



# Comcast Cable Franchise Renewal Final Project Report

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## I. Overview

City staff have completed negotiations with Comcast and now have a proposed cable franchise agreement for Bellingham City Council and community review and approval. Comcast currently provides cable service to approximately 26,500 subscribers within the City of Bellingham. The complete proposed agreement and project background documents are available at [www.cob.org/comcast](http://www.cob.org/comcast).

The proposed 10-year agreement will replace the current 15-year agreement that was finalized in 1996.

The new agreement meets many of the policy goals and direction given by the City Council, and also maintains or adjusts services consistent with requests from key stakeholders and the general public. Not all goals were met, particularly related to Comcast telephone systems and billing statements, however, other administrative improvements were made, a limited discount program was maintained, and a program providing cable services to schools and some municipal buildings was maintained. Opportunities for public, educational and government access television were increased. The overall agreement was reorganized and now includes a table of contents and appropriate reference exhibits. Key provisions of interest to subscribers were included in appendices. Enforcement procedures were updated. Checklists of notices and reporting requirements were added to facilitate administrative requirements for both the City and Comcast.

As has been discussed in the past, the City is not able to impose rate regulation, which was a top interest item expressed from the general public. Rates for cable services are largely deregulated by federal law. Cable operators also have First Amendment protections so the City has very limited authority to regulate the type of cable channels carried or the content of cable television programming Comcast makes available in Bellingham, and this too was an interest item expressed from the general public. Negotiations were therefore limited to other aspects of Comcast's cable services in Bellingham including fees, conditions of service, reporting and payment responsibilities, continuation of special programs, options to add public education and government access channels, etc.

The remainder of this report section provides a project summary, and the remainder of this report provide more detailed information about the proposed franchise agreement.

### **2010 Project Efforts: Physical Plant Inspection**

In 2010 two key project efforts were conducted. The Kramer.Firm was hired to inspect the Comcast cable plant located in City of Bellingham City limits, to determine compliance with electrical safety codes. An inspection of this type had not been conducted in Bellingham in the past. That inspection was conducted in May 2010, and a report was received and posted to the City's web site in August 2010.

Findings were generally positive. Kramer.Firm described the cable system was in Above Average condition related to compliance with National Electrical Code and National Electrical Safety Code standards. A number of specific installation concerns were enumerated.

Staff met with Comcast representatives to review and discuss a proposed corrective action plan in September 2010. Many items identified had already been corrected, and Comcast described a plan to address or schedule the majority of the remaining issues. Comcast also described the interaction between utilities needed to achieve some of the repairs.

### **2010 Project Efforts: Desk audit of franchise fees**

Also in 2010 Moss & Barnett conducted a desk audit of Comcast franchise fees. The objective of the audit was to determine whether franchise fees being paid to the City were consistent with franchise requirements. A more comprehensive audit had been done in 2002. The main purpose of this audit was to review franchise fee revenues and payments made to the City in years 2008 and 2009.

Audit findings were generally positive in that revenue was consistent with franchise requirements and most financial trends analyzed were consistent with industry trends and expectations. Some guidance was provided for the City regarding future monitoring of revenue trends.

The City and Moss & Barnett worked with Comcast to pursue records related to a one-time payment of \$22,841.39 that had been provided to the City in August 2010. Upon further investigation, it turned out that this was a delayed payment for an area that was annexed by the City, and per the franchise agreement, Comcast owed the City interest on that payment. Comcast paid the City an additional \$2,733.11 in interest payments for franchise fees and utility tax.

The audit report was accepted by the City in December 2010 and provided recommendations that staff incorporated into the franchise related to record-keeping and payments following an annexation.

### **2010 Public Needs Assessment**

Feedback from the general public and key stakeholders was gathered and analyzed beginning in May 2010.

In May 2010 the City conducted outreach including a web survey, hosting of public meetings, and meetings with key stakeholder groups. Local media coverage was strong, which may have contributed to the significant amount of community input received. That input, along with analysis by staff of challenges in administering the current franchise, and analysis of other franchise agreements, served as input for a franchise renewal community needs report which was published in August 2010. The report is available in its entirety at [www.cob.org/comcast](http://www.cob.org/comcast).

Needs and recommendations from the community report served to inform the City Council and negotiating team in identifying goals for the new franchise.

## Franchise Renewal

The process of negotiating was a lengthy effort that took nearly one year. The existing franchise agreement expired in February of this year but was informally extended as negotiations with Comcast continued. City negotiation team members invested significant negotiations time in preserving elements of the current franchise agreement.

During the negotiations over 20 versions of the franchise document were created, and in some cases elements that were agreed to by both parties had to be re-reviewed and adjusted. Both the City and Comcast had multiple internal parties to work with to gain approval on some elements of the agreement, and gaining these approvals caused the majority of the delays. Most recently (and in consultation with City leaders), City staff chose to delay moving the agreement forward in an effort to improve or alter specific provisions that were altered in a final review process by Comcast.

## Project Expenses

The City retained the law firm of Moss & Barnett as the principle consulting firm for this project. Project consultant costs through July 2011 were at \$92,255, and include expenses associated with legal and negotiations assistance, the franchise fee desk audit, and the physical plant inspection. Note that these expenses can be billed back to and recovered from Comcast, and thus far over \$73,000 in project expenses have been recovered from Comcast.

## Next Steps for Franchise Renewal

Next steps to complete the Comcast franchise renewal include legal notifications via the local newspaper of record, a public presentation at a City Council meeting, a public hearing, and then consideration by City Council. These project phases are scheduled to take place during September and October 2011..

The remaining sections of this report provide an overall project timeline review, and describe key elements of the proposed franchise.

## II. Project Timeline

Research for the Comcast cable renewal project began in late 2009, with funding appropriated in 2010. There were several components to this project completed in 2010, but actual negotiations began in September 2010 and took almost a full year to complete. Key dates for the project are shown grouped by various project activities.

### Consultant Activity and Reports:

- January 2010 – City issued Request for Proposals for franchise consulting assistance
- April 2010 – Entered into contract with Moss & Barnett, represented by Mr. Brian Grogan, for franchise consulting assistance. Chose Kramer.Firm Inc. to conduct physical plant inspection.
- May 2010 – City receives Physical Plant Inspection report from Kramer.Firm. Report finds Comcast infrastructure to be in above average condition.

- May 2010 – Moss & Barnett initiated desk audit review of Comcast Franchise Fees
- December 2010 – City receives Moss & Barnett desk audit report of Comcast Franchise Fees

#### Public Input

- May 2010 – Public project briefing for City Council
- May 2010 – Public outreach and communications – Community input meetings held, web-based survey released, held meetings with stakeholder groups to gather specific input
- August 2010 – City publishes Needs Assessment Report - This lengthy report (176 pages in length) provided pages long, provides analysis of public input and identifies changes to be made to franchise in consideration of public, stakeholder, and staff input.
- August 2010 – City staff present public report to City Council and provide report online on City Web site

#### Negotiations and key follow-up meetings

- May 2010-present – Began meeting with and/or communicating with Council Liaisons Stan Snapp and Michael Lilliquist to provide briefings and receive project input and guidance. Also received negotiations direction from City Council as needed.
- July 2010 – Began drafting franchise agreement based on public input and Council direction
- September 2010 – Follow-up meeting with City and Comcast regarding physical plant inspection and next steps.
- September 2010 – Began negotiations with Comcast, including exchange of proposed franchise documents
- October 2010 – August 2011 – Exchanged and/or updated over 20 versions of franchise draft documents. Experienced significant delays at times due to authorizations needed by the various parties, or in order to respond to unanticipated document revisions.
- August 18, 2011 – City staff receives franchise from Comcast that is acceptable to Comcast and is consistent with policy direction provided by City Council

### **III. Proposed Franchise - Financial Provisions and Impacts**

#### **Financial Provisions in proposed Franchise:**

There are two types of fees that are identified in the proposed franchise and that can be passed on to cable subscribers:

Franchise fees, and  
PEG fees (to support Public Education and Government Access) equipment.

The franchise agreement allows Comcast to install cable and facilities throughout the City's rights-of-way in exchange for the payment of certain rental fees – known as franchise fees – and other benefits for Bellingham and its residents.

The franchise agreement defines Comcast's gross revenue for the purpose of calculating the franchise fees owed to the City. The franchise fee rate is the percentage of those revenues that

Comcast pays to the City for use of its right-of-way. The current rate is 4.25%. Most other cities in Washington use a rate of 5%, and that is the rate in the proposed franchise agreement.

The Franchise fees collected are not restricted in how they are used. Currently franchise fees distributed to the City are deposited in two funds: a) the City’s general government fund and b) in an operating budget for the City’s government and education access channel, BTV10.

PEG fees must only be used for capital expenses (typically equipment) and may not be used for operational support (such as staff).

Continuation of a discount program was supported by the community, with 77% of Bellingham web survey respondents indicating that special discounts should continue to be made available to low income senior citizens or to low income people with disabilities.

The table below provides information about financial provisions of the current and proposed franchise agreements.

Provision	Current Franchise	Proposed new franchise
Franchise Fee Rate – Comcast’s payment to the City for installing cable and facilities in rights-of-way	4.25%  Distribution of revenues – ensure 1.25% goes to BTV10 operations	5%  Distribution of revenues: During term of the Franchise, the City shall place no less than 1.25% of Franchise fees received in a fund to support BTV10 operations
PEG Fees/Capital Grants	PEG Fees available as part of a Capital grant – was available in the current franchise but was not implemented and therefore not collected from subscribers	<p>Upon the Effective Date of this Franchise, Comcast shall collect on behalf of City a per Subscriber fee of fifty cents (\$.50) per month (“PEG Fee”).</p> <p>The City may, at any time over the term of this Franchise, provide Comcast ninety (90) days advance written notice and increase or decrease the PEG Fee as determined in City’s sole discretion. In no event may any PEG Fee exceed fifty cents (\$.50)/Subscriber/month.</p> <p>Any PEG fees collected and shown on Subscriber bills shall appear in a single line on the bill.</p> <p>Should the City need to construct fiber return lines for carriage of new PEG channels, PEG Fees collected can be used for construction expenses. Comcast will collaborate with City</p>

Provision	Current Franchise	Proposed new franchise
		on cost-sharing.  Use of PEG fees must be sent to Comcast annually so that Comcast will affirm PEG fee use appropriate with capital requirements.
Discount Program for limited cable plan (most basic plan) for qualifying customers	Discount program with qualification process administered by City provides discount of 30% on the limited cable package for some customers.	Discount program continues, to be administered by Comcast.  The program will continue throughout the term of the new franchise for qualified customers. Newly qualified customers must be age 65 and older. The current City standard is age 62 and older. Current customers will be grandfathered in. Comcast will provide count of participating customers to City upon City request.

### Comparison of Franchise Fees throughout Washington State:

Below is table of showing Cable Franchise fees and PEG fees for other Washington state jurisdictions.

#### Franchise Fees (2008 AWC Tax and User Fee Survey), updated in May 2010 by City of Bellingham staff

City	Cable	PEG Fees
Auburn	5%	\$0.35/subscriber/month
Bellevue	5%	\$.25/subscriber/month
Bellingham	<b>4.25%</b>	
Everett	5%	\$1.00/subscriber/month
Kent	5%	No PEG fees, currently in negotiations
Kirkland	5%	\$.25 per quarter on each subscriber
Olympia	5%	\$0.30 per subscriber per month for access capital costs
Redmond	5%	\$1/month/subscriber PEG fee
Renton	5%	\$0.17 per subscriber/month
Seattle	4.20%	\$.12/subscriber/month PEG fees  Note that Seattle has a 10% utility tax for Cable, but Telecomm. utility tax is 6%
Spokane	5%	\$0.50/subscriber/month capital contribution
Spokane Valley	5%	\$0.35/subscriber/month pd quarterly as capital contribution
Tacoma	5%	1% of gross revenue payable with monthly Franchise Fees, in special revenue fund
Yakima	5%	Equipment & facilities grant of \$118,320 paid every 3 years over the course of the 20 year franchise agreement signed in 1994

**Financial Impacts to Subscribers:**

The table below shows impact of fee changes to subscribers based on three typical cable subscription plans.

Franchise fees are assessed based on the total cable portion of the subscriber's bill, which could include the costs of the cable plan, plus extra programming packages, extra equipment, etc.

PEG fees would be assessed monthly for cable subscribers.

<b>Typical customer bills - impact of change - franchise fees</b>				
				as of 8/23/11
<b>Cable Portion of Bill - based on subscriber cable plan</b>	<b>Current Monthly franchise fee Estimate At 4.25%</b>	<b>Monthly franchise fee Estimate At 5.00%</b>	<b>Monthly increase due to franchise fees</b>	<b>Estimated annual increase per subscriber due to franchise fees</b>
\$19.75	\$0.94	\$1.09	\$0.15	\$1.78
\$63.99	\$3.04	\$3.52	\$0.48	\$5.76
\$81.99	\$3.89	\$4.51	\$0.61	\$7.38
<b>Typical customer bills - impact of change - franchise fees &amp; PEG fees</b>				
<b>Cable Portion of Bill - based on subscriber cable plan</b>	<b>Current Monthly franchise fee Estimate At 4.25%</b>	<b>Franchise fees at 5% plus PEG fee at .50/month</b>	<b>Monthly increase due to franchise fees and PEG fees</b>	<b>Estimated annual increase per subscriber for franchise &amp; PEG fees</b>
\$19.75	\$0.94	\$1.59	\$0.65	\$7.78
\$63.99	\$3.04	\$4.02	\$0.98	\$11.76
\$81.99	\$3.89	\$5.01	\$1.11	\$13.38
<b>Comcast cable - Current rates for some plans:</b>				
\$19.75 - Limited cable				
\$63.99 - Digital Starter				
\$81.99 - Digital preferred				



### Financial Impacts to City:

The table below shows the estimated franchise fee revenues that would come in to the City should the proposed franchise be accepted.

<b>Comcast Cable Franchise Revenue</b>	
<b>Bellingham Comcast Franchise Revenue - Current Allocation</b>	<b>Annual revenue</b>
3.00 % - General Fund	About \$550,000 per year
1.25% - BTV10	About \$230,000 per year
0.75% - Not currently collected, but to be collected upon franchise renewal	About \$138,000 per year (\$46k per .25%)  Unless otherwise specified, this revenue would be placed in the City's General Fund

PEG fees are proposed to be collected monthly per subscriber. The anticipated use of PEG fees would be to pay for equipment for use at new PEG access channels or for BTV10. Typical PEG television stations utilize extensive amounts of equipment.

The table below shows the estimated revenue that would come into the City for use in purchase of PEG equipment should the proposed franchise be accepted.

<b>PEG Fees and Estimated Revenue</b>		
<b>Monthly fee per subscriber</b>	<b>Estimated PEG fee revenue per month</b>	<b>Estimated PEG fee revenue per year</b>
\$.50/subscriber/month	\$13,250.00	\$159,000.00
Based on 26,500 subscribers		

### IV. Proposed Franchise - Public, Education, and Government Access Television Provisions

PEG stands for “Public, Education, and Government” and refers to the type of local programming that can be offered on local noncommercial channels. The franchising authority (the City of Bellingham) has the authority to designate the type of access channel.

Cable subscribers in Bellingham currently are able to view programming on one PEG channel, BTV10, which is designated as a Government and Education Access station. The ability to provide

additional PEG channels and to pay for equipment for those channels to utilize is a key element of a cable television franchise agreement.

Many Bellingham respondents to the web-based survey indicated they wished to see local community programming and educational opportunities represented in their cable television service. The following were responses to questions asking respondents to rate the importance of having some types of programming provided as part of the cable service:

- 60% rated community news, events, and announcements as a “high” interest (with 81% selecting community programming as a “high” or “medium” interest)
- 42% rated government meetings as a “high” interest
- 41% rated educational programs as a “high” interest
- 26% rated information about local non-profit organizations of “high” interest
- 21% rated school sporting events as a “high” interest

The City also received letters of interest and/or proposals to expand PEG programming from the following organizations, each presenting different suggestions to expand PEG channel offerings in the community:

- Whatcom Community Television and Communications
- University of Washington/Western Washington University
- Bellingham School District
- Coalition for Community Media

The table below provides a comparison between current franchise and proposed franchise about public, education, and government (PEG) access television provisions.

Provision	Current Franchise	Proposed new franchise
Number of PEG Channels	<p>One additional channel (in addition to BTV10) is allowed without meeting any special requirements, however that 2<sup>nd</sup> channel was not requested. Additional channels are available based on the amount of original programming provided on the existing PEG channels.</p> <p>All PEG programming is intended to be joint between City and County.</p>	<p>Two (2) additional PEG channels allowed for total of three (3)</p> <p>1 – BTV10</p> <p>2 – Additional PEG channels of any type</p> <p>PEG channels not obligated to be joint between City and County</p>
PEG channel locations in lineup	<p>Not addressed other than channel 10</p>	<p>BTV will remain on channel 10 until a move is mandated or is allowed by the City.</p> <p>Should any future PEG channels go into operation, those channels shall be located</p>

Provision	Current Franchise	Proposed new franchise
		<p>consistent with regional channel lineups in existence at time of renewal</p> <p>If PEG any channel is relocated, Comcast to provide \$9,000 worth of in-kind advertising to notify customers of the change.</p>
Transition to High Definition	Not addressed in current franchise	BTV10 may go to HD once Comcast ceases to offer basic service in analog format, and following 90 days notice by City to Comcast – Note that BTV10 is only channel with this option
Technical support for PEG signals	Not addressed in current franchise	Comcast will provide technical assistance within in 24 hours following a call from the City identifying a technical problem with PEG channel signals. Comcast will provide technical assistance or diagnostic services and will promptly correct the problem should it be within Comcast's area of responsibility.

## V. Proposed Franchise – Customer Service and Other Key Franchise Provisions

The following table describes other provisions of the franchise that might be of interest to policy makers, key stakeholders, and the public.

Key Provisions of Interest	
Annexation requirements	<p>The proposed franchise was updated to increase clarity of responsibilities in the event the City limits expand due to annexation.</p> <p>The City must notify Comcast of an annexation within 10 days of annexation approval.</p> <p>Comcast must provide notice to City within 120 days of annexation indicating that subscriber addresses have been reviewed and updated to reflect City as franchising authority</p>
Ascertainment and surveys	<p>Improving customer service was an interest of the public as described in the Community Needs report.</p> <p>In the current franchise, Comcast was required to conduct an annual customer survey but the City was not able to add specific</p>

	<p>questions to it.</p> <p>In the proposed franchise Comcast must ascertain community views (via a survey) every 3 years.</p> <p>At least 60 days prior to issuing the survey, Comcast/City shall meet to discuss survey, and the City shall have the right to add up to 10 questions to the survey or refine questions.</p>
Cable system and complimentary services to schools and municipal buildings	<p>The current franchise provides some cable services at no costs to public educational buildings and facilities and government buildings and facilities that are passed by the cable system.</p> <p>The new agreement preserves this service, which is now offered to accredited public and private schools (but excludes home schools), in Bellingham. The new agreement also provides services to municipal buildings and institutional facilities.</p> <p>There has been some confusion in the past regarding installing new services or relocating services in schools. The proposed agreement clarifies responsibilities of Comcast and the school or City in installing or relocating services.</p>
Customer Service and support	<p>Comcast will continue to be required to maintain a local customer service and bill payment location.</p> <p>As was stated earlier in this report, the City was not able to negotiate additional customer service requirements related to Comcast's telephone system or in the presentation of customer bills, in spite of repeated attempts negotiate for improvements in these areas.</p> <p>Customer service standards provide information to subscribers about many practical elements of their service experience, such as how product information is distributed, notification requirements for rate changes, refund policies, etc.</p> <p>Customer service standards were reorganized for easier interpretation, and key FCC customer service rules and regulations are included in the franchise for ease of reference.</p>
Enforcement Procedures	<p>Enforcement procedures identify steps to be taken if there are concerns about compliance with the terms of the franchise.</p> <p>The enforcement procedures were completely updated and rewritten, including use of the City's Hearing Examiner to make determinations about compliance.</p> <p>Following notice and response period related to franchise</p>

	compliance concern, Comcast has 30 days to cure. In event Comcast fails to respond or if alleged default is not remedied, the matter is referred to City's Hearing Examiner. Hearing Examiner determines compliance/noncompliance.
Line extensions and service uniformity	<p>Comcast is provided to provide equal and uniform cable service throughout the City of Bellingham.</p> <p>Line extension policy describes requirements related to adding cable services. Interpretation of these policies has been a challenge for some customers and for schools in the past.</p> <p>The service and installation requirements were reviewed and updated to be consistent both with FCC requirements and to provide increased clarity based on infrastructure and/or density in the area or site needing service.</p> <p>City staff reviewed proposed line extension language in conjunction with review of City maps and Comcast, to affirm that the language was appropriate in event of City annexations.</p>

## VI. Future City Council Actions

### Municipal Code:

In conjunction with this project several sections of the Municipal Code were reviewed.

Some code revisions will be recommended by Legal staff following Council approval of the cable franchise to provide consistency between Municipal Code and the franchise. Two specific revisions are as follows:

- Line Extensions – Requirements associated with extending cable services. Municipal Code section 6.17.210 will be updated to be consistent with the language in this franchise. Franchise language is consistent with FCC rules.
- Hearings Examiner Powers and Jurisdiction – Municipal Code section 2.56.050 will be updated to reflect Hearings Examiner role in the event of an unresolved franchise violation

### Other future policy actions the Council could make:

The Council may choose to provide policy direction related to the use of franchise or PEG fee revenue.

The Council could grant control and use of additional PEG channels to other entities. This effort would likely follow some discussion of the process for doing so, and inclusion of such effort into staff work plans.

## **VII. Conclusion**

The renewal of the City's Comcast Cable franchise has been a significant project effort that is now in its final phases as the Council considers a proposed 10-year cable franchise agreement.

Should the Council approve the proposed cable franchise ordinance, the franchise would be effective 15 days following Council approval, assuming that the franchise is signed by both City and Comcast officials.

Thanks and acknowledgment is due to the following City staff members and elected officials who assisted with this project effort:

- Joan Hoisington, City Attorney
- Janice Keller, City Communications Manager
- Dal Neitzel, BTV10 Program Coordinator
- City Council Project Liaisons Stan Snapp and Michael Lilliquist
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- Kipp Drummond, Accounting Manager
- Jim Tinner, Building Official