

Executive Summary – CenturyLink cable franchise resolution agreement

The City entered into a cable franchise agreement with Lumen (f/k/a CenturyLink) on April 21, 2015. This 10-year agreement provided an obligation for Lumen to operate its cable system in the City in exchange for consideration permitted by federal law, namely the payment of franchise fees and PEG fees. Lumen made a business decision to prematurely discontinue offering cable service prior to the expiration of the franchise agreement. This cable service was discontinued in the City of Denver on March 31, 2021.

DMMS was notified of this decision by Lumen last year and has been engaged in extensive negotiations to find a resolution to this matter that is both equitable and protects the City's interests. Following extensive research on the legal and policy ramifications of this discontinuation of cable service, as well as research into the settlement positions of similarly situated jurisdictions, DMMS staff and the City Attorney's Office presented in executive session to City Council regarding a proposed settlement offer. 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. Correspondence was sent to Lumen outlining the City's position.

In response to the City's offer, Lumen rejected the proposed resolution and instead claimed that they should not have to pay any amount as a result of their business decision. Subsequent to receipt of the correspondence from Lumen, DMMS staff consulted with the City Attorney's Office. The City Attorney's Office reaffirmed its belief that the City has a legal argument to seek damages for Lumen's early termination of the cable franchise agreement. Specifically, section 2.1 states, "This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise."

However, the City Attorney's Office cautioned that the claim put forth by Lumen also has merit and resolution of this question is ultimately a question of legal interpretation. Rather than pursue costly litigation to have a court of law make this interpretation, 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.

Denver is not the only jurisdiction in which Lumen is discontinuing cable television service. This discontinuation is nationwide, which is one of the factors guiding Lumen's negotiating position. They can reasonably predict that any payment made in Denver will set a precedent, and similar payments will likely have to be made across the country. DMMS staff has been in consultation with our counterparts in other jurisdictions regarding Lumen's position in those respective markets.

Seattle initially asked for approximately \$650,000 as a resolution for early termination of the cable franchise agreement but ultimately reached a resolution in which Lumen agreed to pay

\$150,000 and provide specified contributions towards digital equity. In the Minneapolis market, the settlement did not include a payment but instead just a contribution to digital equity.

Because Lumen has stopped providing cable television service as of March 31, 2021, they may be considered to be in material breach of the franchise agreement as they have failed to provide service for 48-hours. According to the Franchise Agreement, there are revocation proceedings that can commence if such a breach occurs. DMMS sent Lumen correspondence informing them of this breach but agreeing to wait on pursuing revocation proceedings dependent on the outcome of these negotiations. Even if the City did choose to pursue a breach claim, revocation proceedings are quite cumbersome and take up a lot of time and money. If the parties can reach an amicable resolution on a settlement amount it will be a more efficient way to resolve this matter.

The City initially asked for franchise fees of \$465,419.88 and PEG fees in the amount of \$66,187.80. Lumen responded with a resolution offer of \$0. The City Attorney's Office believes that we have legal grounds to seek monies as a result Lumen's early termination. However, there is no certainty that we would prevail in court. Therefore, DMMS staff has continued to negotiate with Lumen and has come to a resolution that we believe is acceptable compensation for the early termination of the franchise agreement.

In exchange for the City agreeing to terminate the cable franchise prior to its expiration date, and for the City to waive any additional action related to this breach of contract, Lumen will pay \$112,000 to be used for PEG and Community Access. In addition, Lumen is agreeing to contribute towards improving digital equity in the community. Specifically, Lumen will provide the highest level of internet service currently available to ten community service locations selected by the City, until April 15, 2025, free of charge. This four-year contribution is free connectivity for community groups and is valued at \$50,000 over the next four years. The City has discretion in choosing the locations for this connectivity. The ten community service locations do not have to be identified at this time. Furthermore, despite no longer broadcasting cable television, Lumen will agree to keep the fiber data connection to the City and County building at no cost until April 15, 2025. This fiber feed is an important tool used by DMMS during some live productions. The value of this continued fiber feed is \$8,000.

While the agreed upon amount is lower than our initial request, considering legal factors as well as the agreements being negotiated in other jurisdictions, we recommend that the City accept this resolution offer. Because both sides have meritorious legal claims, Lumen could have played hard-ball as it did in some other jurisdictions and offered no monetary payment. By offering a resolution with a value of \$170,000, Lumen has shown their commitment to remain partners with the City. This settlement reflects concessions by both sides in an effort to reach a mutually beneficial resolution.