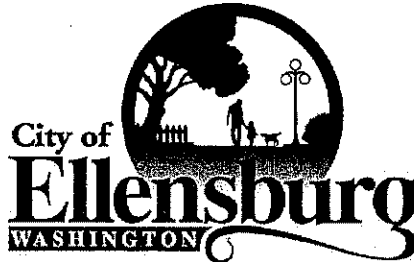


SPECIAL COUNCIL MEETING



Monday, February 11, 2013 – 6:00 p.m.
Council Chambers
501 North Anderson Street**




Agenda Items:

Joint Meeting with the Cable TV Commission re: Charter Franchise Negotiation Issues and the Future of Ellensburg Community Television (ECTV)

**** PLEASE NOTE TIME CHANGE**



AGENDA REPORT

DATE: February 11, 2013
TO: City Council
THRU: Ted Barkley, City Manager 
FROM: Bob Titus, Special Projects Manager 
Jim Pidduck, City Attorney 
RE: Charter Franchise Negotiation Issues and the Future of Ellensburg Community Television (ECTV)

SUMMARY: Current negotiations for a new franchise agreement with Charter Communications and the decision by CWU not to renew the agreement for operation of ECTV Channel 2 require the City Council to provide some direction to staff as to how to proceed.

BACKGROUND: The attached White Paper describes in great detail the history of the recently expired franchise agreement with Charter Communications and the agreement with CWU for operation of ECTV.

ANALYSIS/FINDINGS: The attached white paper analyzes in some detail the current situation the City finds itself in with regard to negotiations with Charter Communications and the options that the City has for continuing operation of ECTV. Staff will be holding another negotiating session with Charter later this month after Charter rejected the City's offer to roll the old franchise agreement over for another five years. Federal Communications Commission (FCC) rules prescribe many of the elements concerning franchise agreements between governmental entities and cable companies but it is less precise with regard to the negotiation process. As a result staff does not foresee an early settlement of the issues separating the City and Charter in current negotiations. However, at this point staff needs feedback from the City Council with regard to City priorities and the authority to negotiate based on those priorities. Areas to prioritize include: 1) ECTV, 2) the other public, educational and governmental (PEG) channels, and 3) the I-Net.

With regard to future operation of ECTV the Council again needs to provide staff with feedback for future operations. With CWU no longer supporting ECTV operations after March of this year the City needs to determine whether to support ECTV operations at current or reduced levels. Once that decision is made the issue becomes one of finding the resources (funding, physical space, and staff/contractor) to support ECTV at the appropriate level.

RECOMMENDATION: Staff recommends that Council discuss the issues presented in the 'Where Do We Go From Here' and 'Conclusions' sections of the White Paper with the Cable Commission and then provide staff with direction to negotiate with Charter and to put in place whatever is necessary to operate ECTV after March 31st at an appropriate level.

**The Future of ECTV, Other PEG Channels and the I-Net in Conjunction With
Charter Franchise Negotiations/CWU ECTV Operations Agreement/New Technologies
Prepared by Bob Titus**

BACKGROUND

In 1997 the City of Ellensburg negotiated a cable TV franchise agreement with Charter Communications that was very progressive for a community of our size. The 1997 franchise agreement, among other things, required Charter to: 1) upgrade the bandwidth of their cable system to support greatly expanded channel offerings and better signal quality (complying with this provision automatically extended the ten year franchise agreement an additional five years through October 10, 2012); 2) provide four public/education/government (PEG) channels which included Ellensburg Community Television (ECTV) for community programming, two channels for CWU and one channel for the Ellensburg School District; 3) provide a fiber system so that the City could establish an institutional network (I-Net); 4) pay the City 5% of Charter's gross cable TV receipts (2% for operation of ECTV, and 3% for administration of the franchise agreement); 5) pay the City \$0.50 per subscriber per month to pay for capital expenditures associated with ECTV (this provision included a COLA so that today the fee is \$0.64).

Now, 15 years later, the franchise agreement is up for renegotiation, Federal Communications Commission (FCC) rules have changed significantly in favor of cable TV system owners, and new technologies like the internet, streaming media and satellite TV are causing cable providers to revise their business models. At the same time, CWU is reassessing its role in supporting the operation of ECTV, franchise fees are no longer covering all of the costs of operating ECTV, and much of the community programming envisioned 15 years ago never materialized. Finally, the City and its I-Net partners have made major investments in the I-Net and, at least in the case of the City, rely on the I-Net for all communications between City facilities. So, where does that leave us?

CURRENT SITUATION

Negotiations with Charter are currently underway for a new franchise agreement. Charter's initial proposal to the City provides less funding, reduces the number of PEG channels, and would charge the City for use of the I-Net fibers among other things. The University which has contracted with the City since 1997 to operate ECTV has indicated a desire to move operations off campus and to turn back most of the operational support to the City. The rest of this section will address each of these issues in more detail.

Franchise Funding – The FCC rules still provide for up to 5% of gross receipts to be collected as a franchise fee and Charter is not proposing to change this amount (currently about \$150,000 per year). However, Charter is proposing to eliminate the per customer per month fee that supports capital equipment and to instead reimburse the City for capital expenditures that Charter feels are valid. Currently the per customer per month fee brings in around \$30,000 a year which is usually more than the amount of capital expenditures. Thus, for the last few years the City has been transferring \$10,000 a year from the ECTV Capital Fund to the ECTV Operating Fund to meet annual operating expenses. Without this fee transfer the General Fund would have to pick up this expense or ways would need to be found to reduce expenses.

ECTV Operating Agreement with CWU – The City has been paying a little over \$70,000 a year to CWU to support the operations of ECTV. For this amount, CWU provides office space for a full-time employee, production space for community producers, storage space for tapes of past productions, and engineering, clerical and administrative support. CWU has expressed a desire to relocate the office, production and storage space off campus and to limit their involvement with ECTV to engineering technical support. To maintain the current services without CWU would require the City to rent or lease space for production support staff and equipment and to employ staff to support ECTV. This would almost certainly increase the cost of operation of ECTV well in excess of the current \$70,000 since presently the City is not reimbursing the University for office/production space or associated utilities. Possibilities exist for charging community producers and other PEG channel operators a fee to help support these additional costs but it is unlikely that such fees would completely cover the additional costs.

The Future of PEG Channels - Charter is proposing that the number of PEG channels be reduced to 1 and no more than 2 and that further reductions would occur if a certain level of original programming was not broadcast over time. Specifically, Charter's proposal would require that any PEG channels have locally produced non-repetitive programming represent at least 70% of the programming broadcast between 11:00 AM and 11:00 PM daily. Failure to satisfy this requirement would result in Charter reclaiming those channels. In addition, Charter is proposing to allow it to place any PEG channels on any tier including the digital tier. Currently, none of the PEG channels come anywhere close to satisfying this requirement. All of the current PEG channel operators have expressed an interest in continuing to have access to their PEG channel but would need to allocate considerably more money for production in order to satisfy even a 50% locally produced program requirement. Additionally, the value of the PEG channels to the community could be significantly reduced if Charter were to move them to the digital tier, for instance, since it would mean a much smaller audience could access the PEG channels.

Impacts of New Technologies – The world is a much different place today than it was in 1997 and the pace of change is not slowing. The internet existed in 1997 but was not the dominant player that it is today. Satellite TV also existed in 1997 but it was not a significant competitor to traditional cable systems as it is today. The combination of satellite TV and access to high-speed internet has meant that more and more entertainment content is moving from traditional cable systems and customer growth for cable companies is either flat or declining. This is certainly the case in Ellensburg where the franchise fees collected from Charter have been flat or declining for years. More recently, streaming media over the internet has become a competitor to cable systems as high-speed internet and cell phone technology have advanced rapidly. This provides additional challenges for cable systems but also an opportunity. As more people use computers and smart phones to access their entertainment content, the value of traditional programming content available from cable systems declines but at the same time the value of their fiber networks increases as more and more bandwidth is required to support users desire to stream music and video. Charter obviously recognizes this as reflected in their proposal for the I-Net fiber addressed below.

The other relatively new technology that needs to be elaborated on here is streaming media, particularly as it relates to the issue of PEG channels addressed above. It is safe to say that many more Ellensburg citizens have access to high-speed internet than are Charter subscribers and the disparity is almost certain to increase over time. Thus, one issue that the Council needs to consider in evaluating the future of PEG channels is how much longer will they be relevant and whether it makes sense now or in the near future to enable City Council, School Board and other community events to be streamed live over the internet to a much wider audience. This is a relatively complex issue that will require a great deal of evaluation if for no other reason than this is an area where technology is changing rapidly and there is always some risk in investing in new technology. Additionally, there would likely need to be a transition period where the City offered content over both ECTV and the internet.

Fees for Use of the I-Net Fibers – The City in negotiating the 1997 franchise agreement assumed that it would own and control the I-Net fibers provided by Charter. However, after considerable discussion and legal review, the fibers remained the property of Charter but the City was provided exclusive use of the fibers for purposes of operating the I-Net. Charter has taken the position that any obligation Charter has to provide access to the I-Net fibers will expire with the franchise agreement and is proposing to charge the City for continued use of the fibers. Their initial proposal would charge the City \$10,300 per month for this privilege. The City has retained special legal council to review the previous agreements and to advise the City on this issue in future discussions with Charter. The City's initial position is that we have no

obligation to pay Charter anything for the use of the I-Net fiber and if somehow we were eventually found to be so obligated that it would be more cost effective to install our own fiber rather than pay Charter \$10,300 a month. Another interesting twist to this issue is that the 1997 franchise agreement restricted our use of the I-Net fiber to non-commercial customers. If Charter were to force us to install our own fiber this restriction would go away and, if Council chose, we could go into competition with Charter in providing high-speed fiber communications to our citizens which would help defray some of the expense of installing our own fiber.

WHERE DO WE GO FROM HERE

Many of the issues to be addressed are inter-related. The I-Net issue has the most cost impact to the City and involves the most outside parties (City, County, CWU, Ellensburg School District, Kittitas Valley Community Hospital, Kittitas Valley Fire & Rescue, Kittitas County PUD, and Kittcom). The I-Net is also the pathway for Council and School Board meetings to be broadcast. The PEG channels, while seeing somewhat limited use, have a small but ardent following and have played a significant role in documenting community activities for many years. All of the current PEG channel users have an interest in continuing to have access to them but that could change if there was a cost associated with maintaining the channels or if the channels were moved to a higher tier (fewer viewers).

Maintaining existing levels of service will require an increase in funding that could be significant and require funding support from other entities. If the City chooses to make a significant investment in maintaining some or all of these services, then other technologies need to be taken into consideration to determine if there are better or less expensive ways to provide the same or similar services. At the conclusion of the joint City Council – Cable Commission meeting it would be very useful if the following questions could be answered so as to provide direction to staff.

What are the City's priorities with regard to a new franchise agreement with Charter?

The major elements include: 1) fees for use of I-Net fiber, 2) loss of PEG channels and/or having the PEG channels moved to a tier which fewer viewers have access to, and 3) reduced funding for capital needs of ECTV.

To what degree does the City want to support the continued operation of ECTV? With

CWU moving to limit its involvement in the operations of ECTV the City will need to either: 1) find another entity to contract with for the services, 2) lease space and employ staff to maintain the current level of service, or 3) reduce or eliminate City support for ECTV.

How important is it to continue to broadcast City Council and School Board meetings? Would streaming them over the internet be an acceptable alternative? If broadcasting the meetings is a priority, then by default there would be a need to maintain at least one PEG channel, provide other content to satisfy any Charter requirement for locally produced content, and contract with or employ an individual to shoot, edit, and transmit the program for telecast. Alternatively, the City would need to invest or contract for equipment/services to stream meetings over the internet. In either case, an additional question would be how important is it to edit content and/or incorporate multiple cameras as opposed to running live un-edited feeds from a single camera.

CONCLUSIONS

Charter Franchise - Franchise negotiations between the City and Charter Communications are currently underway and while there is no specific deadline, the City negotiating team needs some direction from Council to negotiate franchise terms and conditions.

ECTV Operations - The recent three month extension of the operating agreement between CWU and the City for the operation of ECTV provides some breathing room, but a permanent solution needs to be found by the first of April and if the City chooses to take on full responsibility for operation of ECTV there is much work to be done.

Streaming Media - The alternative of streaming meetings over the internet is likely a longer term approach but guidance from Council on the future use of streaming would help develop strategy for resolution of some of the nearer term issues.

I-Net - Finally, the I-Net is the biggest issue both in terms of costs and in terms of direct impacts to the City. The initial proposal from Charter calls for the City to lease the I-Net fiber for \$123,600 a year. For the equivalent of a few years of leasing payments the City and its I-Net partners could install our own fiber and pay nothing to Charter. As mentioned earlier, if the City did this it could then offer high speed data transport to businesses in the City that the current franchise with Charter prohibits. I'm not sure that Charter has completely thought this issue through but if Charter holds to their current position, the City would need to be able to move forward with fiber installation in the very near future.

This material was put together to provide a basis for discussions at a joint meeting of the City Council and the Cable Commission to address current issues that need timely resolution.

Beth Leader

From: Arthur Clark <artjr66@hotmail.com>
Sent: Thursday, January 17, 2013 12:35 PM
To: Beth Leader; Bob Fordan; Robert Titus; Carol Johnson; Kurt Newman; Scott King; Marc Herbert
Subject: Channel 2

Here are my comments for the upcoming meeting with the city council.

Art Clark Jr.
2710 Cohoe Rd.
Ellensburg, WA 98926
509-925-4667
January, 2013

To the Ellensburg City Council,

The citizens of Ellensburg will lose an important cultural resource that will never be regained if E.C.T.V. Channel 2 is allowed to die. Many programs with audiences will be lost to the community. Live coverage of city council and school board meetings will be gone. Live coverage of the Rodeo parade and E.H.S. graduation ceremonies will be gone, as well as broadcasts of other county high school graduations. Gone will be broadcasts of the school winter programs, Ellensburg Children's Musical Theatre productions, Valley Musical Theatre, and Missoula Children's Theatre productions. Two local churches will lose their weekly TV ministries. Community Choir concerts; Old Time Fiddler concerts; Jazz in the Valley; Spirit of the West; and Family Poetry Night productions will disappear. Community TV producers will lose the outlet for their creative endeavors. The city will also lose a foundation on which new media technologies would be built.

Why is this happening? One and only one CWU administrator has decided it would be a good idea to not renew the 28 year old mutually beneficial inter-local agreement between the city and the University and evict Ellensburg Community TV from the small space provided by the University in the Brooks Library. There is not a universal hue and cry among the University community for this action and, in fact, most of the University community is not even aware of what is going on. Neither the city nor the University will win if Channel 2 is lost, and town / gown relations may suffer.

I am not optimistic about the future of E.C.T.V. The city will have to find space somewhere to relocate the E.C.T.V. office. Rent may have to be paid; infrastructure will have to be dealt with.

How do we save Channel 2? The answer to that is money, which the city says it does not have. A solution could be soliciting contributions from community benefactors via P.B.S. style fundraising and underwriting. The city could put E.C.T.V. in one of the vacant storefronts of the newly purchased Hubbell building.

Thank you,
Art Clark Jr.