

Finance & Governance Committee Presentation

By

Marketing Services

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Amendment To CenturyLink Prism Cable Television Franchise Agreement

Ordinance Request/ Proposed Resolution

- Amend the end date of the Franchise Agreement so that it co-terminates with the discontinuation of Lumen's Prism cable service offerings. The term end date will change from April 14, 2025, to March 31, 2021. In exchange for this early termination, Lumen will provide the below concessions.
- Lumen will pay the City \$112,000 to be used for Public, Education and Government (PEG) and Community Access.
- Lumen will provide the highest level of internet service currently available to ten (10) community service locations selected by the City, until April 15th, 2025, free of charge. This contribution is valued at \$50,000.*
- Lumen will agree to keep the fiber data connection to the City and County building at no cost until April 15, 2025. This contribution is valued at \$8,000*

*These terms are spelled out in a service agreement that is dependent on and will be co-executed along with the Franchise Amendment

CABLE FRANCHISE AGREEMENT BACKGROUND

- Following extensive negotiations and multiple sessions with City Council, the City entered into a 10-year cable franchise agreement with CenturyLink in April 2015 (the “Agreement”).
- In consideration for access to the City’s Rights-of-Way, CenturyLink is required to pay a quarterly Franchise Fee of no more than 5% of its gross revenue earned on cable related services.
- Additionally, CenturyLink also remits a PEG Fee of \$1.05 per subscriber in accordance with federal law and the Agreement in support of Access TV channels.

DISCUSSIONS

- Lumen made a business decision to discontinue providing Prism cable television service nationwide. This cable service was discontinued in the City of Denver on March 31, 2021.
- DMMS staff and the City Attorney's Office presented in executive session to City Council regarding a proposed resolution offer on May 24th, 2021.
- The recommendation approved by City Council was to seek franchise fees in the amount of \$465,419.88 and PEG fees in the amount of \$66,187.80 in compensation for revenue that would be lost as a result of this early termination of the agreement.
- DMMS, the City Attorney's Office and City Council Representative Herndon engaged CenturyLink in multiple rounds of negotiations

- **The City's Position:**

- Agreement states that Century Link has both a right and an obligation to provide and market the cable services required by the provisions of the Franchise.

- **Lumen's Position:**

- The Agreement does not state that there is an obligation to serve. It is an obligation to be subject to various requirements in order to provide cable services. The provision of cable services should be driven by market success and the Prism cable television service was not successful.

DATA

- According to CenturyLink's records by the end of October 2020, there were only 699 Prism subscribers.
- City records show that Century Link averaged a -17.45% quarterly rate of decline in PEG Fees between 2019 and 2020 and a -11.55% quarterly rate of decline in Franchise Fees during that same period.
- At this accelerated rate of decline, it is estimated that the city would have collected a total of \$116,300 in Franchise Fees and around \$5,014 in PEG Fees between March 2021 and March 2025.

PEER MUNICIPALITY RESEARCH

- Denver is not the only jurisdiction in which Lumen is discontinuing cable television service. This discontinuation is nationwide.
- Based on peer research, Denver is receiving an amount that is at the high end of what Century Link has offered other similarly situated Municipalities.
- Seattle:
 - Initially asked for approximately \$650,000.
 - Reached a resolution in which Lumen agreed to pay \$150,000 and provide specified contributions towards digital equity.
- Minneapolis
 - The resolution did not include a payment. Lumen agreed to provide specified contributions to digital equity.

CONSIDERATIONS

- The City Attorney's Office cautioned that while they believed the City had legal right to seek damages for Lumen's early discontinuation of Prism services, Lumen's argument also held merit.
- The City could choose to initiate revocation proceedings as detailed in the Franchise Agreement for breach of contract; however, this is a cumbersome process that would take a lot of time and money.
- Rather than pursue costly litigation to have a court of law make an interpretation, or to pursue costly revocation proceedings, it was recommended by the City Attorney's Office that we continue to negotiate with Lumen to determine an amount that would be acceptable to all parties.

RESOLUTION SUMMARY

- This resolution reflects concessions by both sides to reach a mutually beneficial resolution.
- By offering a resolution with a value of \$170,000, Lumen hopes to demonstrate a good faith effort.
- A Service Agreement will be co-executed if this Amendment is approved by City Council. The Agreement includes a scope of work that mirrors that of other municipalities and spells out the terms of the gratis internet service Lumen has agreed to provide.

QUESTIONS & ANSWERS