

Agenda Report

TO: CITY COUNCIL
FROM: CITY MANAGER
SUBJECT: CABLE TV FRANCHISE RENEWAL: PUBLIC HEARING

RECOMMENDATION

It is recommended that the City Council conduct a public hearing to receive input regarding the proposed cable television franchise renewal with Charter Communications.

EXECUTIVE SUMMARY

This public hearing is for City Council to receive public input on the performance of Charter Communications, the City's sole cable television provider. The current franchise will expire on January 12, 1999.

This public hearing has been preceded by two public hearings before the Business Enterprise Committee of the City Council. The first public hearing, conducted on June 10, 1996, concerned the cable television franchisee's performance under the current agreement. The second public hearing helped to establish the needs for the future cable TV franchise. The ability of Charter to meet the existing and future cable related needs of the community, along with a review of the legal, financial and technical qualifications of Charter, will be the basis for negotiations between city staff and Charter Cable staff in developing a franchise proposal by Charter Communications. This proposal must be presented to the City Council so that due administrative processes, as required by Federal law, and appeals if necessary, can take place. Staff will return to Council in the very near future with recommendations based on the public input and Council direction for future franchise negotiation discussions.

BACKGROUND

On June 10, 1996, the BEC conducted the first public hearing in accordance with Federal guidelines for determining the basis of either accepting or rejecting a cable TV franchise holder's application for a renewal of its franchise. The main purpose of that public hearing was to assess the franchisee's compliance with the existing agreement. It was determined that Charter had performed adequately under most provisions of the agreement with the exception of key elements regarding telecommunications services and infrastructure, these services and infrastructure more commonly referred to as I-NET or Institutional Network.

It was also determined that there were some minor performance defects in financial reporting, and other administrative matters relating to revenue tracking, public works, and service-related issues. In addition, public speakers were heard; letters received on the subject were reviewed by the committee. Subsequent to the hearing, all public comments relating to service delivery or other complaints were responded to by City and Charter Cable staff. The second public hearing began the process of formulating the City's needs in its coming franchise.

THE NEEDS ASSESSMENT

In late 1982 the Pasadena City Board of Directors determined that the next cable franchise it authorized would be the most important cable TV franchise it had to consider. Consequently the Board authorized a major enterprise in community outreach, needs assessment and planning. A Blue ribbon committee was appointed and met for over 18 months, conducting research, holding hearings, taking testimony, and working with consultants.

The City's previous work establishes an excellent base-line for priorities: 1) Services and safety; 2) Revenues; 3) Institutional Network (I-Net) (see discussion below under NEW REGULATORY POLICY); and 4) Access. Several standard needs emerged from this process, among them ample cable channels, high service standards, variety of programming, and several revenue streams to the City. But many areas of need were somewhat unique, responding to what was felt to be the special conditions of Pasadena.

Services and safety, while naturally at the top of the list, are routine and require the application of existing standards, where applicable; for example, City's can no longer require specific types of programming but can assure a sufficient variety. Revenues are critical but must be dealt with carefully to accommodate new Federal and State laws specifying "level playing field" standards for telecommunications providers and limiting taxing authority.

At the top of the 1983 list was a variety of specific needs relating to cable

TV access, or what has come to be known as PEG (for Public, Educational, and Government) access. All these needs were accumulated in one major package agreed to by the City, PUSD and PCC. and memorialized in a Memorandum of Understanding which featured a non-profit corporation to deliver all the services corresponding to these needs. These needs were designated as equipment, services, grants and annual revenues, and a large number of channels (16 originally) allocated for access purposes.

Equally important but less well articulated in terms of actual performance standards was telecommunications of a non-video type. All these needs were accumulated under the package designated as Institutional Network. The engineering standards were not as well defined then as were those for television production, but the services sought were considered feasible from an engineering perspective and attractive from a market perspective.

It now appears that the engineering feasibility may have been premature and that too few people then really understood the market potential, but in any case, after study and discussion staff concludes that the original projections are now right in line with current market conditions and the technology to deliver the envisioned services. Therefore it appears that the original needs assessment should still be the basis for considering the City's ongoing needs in the cable TV area.

NEW REGULATORY POLICY: LEVEL PLAYING HELD AND TAX LIMITS

The Telecommunications Act of 1996 requires that local governments provide a level playing field for all telecommunications providers. The way our current telecommunications ordinance is framed and the current structure of our utility users tax does not provide for the desired equitable Television vs. Telecommunications market place. Specifically, the City's own regulatory environment may be considered at some point, by either player type, to be discriminatory against Cable TV, or a variety of telecommunications providers, all of whom want access to the City's rights-of-way, buildings, lamp standards, roads, trees, poles, etc. At any point, under present City ordinances, a more or less justified claim could be made that the City is not maintaining a "level" playing field.

This topic is important at this point because the City's needs assessment in terms of revenue and telecommunications services and infrastructure may be affected by the changing regulatory environment and by subsequent legal battles over definitions and rights. Charter Communications has already made a significant investment to enter the telecommunications marketplace and competitors are preparing to enter the cable TV market.

Presently, Federal law permits local jurisdictions to maintain their franchise authority over cable TV but severely limits this authority over telecommunications. While the technologies underlying these services have now merged so that from an infrastructure point of view there is no discernible

difference, from a regulatory perspective a strict division must be maintained between these two.

This has two pressing outcomes for the City. Staff is conducting discussions with Charter Communications keeping these circumstances in mind, and consequently has determined that all previous cable TV needs assessments and contract language referring to telecommunications services and infrastructure as I-Net should continue to be employed.

CURRENT NEEDS ASSESSMENT

Public, Educational and Government (PEG) Access

In 1983 the City determined that access in all its varieties should top its list of cable TV need priorities. All services, facilities, and related revenue streams were accumulated in the MOU, which was the first step in establishing a non-profit corporation for directing and administering these resources. In theory this was considered to be the most efficient and cost-effective way to deliver these services and to acquire the necessary facilities.

For many reasons theory and the actual practice diverge considerably, to the long-standing dismay of all concerned. The Access Corporation has bitterly proclaimed that it has not ever received all the franchise promises. The three parties to the original MOU have stated that they have never received the services originally planned for and have developed their own access centers and their own cable TV channels. And the community at large, especially Pasadena's school children, have not participated to any significant or continuing degree in any of cable TV access's promises.

After three major studies over a period of almost 6 years and efforts to revitalize the access situation, staff has formed the opinion that the current emphasis on access is not the most pressing community need in the cable TV franchise. The City's cable consultant and its cable attorney are also of the opinion that the franchise agreement itself is out of compliance in regard to access, but that under current language the agreement is not enforceable, a situation which has been addressed by both the School District and the City College in regard to the deteriorating and inaccessible access studio and mobile van. And because there have been major developments in communications technology and in the relative importance to communities of access, staff considers telecommunications needs more critical for the community than access. Since this position sits directly astride a controversial issue, it deserves further discussion.

REVIEW OF THE 1983 ACCESS PROVISION, ITS EXECUTION, AND PRESENT POSSIBILITIES

In 1983 the primary technology of cable was television, and historically

most communities had evolved a relationship with the cable industry based on acquiring access to television technology, both in production and in distribution. In Pasadena by 1987 all participants (City, PCC, PUSD, and PCAC) had built television production facilities by which they "aired" programs. The cable company, relieved of the traditional requirement of producing these programs, provided cash support for production and cable channels for distribution.

Television production, in capital and operation terms, is enormously expensive. The city currently spends approximately one-half million dollars per year supporting the P(ublic) and G(overnment) portions of PEG. It is unknown how much PCC and PUSD invest in their programs, but discussions with their representatives suggests it is a significant amount. For the City, given its current budget constraints, it is no longer feasible to maintain and staff a full production facility. The recent merger approval for KPAS and PCAC may alleviate the fiscal burden of PEG programming.

Costs, however, simply are not the whole picture. One needs to look at the services required and the functions needed to provide these services. In the City's case, and indeed throughout the communications industries, computer usage is replacing television production as the medium of choice. All types of communications can now be produced on computers at relatively low cost, certainly at diminutive fractions of the costs of television production. Once this is accepted, the key to communications becomes the delivery system, and here cable TV is exceptional for capacity, interconnection, and community orientation.

The change in emphasis from cable television to telecommunications services now requires us to rethink PEG access and what it means in the future. Although the city will continue to cablecast City Council meetings, staff will be looking at telecommunication technologies, other than television, to make government more accessible to its citizens. In the same vein, the educational institutions are probably focusing as much attention on classroom Internet access as they are in distance learning via television. Charter Communications' new investment in telecommunications plant and services provides the City with important opportunities to broaden communication potential for all residents, especially schools and their constituents.

A PHILOSOPHY FOR PUBLIC ACCESS

Originally cable TV access was founded on two notions: the first was the potential for promoting First Amendment rights, or free speech; the second was the broadband capacity, rooted as it was in a municipality's streets, was sufficient to portion off some piece for community purposes. The Free Speech idea was persuasive and pervasive, ultimately employed by the cable industry itself in its varying competitions for franchises in the late '70's. Since this access was seen primarily only in terms of television,

provisions were made in Pasadena for public access to promote television use as the only form of free speech service on cable.

The establishment of PCAC, along with policy developed by the various sitting PCAC Boards, further rooted that principle, to the extent that PCAC soon became not only the protector of the right of access, but even became the producer of choice as the free speech vehicle (televised soap box concept) as well as a training facility, full television production studio, and editing facility. That self-imposed role is expensive, difficult to sustain, and either is non-existent in other communities or is rapidly disappearing.

In many cases, the communications potential now exploding in the combination of computers and high-speed networks is being exploited by some communities access purposes. The City of Seattle, for example, has converted its usual television production orientation to a computer orientation employing the local cable system for interconnecting its "access computer to schools, businesses, and homes.

Access was founded on the principle of having as many people as possible express their views in public, and to have as many people as possible sharing these opinions. Television production now appears to be a poor medium for reaching this goal due to the high cost of production and the inconvenience to the viewer. Very few people know how to locate any specific access television program, a fact borne out by the several polls conducted by the City in the mid-80's. And of course, only cable subscribers (one out of three Pasadena households) can access this programming. If Pasadena's 132,500 citizens lined up to be trained, to produce and to air their programs, each individual would probably be afforded the opportunity to practice this form of free speech once in his or her lifetime if blessed with a lot of luck and long life. Television has become an elite occupation.

But with the new technologies, public access could be directed toward the Internet, assisting citizens with the ability to develop home pages which they could update as they saw fit. The role of public could be to provide the basic computer training and to maintaining a "Community Access Server." For the investment, service levels to citizens would increase dramatically, ongoing costs could be reduced, and the services could be reached by anyone with access to a computer and a modem, items which will be increasingly available not only to Pasadena residents, but most significantly to students in the classroom. And at a broader level, access would have a reach way beyond the City's borders to the very limits of the World Wide Web, Since this technology can link each cable TV drop to the Internet.

This reorientation of access does not mean the public, or government or education needs to give up television production or distribution, but much more cost-effective models are available for use. And in fact, many of the

production tasks can be undertaken more inexpensively by other agencies, even the cable company itself.

STAFF ASSESSMENT OF NEEDS

Given the research already conducted, staff concludes that, besides revenue, the greatest community benefit will be derived in developing the telecommunications potential of the renewed franchise agreement. These should be referred to as the I-Net provisions of the agreement, and this should have top priority.

Staff feels the reasons for this are compelling: Telecommunications is rapidly becoming an essential and universal infrastructure; the education and research benefits available are extraordinary and increasing daily; employment opportunities are now following the investment in telecommunications and will be enhanced through an increasing familiarity with the services involved; business development is increasing most dramatically in those areas either in or related to telecommunications; and finally (but not exhaustively) more enterprise opportunities are appearing in telecommunications than in most other areas of commerce.

There could also be important benefits from connections between the City's fiber optic network and the I-NET provisions of a new franchise agreement with Charter. These include: expanding the geographic area covered by advanced telecommunications infrastructure to provide services to businesses, residents and institutions; and joint efforts by the City and Charter to provide new services of benefit to the community, to be delivered via the I-NET of the City's fiber optic network.

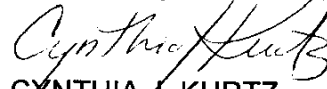
FISCAL IMPACT

The City receives approximately \$300,000 a year in franchise fees. The Pasadena Community Access Corporation receives \$200,000 a year from Charter Communications to fund their public access activities. In a future franchise agreement, these amounts are subject to change based on Council direction and/or competition from other television entertainment technologies.

Cumulative revenues from the beginning of the current franchise through February 28, 1998:

Payments to PCAC:	\$2,967,566
Franchise Fees to City:	\$2,856,441
Utility Users Tax Receipt:	\$7,224,129

Respectfully submitted,



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