CITY AND COUNTY OF DENVER

DENVER
THE MILE HIGH CITY

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TO: Frank Daidone, Executive Director, Technology Services
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FROM: David W. Broadwell, Asst. City Attorney

RE: **Summary of proposed Qwest Broadband Services (CenturyLink) cable television franchise; comparison to Comcast franchise**

DATE: February 4, 2015

Introduction

Qwest Broadband Services, Inc., d/b/a CenturyLink, is seeking approval of a competitive cable television franchise in Denver. Although CenturyLink and its predecessors have long maintained facilities in city rights-of-way delivering local exchange telephone service and other broadband services to customers, under Colorado law the company is not required to have a city franchise in order to deliver these services. However, in order to add cable television products and services to its current offerings, state and federal laws require CenturyLink to obtain a local franchise.

Mile Hi Cable Partners, L.P. (Comcast) is currently the sole provider of cable television service in Denver, via a non-exclusive franchise originally granted in 1984, and recently renewed for an additional term of ten years through December 31, 2023.

Under state and federal laws, exclusive cable franchises are prohibited. While a local franchising authority has the power to negotiate the terms and conditions of a competitive franchise, it "may not unreasonably refuse to award a competitive franchise." In general, federal law is structured to encourage competition in the delivery of telecommunications services, including cable TV.

The existing Comcast franchise acknowledges that other cable companies may enter the Denver market; however, the document contains a new "competitive equity" provision added when the franchise was recently renewed. In short, if a competitive franchise contains "material terms and conditions" that differ from the provisions of the Comcast franchise, then Comcast may demand amendments to its own franchise to match the provisions in its competitor's franchise. The purpose of this provision is to ensure that "the regulatory and financial burdens on each party are materially equivalent." Therefore, it is important to understand how the CenturyLink proposal either matches or differs from the existing Comcast franchise.

Identical provisions in the CenturyLink proposal and the existing Comcast franchise

Most of the language in the CenturyLink proposal is identical to existing language in the Comcast franchise. This commonality is due to the fact that both documents are based to some degree upon a "model" franchise agreement crafted in recent years by the Greater Metro Telecommunications Consortium (GMTC), now known as the Colorado Communications and Utility Alliance (CCUA). The documents are essentially identical on the following subjects:

- ***Term of franchise.*** Ten years. (§ 2.3)
- ***Basic grant of franchise rights.*** Authority to occupy city rights-of-way anywhere in Denver for purposes of delivering cable services. (Section 2)
- ***Amount of franchise fee.*** 5% of gross revenue, with the term "gross revenue" defined identically. (§§ 1.29, 3.1)
- ***Amount of PEG fee.*** $1.05/customer account/month (§ 9.3)
- ***Administration and Regulation of the franchise.*** (Section 4)
- ***Insurance and Indemnification.*** (Except as indicated below.) (Section 5)
- ***Customer service standards.*** The detailed customer service standards adopted via ordinance of the City Council in January, 2014 apply equally to all cable franchisees and must be incorporated by reference in each franchise. (Section 6)
- ***Reports and records.*** (Section 7)
- ***Programming.*** (Section 8)
- ***General right of way use and construction standards.*** Includes requirements related to underground construction and relocation. (Section 10)
- ***Cable system technical standards and testing.*** (Section 11)
- ***Requirements for connection to schools and public buildings.*** (12.2)
- ***Franchise violations.*** (Section 13)
- ***Franchise renewal and transfer.*** (Section 14)

Service Availability

The most significant differences between the CenturyLink proposal and the existing Comcast franchise are the provisions governing "service availability."

In the first Denver cable television franchise originally awarded by the city in 1984, Mile Hi Cable was required to serve the entire city within four years, under threat of liquidated damages and other potential sanctions if the company failed to meet this deadline. The original franchise included a map and other detailed information showing how build-out to the entire city would be phased-in during the first four years of the franchise. The requirement for Mile Hi Cable to offer cable service "universally" to any person requesting service anywhere in the city has since been carried forward in subsequent renewals of the franchise in 1999 and 2014, and currently appears at §12.1 of the Comcast franchise.

In contrast, the proposed CenturyLink franchise does not require "universal service" unless and until CenturyLink achieves a certain level of market success in Denver over time. The basic concept of keying expansion of service to market success is adapted from the CCUA model. However, unique to Denver, the proposal adds requirements for geographic distribution of cable service throughout the city as set forth in § 12.1:

- ***Mandatory scope and distribution of cable service in the first two years.*** Within two years CenturyLink must: (A) offer cable service to at least 15% of the Living Units in the entire city; *and* (B) offer cable service in each of the eleven council districts, through the installation of at least one "remote terminal" (RT) in each district. CenturyLink actually intends to deliver cable service through two distinct technologies—Fiber to the node (FTTN) via the RTs; and Fiber to the home (FTTH) which does not utilize RTs. The company will map and define the initial FTTN and FTTH service areas in each council district.
- ***Market penetration benchmark***. If and when CenturyLink serves at least 27.5% of the living units in the initial service area in any council district, the company will be required to install at least one additional RT in the district.
- ***Future benchmarks.*** The City will continue to require that as CenturyLink's service area expands, additional RTs must be activated whenever the 27.5% market penetration threshold is met in the expanded service area.
- ***Predominant cable service provider.*** If CenturyLink is ever determined to serve at least 50% of all cable television customers in the city, the company will be required to provide universal service throughout the city within a reasonable time thereafter, not to exceed four years.
- ***Non-discrimination.*** In the deployment of competitive cable service, CenturyLink is prohibited from discriminating against any neighborhood on the basis of income levels in the neighborhood. The franchise requires quarterly

meetings between the City and CenturyLink to review, among other things, whether or not CenturyLink is deploying cable service in a non-discriminatory manner.

Public, Educational, and Government Access Channels (PEG)

The CenturyLink proposal is substantially similar to the Comcast franchise on the general subject of PEG, including provisions for conversion of PEG channels to HD. However, there are a few differences in the details of the PEG provisions:

- ***Number of PEG channels***. CenturyLink proposes 7 PEG channels, the same as number of PEG channels as Comcast has currently activated in Denver. However, the Comcast franchise provides for the possibility of activating at least one additional channel under certain circumstances. (9.2)
- ***Channel 8 assignment***. CenturyLink commits to maintaining "Channel 8" as the main government access channel assignment. Comcast simply states: "Grantee will use reasonable efforts to minimize movement" of PEG channels.
- ***Marketing and outreach when PEG channel reassignments***. CenturyLink proposes to cover city costs for marketing and outreach costs associated with PEG channel reassignments up to $.50/subscriber. Comcast provides a maximum cost reimbursement of $20,000 per channel.
- ***HD receiver equipment to PEG providers.*** CenturyLink proposes free HD receiver equipment for each access provider. (§ 9.2(B)(3))
- ***Government Access Video on Demand (GAVOD).*** CenturyLink proposes more generous and less prescriptive provisions for GAVOD than does the Comcast franchise, including 20 hours of GAVOD programming capacity per channel in contrast to the 5 hours total offered by Comcast. (§ 9.2(D))
- ***Change in technology and technical quality affecting PEG.*** The commitment to assist the City and access providers is somewhat more qualified in the Comcast franchise than in the CenturyLink proposal. (§§ 9.9; 9.10)
- ***Applicability of PEG fee to bulk billing situations.*** In bulk residential billing scenarios (apartment buildings, etc.) CenturyLink proposes to collect a separate PEG fee per residential subscriber. Under the Comcast franchise, only one PEG fee is charged for the entire building. (§§ 1.35; 9.6)
- ***PEG return lines/access origination.*** The CenturyLink proposal differs from Comcast in that it addresses responsibilities for construction of entirely new return lines to the CenturyLink headend, while the latter focuses primarily on maintaining the return lines that are already in place. (§ 9.13)

<u>Other miscellaneous differences</u>

As explained above, to the extent there are any substantive differences in the CenturyLink proposal and the Comcast franchise, they tend to be clustered in two areas—service availability and PEG. However, there are a few other notable differences in the two documents:

- ***Competitive equity***. To repeat, the Comcast franchise contains detailed criteria and procedures allowing Comcast to force an amendment or renegotiation of their franchise if Comcast believes the "regulatory and financial burdens" imposed upon Comcast places the company at a competitive disadvantage in comparison to another cable company. In contrast, the CenturyLink proposal simply requires that franchises offered to other cable companies in the future will be "reasonably comparable." (§ 2.6)
- ***Indemnification***. The indemnification clause proposed by CenturyLink contains an additional assurance that the company will defend any lawsuits if a competitor challenges the grant of a franchise to CenturyLink. (§ 5.1 (C)(1) and (F))
- ***Letter of Credit.*** CenturyLink proposes a standing letter of credit ($100,000) to secure performance of the franchise. The Comcast franchise states that a LOC will be provided only if demanded in conjunction with an alleged breach of the franchise. (§ 5.4)
- ***"State of the Art" provision***. The CenturyLink proposal commits the company to upgrading its system and services consistent with technological advancements in the industry. In lieu of such a provision, the Comcast franchise simply states that the company will do a "technology assessment" upon the request of the City, but with no obligation to upgrade its system based upon such an assessment. (§ 11.2)
- ***Service to public buildings, schools and libraries.*** Both the Comcast franchise and the CenturyLink proposal contain requirements to provide free service to public buildings, school and libraries. However, because Comcast provides service universally throughout the city, the company is essentially required to provide free service to <u>*every*</u> school and library in Denver. In contrast, Centurylink would be obligated to provide service only to school and libraries that exist in those areas of the city where CenturyLink has chosen to activate a Remote Terminal. However, Centurylink would be required to serve at least one school or library in each council district in its initial service area, and then each time the company is required to activate a new RT if and when it reaches a market penetration benchmark within a particular council district. (§ 12.1, 12.3).