

**CITY COUNCIL  
COMMUNICATION:**

**ITEM \_\_\_\_\_**

**OFFICE OF THE CITY MANAGER  
CITY OF DES MOINES, IOWA**

**98-347**

**SYNOPSIS —**

**AGENDA:**  
AUGUST 17, 1998

The City’ s Cable Television franchise with Heritage Cablevision, Inc., dba TCI of Central Iowa (TCI), expired on February 3, 1998.

**SUBJECT:**  
PROPOSED  
FRANCHISE  
AGREEMENT WITH  
TCI

The informal franchise renewal process began in January 1997, with Council’ s vote to retain the law firm of Moss & Barnett to prepare an informal “ Needs Assessment” . This document compiles a wide variety of information regarding TCI’ s technical and financial capabilities, community input from written and telephone surveys, a technical audit of the subscriber system by an electrical engineer, an analysis by staff of the City’ s future internal cable related needs, a review of TCI’ s past compliance with the City’ s ordinance requirements, and a franchise fee audit. A draft of this document was submitted to the Council on December 8, 1997.

**TYPE:**  
**RESOLUTION  
ORDINANCE  
RECEIVE/FILE**

**SUBMITTED BY:**  
RICHARD CLARK  
DEPUTY CITY  
MANAGER

The work to perform the franchise fee audit has been completed by Moss & Barnett; however, the final report has not been completed. The resolution of any underpayment identified by the audit would be considered separately from the Franchise Agreement. Our intent is to have the audit issues resolved before final action on the Franchise Agreement by the Council.

Also, during the December 8, 1997 meeting, Council directed that staff observe the following general goals during the negotiations:

- Provide quality cable service, with sufficient channel capacity and band width, for all subscribers on an equal basis.
- Provide enhanced local government and school internal communications through assistance from the cable operator.
- Ensure a sufficient number of cable channels, and transmission and production capabilities to meet the needs of local government, public users, and educational entities.

- Seek to improve customer service performance by TCI.
- Maintain the franchise fee revenue as compensation to the City for use of the public rights-of-way.
- Ensure the term of the franchise agreement is consistent with the quality and amount of investment by TCI.

The proposed Franchise Agreement addresses these goals.

Since the February expiration, Council has authorized franchise extensions to allow negotiations to proceed; the last extension will expire on August 18, 1998. At Council's direction, these negotiations have recently proceeded on an intensive basis and a proposed Franchise Agreement is now ready for review.

As a point of information, we have maintained a dialogue with McLeod USA which earlier announced its intention to seek a cable franchise with the City of Des Moines. We anticipate opening formal negotiations with McLeod representatives in the very near future.

A key requirement for dealing with competing franchises is the need to treat the competitors in a manner which is substantially equivalent from an economic standpoint. Depending upon the outcome of negotiations with McLeod USA, it may be necessary to revisit the proposed TCI Franchise Agreement to ensure that the provisions of the Agreement are substantially equivalent.

#### **FISCAL IMPACT –**

The draft Agreement contains provisions which will provide significant financial benefits to the City; these are detailed below.

#### **RECOMMENDATION –**

**Receive, file, and set a date of hearing for August 24, 1998. Approve an extension until October 20, 1998, of the existing Franchise Agreement with TCI to allow time for formal review and approval of the new franchise.**

## **BACKGROUND –**

The proposed Agreement provides for the following:

- *Subscriber System Upgrade*– TCI has agreed to rebuild its subscriber system into a state-of-the-art fiber-optic and coaxial cable facility with a 750 Mhz minimum bandwidth. This is consistent with the City’ s askings and will provide substantially more channel capacity, an improvement in signal quality, and create a system with two-way capability.

The rebuild is scheduled for completion by December 31, 1999, which will be in advance of any other rebuilds in the metropolitan area. During this process, all early generation coaxial cable and related connectors and amplifiers will be replaced.

- *Institutional Network (I-Net)*– TCI has agreed to construct an I-Net which will provide high speed fiber optic connectivity to 46 City owned buildings and facilities, and to 25 Des Moines Public Schools buildings. The value of this project will be \$1,500,000.

The construction of an I-Net will provide extremely valuable voice and data linkage, both internally and externally, to City and Schools facilities, and will further the development of the City’ s information technology infrastructure.

- *Franchise Fee*– The City will continue to collect a 5 percent franchise fee on TCI’ s gross revenues; for the fiscal year ending June 30, 1997, this amounted to \$1,018,305. Payments to the City will be made on a monthly instead of quarterly basis under the new Agreement.

- *Support for City Cable Casting*– TCI will provide a one-time sum of \$600,000 to support capital expenses associated with City cable casting. Anticipated uses for this funding could include the Council Chambers remodeling project and the purchase of new broadcast equipment to be used for City meetings and activities.

- *Public, Educational, and Government (PEG) Programming*– TCI has agreed to continue to provide one channel each for the City, the Des Moines Public Schools, the College Consortium, and for access by the general public.

As part of this agreement, the City and college channels will again be restored to full-time availability to both entities as programming dictates. A “ trigger” has also been included to make more PEG channels available upon full utilization of existing channels.

- *Enforcement Provisions*– TCI has agreed to establish and provide to the City a \$150,000 irrevocable letter of credit (LOC) as security to ensure performance of those obligations established by the proposed Agreement. Upon proper notice and failure by TCI to cure an alleged violation of the Agreement, the City may draw against the LOC for liquidated damages following a schedule established in the Agreement.
- *Franchise Term*– TCI has agreed to a ten-year term for the franchise.
- *Emergency Alert Capability*– TCI will provide the City with the ability to activate an emergency audio override which can be used to interrupt and cablecast messages across all system channels in the event of a disaster or public emergency.
- *Use of TCI Facilities*– The Agreement gives the City the right to install communication wires and fixtures, free of charge, on poles or in underground conduits owned or available to TCI to the extent this does not interfere with its existing operations.
- *Information Distribution*– The City will be able to distribute information at no cost through TCI resources by the use of “ bill stuffers” twice yearly, and through the cablecasting of 28 promotional and awareness commercial “ spots” .
- *Evaluation and Review*– The City may require that TCI participate in yearly evaluation sessions. These sessions may be used to discuss such topics as rates, channel capacity, subscriber system performance, programming, subscriber complaints, and any other topics the City deems to be relevant.