



REQUEST FOR COUNCIL ACTION

Title: Request for Council Action – Ordinance Bill No. 17 for 2023, Ordinance 1323, Granting Franchise Renewal to Comcast for Cable Service

Preferred Agenda: December 12, 2023

Submitted By: Robert Snyder, City Attorney

Reviewed By: Kelcey Young, City Manager

Type of Action: Resolution ____ Motion X Roll Call ____ Other ____

Relevant Code/Policy: Sweet Home Ordinance 1228 (Prior Franchise Agreement)

Towards Council Goal: Effective and efficient government, viable and sustainable essential services

Attachments: Prior Ordinance with proposed revisions shown
Proposed Ordinance No. 17 for 2023, Ordinance 1323

Purpose of this RCA:

To present for City Council consideration of an Ordinance that grants Comcast of Oregon II, Inc. a renewal franchise for the construction and operation of a cable system in the City of Sweet Home.

Background/Context:

The prior Franchise Agreement with Comcast was executed in 2012 under Ordinance 1228. In July of 2022, the League of Oregon Cities (LOC) drafted a cable franchise Ordinance. City staff and Comcast have reviewed this Ordinance and included provisions that were not directly addressed in the former franchise agreement into the proposed ordinance which changes will be explained below along with the other changes because relevant laws changed, or the parties agreed that the proposed changes work for the parties better than the old language. Notable changes are explained as follows:

1. 1.1H Gross Revenues – FCC user fee and Franchise fee and PEG fees (public, education, and government) amounts – These fees are now included in Gross Revenues and not part of the excluded items. Also, in this subsection is added the new provision on bundling services and cable’s part thereof similar to the LOC provision on bundling.
2. 1.1I Person – Has a new definition that is much like the old definition covering the same organizations.
3. 2.3 Competitive Equity – “Grantee’s request” is made possessive with the added apostrophe.

4. 2.4 Term – Section 8.6 referred to therein is changed to 9.6 to match its current placement in the proposed ordinance. Also, Section 8 is changed to Section 9 in the remainder of the proposed ordinance.

5. 3.3 Relocation at Request of the Franchising Authority – Notice therein is changed from 5 days to 10 days. This change was acceptable to staff. Additionally, the word “underground” was added in the last sentence to explain that Comcast can abandon its underground property but not its above-ground property.

6. 3.5 Reservation of Franchising Authority – Public Ways – The term “affiliate” was removed therefrom so that the City if required to pay for relocation in certain circumstances (competition services) will not have to pay to relocate an affiliate of Comcast. (Note that in Section 3.3, Comcast shall pay for relocations requested by the City.)

7. 3.11 Cable Service to Public Buildings – This is a total change in wording to reflect the current law. A cable company is not required to provide free service to public buildings but if they do, it is to be at their cost which should be a substantial reduction from the normal price.

8. 3.14 System Standards – The last sentence was added to state explicitly that the City of Sweet Home will be provided programming at least equal to that which is provided to other cities in the general area.

9. 4.2 Filing of Rates and Charges – This section has additional language to reflect that the City as a fee recipient for the use of its right-of-way does not and never has regulated cable rates or charges, which are set by State or Federal law.

10. 5.2 Maps – Terms such as “strand” and “trench” have been omitted since they are no longer used. The time for providing needed maps to the city was reduced from 60 days to 30 days. The addition of “and shall not be left behind” notes that the maps are confidential and proprietary documents and are to be guarded by the City when it uses them.

11. 7.6 Force Majeure – A new clause (second sentence) was added to set forth examples of excused non-compliance conditions and events such as a pandemic.

12. 8.1 Access Channels – This is a new provision for access to a PEG (Public, Educational, and Governmental Access) channel in that Comcast will provide one if certain criteria are met as set forth therein. The prior agreement provided that Comcast would provide a PEG channel. However, with the City’s own website and social media, the likelihood that the City will need or use an Access PEG channel is small.

13. 9.3 Notice – The use of electronic communication for notices can be used when both parties agree, which is set forth in the last sentence of the subsection. Also, the names and addresses of the parties have been updated.

14. 9.5 Severability – A new provision (last sentence) has been added to provide that if the law changes during the term of this agreement, then the parties agree that the agreement will be modified to reflect those changes.

The current proposed agreement will be for a term of 10 years. Over the last 10 years, the City of Sweet Home has collected approximately \$1.2 million in revenue as a result of the agreement with Comcast.

The first and second readings of this Ordinance were held at the City Council meeting on November 28, 2023.

The Challenge/Problem:

Without renewal of this Franchise Agreement, the City risks losing valuable Comcast services to the City of Sweet Home, its residents, and its business owners as well as a revenue source from the agreed upon franchise fees.

Stakeholders:

- City of Sweet Home Citizens – Citizens of Sweet Home will continue to have Comcast as an option for service.
- City of Sweet Home Employers – Employers of Sweet Home will continue to have Comcast an option for service.
- City of Sweet Home Staff – Staff will provide for permitting Comcast cable services to utilize City right-of-way in accordance with the Franchise Agreement and collect associated revenues.
- City of Sweet Home City Council – City Council will continue to provide service options to the City of Sweet Home and maintain a current business relationship.

Issues and Financial Impacts:

The financial terms of the proposed Ordinance are set by law that provides for a maximum franchise fee of 5% of gross revenues for cable services; that 5% is the amount set forth in the current and proposed Ordinances.

Elements of a Stable Solution:

The Franchise Agreement set forth in the proposed Ordinance provides a basis for the City and Comcast to allow Comcast to use the City’s rights-of-way to provide services in an orderly and functional manner.

Options:

1. Do Nothing – Failure to approve a new Franchise Agreement will result in loss of Comcast services through City rights-of-way and loss of associated franchise fees to the City.
2. Motion to conduct a third and final reading of the proposed Ordinance as presented – Approve the Franchise Agreement as presented and adopt Ordinance No. 17 for 2023, Ordinance 1323.
3. Motion to conduct a third reading of the proposed Ordinance with changes – The City Council may make changes to the proposed Ordinance.
4. Direct Staff to draft other or different provisions and terms for the agreement.

Recommendation:

Option 2 is the recommended option: Approve the Franchise Agreement as presented and adopt Ordinance No. 17 for 2023, Ordinance 1323.