend the Franchise Agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the franchise, whether those rights arose before or after the change in control to Comcast and the fact that such deficiencies may have existed prior to the change in control shall not be a defense against correction of the deficiencies or non-compliance.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk

RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING THE AGREEMENT FOR EDUCATIONAL TELEVISION SERVICES
BETWEEN DAVIS JOINT UNIFIED SCHOOL DISTRICT AND THE CITY OF DAVIS
THROUGH DECEMBER 31, 2004**

WHEREAS, the provision of educational television services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, the City Council of the city of Davis has approved support for educational television services for the 2004-2005 budget year; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive public television services terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, the current agreement for public television services between the City of Davis and Davis Joint Unified School District should be amended as follows:

Section 1. Extension of the term of the agreement through December 31, 2004.

The City hereby agrees and consents to extend the term of the current agreement for educational television services through December 31, 2004 subject to the terms and conditions set forth below.

The City Council authorizes the City Manager or his designee to execute the contract amendment and any other documents related to the current agreement, as needed.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in current agreement:

Cable Franchise Ordinance Extension Resolution

A. All terms and conditions of the current agreement shall remain in full force and effect during the extension period.

B. The extension shall not be grounds for any change or modification in the remaining terms, conditions and obligations of the agreement. Further, the extension of the agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of educational television services.

C. The City's agreement to extend the agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the agreement.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk

RESOLUTION NO. _____, SERIES 2004

**AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
EXTENDING THE AGREEMENT FOR PUBLIC TELEVISION SERVICES BETWEEN
DAVIS COMMUNITY TELEVISION AND THE CITY OF DAVIS
THROUGH DECEMBER 31, 2004**

WHEREAS, the provision of public television services are a critical service for many Davis residents to residents and the public at large; and

WHEREAS, the City Council of the city of Davis has approved support for public television services for the 2004-2005 budget year; and

WHEREAS, the City is currently negotiating to renew the cable services franchise; and

WHEREAS, the negotiations will not be completed before the expiration of the current franchise; and

WHEREAS, it is in the common interest of Davis cable customers to continue to receive public television services terms until a new franchise is approved;

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVIS, the current agreement for public television services between the City of Davis and Davis Community Television should be amended as follows:

Section 1. Extension of the term of the agreement through December 31, 2004.

The City hereby agrees and consents to extend the term of the current agreement for public television services through December 31, 2004 subject to the terms and conditions set forth below.

Section 2. Terms and Conditions of Extension of the Agreement.

The City's consent to the extension, described above, is subject to, and conditioned upon, the following terms and conditions, all of which are hereby incorporated in current agreement:

A. All terms and conditions of the current agreement shall remain in full force and effect during the extension period.

Public Television Agreement Extension Resolution

B. The extension shall not be grounds for any change or modification in the remaining terms, conditions and obligations of the agreement. Further, the extension of the agreement will not affect, diminish, impair or supercede the binding nature of the existing ordinances, resolutions and agreements applicable to operation of public television services.

C. The City's agreement to extend the agreement, as set forth herein shall not be construed, in any manner whatsoever, to constitute a waiver or release of any rights the City may have under the agreement.

PASSED AND ADOPTED by the City Council of the City of Davis on this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

SIGNED:

Ruth Uy Asmundson, Mayor

ATTEST:

Bette Racki, City Clerk