



Staff Report: CenturyLink Cable Franchise

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I. Overview

A municipal cable television franchise agreement is a contract between a City and a cable television service provider which includes the terms and conditions under which the service provider may install infrastructure in the City's right-of-way to provide cable television services.

In June 2016, Qwest Broadband Services, Inc. doing business as CenturyLink "CenturyLink" submitted an application for a Cable Television Franchise, a proposed franchise agreement, and the required application fee. CenturyLink currently provides both telephone and internet services within the City of Bellingham.

City staff engaged in substantive negotiations with representatives of CenturyLink for more than a year regarding the proposed franchise agreement. City staff worked with the Council's Franchise Working Group, Gene Knutson and April Barker, and the Mayor's Office to identify the City's (and the community's) needs and interests in a cable television franchise agreement. City staff worked to secure the best possible agreement for the City while maintaining parity between CenturyLink and the incumbent provider, and remaining within the limits of the City's regulatory authority in this field.

The agreement is consistent with the existing franchise agreement between the City and Comcast in organization and in much of the content. Where appropriate the agreement language reflects recognition that CenturyLink is a second entrant in the market. Comcast is the incumbent cable television provider in Bellingham.

It is important to note that CenturyLink, as a second cable provider in the community, is not required to meet all the same standards as the incumbent cable provider, per the Federal Communications Commission. CenturyLink will not be required to provide cable television service throughout the entire City. CenturyLink anticipates being able to provide its cable television service, known as Prism, to 6,200 addresses within one year of franchise acceptance. CenturyLink maintains technical criteria which determines which addresses can receive its service.

The proposed franchise carries a 10-year term, however CenturyLink has the option to end the agreement in five years if CenturyLink is not providing cable service to 20% of the total subscribers in Bellingham. Some requirements of the franchise will be phased in based on CenturyLink's market share of cable subscribers.

The City Council is responsible for reviewing the proposed agreement and determining whether CenturyLink should be awarded a franchise to provide cable television services in the City.

The remainder of this report provides additional background information, franchise development timeline, legal issues related to franchise agreements, and highlights of the proposed agreement reflecting community and policy interests.

II. Background Information

Key facts and background information regarding cable television agreement is provided in a frequently asked questions format below.

Q: What is PEG and PEG Access, in the context of a cable franchise agreement?

A: A local franchising authority may require that a cable television service provider make available, for non-commercial purposes, a channel, or channels, on its cable system for Public, Education, or Government programming. This is commonly referred to PEG access.

“**Public Access**” or “**Public Use**” - organizations, groups, or individual members of the general public, on a non-discriminatory basis, are the primary or designated programmers or users having editorial control over their programming;

“**Education Access**” or “**Education Use**” - accredited educational institutions are the primary or designated programmers or users having editorial control over their programming; and

“**Government Access**” or “**Government Use**” - government institutions or their designees are the primary or designated programmers or users having editorial control over their programming.

Q: What PEG channels are currently available in the community?

A: The City operates BTV Bellingham as its PEG access channel. BTV provides government and education access programming most days of the week, and also provides members of the community the ability to submit and air public access programming on Sunday evenings. Training is provided for community members interested in public access. The public access program is known as Access Bellingham.

BTV Bellingham website containing program schedule and information is www.cob.org/btv.

Access Bellingham website containing information about public access programming and training is www.cob.org/accessbellingham.

BTV is currently available via Comcast cable in a standard definition format on channel 10, and in high definition format on channel 321.

Q: Would CenturyLink cable television subscribers have access to view local PEG access channels?

A: Yes. CenturyLink has agreed to provide BTV Bellingham in both standard definition and high definition formats under the terms of the proposed franchise. Based on the way that CenturyLink’s system works, subscribers will also have access to additional PEG stations carried on Prism in Washington State.

Q: What are the key rates and fees associated with cable television franchise agreements?

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

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

The franchise fee is a percentage of the cable provider's gross revenues that are paid to the City in exchange for the right to use of the City's right-of-way. Most jurisdictions in Washington charge a 5% franchise fee which amount is also the maximum amount that may be charged under federal law. The franchise fee in the proposed franchise with CenturyLink is 5% of gross revenues from the operation of the cable system to provide cable services in the City, which is identical to Comcast.

The law does limit how a local franchising authority may use franchise fees. The City Council, as part of the budget process, determines how the franchise fees are spent. Currently, the City distributes franchise fees collected from the incumbent provider in two separate funds: a) the City's General Fund and b) the Public, Educational, & Government TV Fund (i.e., a fund dedicated to operating BTV Bellingham).

By contrast, federal law strictly limits how a local franchising authority may use PEG fees. PEG fees may be used for capital expenses only (e.g., equipment). A local franchising authority may not use PEG fees for operational support (e.g., wages and benefits). The PEG fee in the proposed franchise with CenturyLink would be \$0.50 per subscriber per month, which is identical to Comcast.

Q: Do Bellingham viewers watch PEG programming?

A: Yes. The following statistics are based on a November 2015 survey of Comcast cable subscribers in Bellingham. BTV Bellingham is identified as "BTV10" in the table below.

Frequency of viewing channels:

Channel	Watches at least 1x per week	Occasionally 2x-3x per month	Seldom "about 1x month or less"	Never Watch
BTV10	6%	18%	18%	57%
TVW	3%	7%	21%	67%
C-SPAN	5%	17%	16%	60%
CNN	23%	29%	15%	32%

Programs watched most frequently:

- City Council 48%
- County Council 12%

- Planning Commission 4%
- Ski to Sea Parade 4%
- Bellingham Voices 3%
- Western Lectures 3%
- Western Window 3%

Percentage of subscribers receiving cable television in “HD” format: **59%**

Q: Where else does CenturyLink provide cable television services in Washington State?

A: Cable franchise agreements with CenturyLink are in place in the Washington cities of Bellevue, Burien, Lake Forest Park, Mercer Island, Normandy Park, Seattle, and Shoreline.

Q: How will Bellingham residents know if CenturyLink will be able to provide Prism TV service at a specific residential address?

A: Because CenturyLink cable television services depend on required technical infrastructure at each individual service address, Bellingham residents will need to contact CenturyLink (via website or phone call) to determine whether service is available at a specific location.

Inquiries regarding potential service addresses can be made within 30 days after the franchise is approved.

III. Franchise Development Timeline

Representatives from CenturyLink reached out to the City in March 2016, requesting information about City Code and the process for cable television franchising. An activity timeline is provided below.

- June 2016 – Submittal from CenturyLink
 - Franchise application
 - Application fee
 - Proposed draft franchise agreement
- July 2016
 - CenturyLink services overview and introductions for staff and Elected Officials
 - Initial negotiations
- August 2016
 - Required public notices published
 - Public web page established – www.cob.org/centurylink
 - Initial staff outreach to other jurisdictions regarding CenturyLink cable
- August – December 2016
 - Staff and CenturyLink negotiated, exchanging several draft documents
- December 2016
 - Policy guidance check-in Council and Mayor’s office
- January 2017

- CenturyLink notified City of new management direction and priorities affecting the franchise
- February 2017 – June 2017
 - Staff received updated direction from Council and Mayor’s office based on CenturyLink direction changes
 - Staff outreach to other jurisdictions regarding CenturyLink cable services continued
 - Staff participation in Washington Association of Telecommunications Officers & Advisors (WATOA) meeting
 - Several document exchanges and work sessions in an effort to finalize the agreement
- June 2017
 - Agreed to target July 24, 2017 as date for public meeting and presentation of franchise draft to Bellingham City Council

IV. Legal Issues related to Cable Television Franchises

Franchising Authority

The City has the authority to grant franchises for the use of public streets, bridges, or other public ways, structures or places above or below the surface of the ground for railroads and other routes and facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service. City Charter, s. 11.02. The City may grant a cable television service provider a franchise to use the City’s rights-of-way to provide cable television services within the City.

Rules regarding 2nd Cable Television Provider

For purposes of negotiating a cable television franchise, CenturyLink is considered a new entrant.¹ The Federal Communications Commission (FCC) has issued rules to eliminate unreasonable barriers to entry into the cable market for new entrants, and to encourage investment in broadband facilities. For example, the FCC has ruled that a local franchising authority’s refusal to grant a competitive franchise because of an applicant’s unwillingness to agree to unreasonable build-out requirements constitutes an unreasonable refusal to award a competitive franchise under federal law. The City may not lawfully require CenturyLink to immediately build out its cable television system across the entire City or to provide service upon request to any resident of the City.

Federal law also pre-empts other local regulation of cable television service providers, for example, with respect to franchise fees.

Bellingham Municipal Code

¹ The City previously granted a cable television franchise to Comcast of Washington IV, d/b/a Comcast. Information about the City’s franchise agreement with Comcast can be found on the City’s website at www.cob.org/comcast.

The City has adopted local regulations regarding cable television and those regulations are codified in Chapter 6.17 BMC. The local regulations define the process by which cable operators may apply for a cable television franchise, the criteria that will be used to evaluate the application, and the requirements that the City will generally require cable operators to meet in order to provide cable television services in the City. These regulations were most recently modified in 2012.

However, as stated above, the FCC has issued rules in order to eliminate unreasonable barriers to entry into the cable market for new entrants, and to encourage investment in broadband facilities. Accordingly, CenturyLink has requested that the City Council waive the following requirements in Chapter 6.17:

BMC 6.17.040(B) states: The company agrees to provide all services specifically set forth in its application and to provide cable television service within all the confines of the city.

BMC 6.17.200 states: The company shall provide cable television service throughout the city pursuant to the provisions of this chapter and shall keep a record for at least three years of all requests for service received by it.

BMC 6.17.210 further describes the general requirement that a cable television service provider extend its system and make service available at standard installation and service rates.

As stated above, the FCC has ruled that refusing to grant a competitive franchise because of an applicant's unwillingness to agree to unreasonable build-out requirements constitutes an unreasonable refusal to award a competitive franchise under federal law. Accordingly, the City may not require CenturyLink to commit to an immediate full build out of its cable system so that it can provide cable television service within all areas of the city.

BMC 6.17.120(A) states in part: Company shall maintain a convenient local customer service and bill payment location within the city for matters such as receiving subscriber payments, handling billing questions, equipment replacement and customer service information.

CenturyLink has requested a limited waiver from the requirement to maintain a local customer service and bill payment location. CenturyLink has stated that the costs of maintaining a local office constitute a barrier to entry in this market because it currently has no cable customers and receives no revenues for the provision of cable television services. Therefore, CenturyLink has proposed that the City waive this requirement until such time as CenturyLink provides cable services to at least 30% of the total number of cable service subscribers in the City. IN the meantime, CenturyLink will identify third party locations where customers can pay their CenturyLink bill.

V. Franchise Highlights

Identifying Community and Policy Interests

Bellingham established and reported on a number of community needs and interests related to cable television services during the franchise renewal effort between the City and Comcast. Those

efforts and the resulting agreement were used as the initial baseline for the development of the proposed agreement with CenturyLink.

The staff used the following to inform the negotiations:

- Community Needs and interests identified during robust public outreach in 2010-2011, and the existing franchise agreement between the City and Comcast
- Staff input received from other jurisdictions based on their experience with CenturyLink franchise and services
- Staff contact and input with the public over time related to cable television services
- Elected Official input from Council franchise Working Group & Mayor's Office

Following several discussions with the Council Work group, some key policy and community interest areas emerged. These interests were used to further guide negotiations.

- Term of agreement
- Customer service
- Service area and buildout
- Equity interests
- Responsiveness based on feedback from other jurisdictions
- Financial terms and reporting unchanged from agreement with incumbent provider
- PEG channel provisions
- Reporting requirements

Franchise Agreement Highlights

Subject and Agreement Section	Content summary notes (See agreement for complete language)
1. Financial definitions and reporting frequency - Sections 1.22, 8.1, 11.1	Financial definitions and reporting requirements are the same as with incumbent franchise. Franchise fee rate – 5% PEG fee - \$.50/subscriber/month Financial payment and reporting occurs monthly, same as with incumbent franchise.
2. Term of the agreement and effective date – Sections 2.3, 12.5	The term is 10 years, but CenturyLink can terminate in 5 years if CenturyLink is not providing service to at least 20% of cable television subscribers in Bellingham. The agreement will go into effect 15 days following final passage by City Council. CenturyLink will have 60 days to accept the franchise and comply with all conditions for such acceptance.
3. Franchise area and Service availability – Sections 2.4, 10.1	The franchise area includes the present or future corporate limits of Bellingham.

Subject and Agreement Section	Content summary notes (See agreement for complete language)
	<p>CenturyLink anticipates being technically able to provide services to 6,200 service addresses within 12 months of franchise acceptance.</p> <p>CenturyLink shall not deny cable service to any group of subscribers or potential residential subscribers based upon race or the income level of the local area in which such group resides, nor shall it base decisions about construction or maintenance of its cable system or facilities based upon race or the income level of residents of the local area in which such group resides.</p>
4. Construction and Operation in Streets and Rights-of-Way – Section 3	CenturyLink required to meet all codes and standards, same as with incumbent franchise.
5. Cable system capacity - Channels offered – Section 4.1	CenturyLink shall provide a minimum of 85 channels of video programming, same as with incumbent franchise.
6. Complimentary services to City buildings and schools – Section 4.2	<p>City and school buildings may request and receive outlets of complimentary services for specified purposes, if</p> <ul style="list-style-type: none"> • Address is technically capable of receiving Prism service, and • City requests service be provided by CenturyLink, and • Incumbent-provided cable service is disconnected
7. Closed Captioning – Section 5.5	CenturyLink shall comply with laws to provide services to the disabled, including closed captioning. This is same as language with incumbent provider.
8. PEG Access Channels – Section 6.1, 6.4	CenturyLink shall provide two PEG channels within six months of franchise acceptance, and a third upon request and only after CenturyLink provides cable services to 30% of the Bellingham market.
9. PEG Access channel location and numbers – Section 6.6	<p>Initial PEG channels assigned</p> <ul style="list-style-type: none"> • Channel 40 – BTV Bellingham – standard definition • Channel 1040 – BTV Bellingham – high definition <p>City will receive 90 day advance notice of channel number changes or of a change in the way the channel is accessed via the CenturyLink “mosaic” navigation system option.</p>
10. Low income discounts – Section 7.4d	CenturyLink will provide needs-based discounts which will not be less than amounts provided by other cable operators in the City.

Subject and Agreement Section	Content summary notes (See agreement for complete language)
	<p>As of the date of the franchise, to participate in the Lifeline Link-up program, subscribers must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in one of a number of assistance programs:</p> <ul style="list-style-type: none"> • Medicaid; • Supplemental Nutrition Assistance Program (Food Stamps or SNAP); • Supplemental Security Income (SSI); • Federal Public Housing Assistance (Section 8); • Veterans and Survivors Pension Benefit; • Bureau of Indian Affairs General Assistance; • Tribally-Administered Temporary Assistance for Needy Families (TTANF); • Food Distribution Program on Indian Reservations (FDPIR); • Head Start (if income eligibility criteria are met); or • State assistance programs (if applicable).
11. Liquidated damages – Section 7.6	The City will suspend liquidated damages for CenturyLink’s failure to comply with the FCC’s customer service standards during the initial twelve (12) months of the agreement. Subsequently, the amount of liquidated damages that may be assessed by the City for CenturyLink’s failure to meet those standards will increase in proportion to the number of subscribers that CenturyLink provides services to within the City.
12. Trouble call reports – Section 8.2	Six months after franchise is effective, CenturyLink will be required to provide a quarterly count of “trouble calls”. The City may request additional details.
13. Quarterly customer compliance reports – Section 8.3	Twelve months after the franchise is effective, CenturyLink will be required to provide the City with quarterly reports describing compliance with customer service standards.
14. Ascertainment (Community Assessment) – Section 8.5	After the franchise has been in place for five years, the City may request one ascertainment survey be conducted related to the community’s cable needs and interests. The City may add up to 10 questions for inclusion in the survey.
15. Semi-annual meetings – Section 8.8	Six months after the franchise is effective, CenturyLink will meet with the City semi-annually, and more frequently if requested, to discuss service availability.
16. Customer service Agreements and standards, location – Section 9.3, 9.4	<p>CenturyLink is required to provide service agreements and specific customer-oriented information to customers.</p> <p>CenturyLink adopts FCC customer service procedures and standards.</p>

Subject and Agreement Section	Content summary notes (See agreement for complete language)
	<p>CenturyLink will deliver equipment and accept equipment returns via courier service or via a service technician. A telephone-based customer service and complaint line will be offered. Subscribers will be able to return and receive equipment free of charge.</p> <p>CenturyLink will offer payment locations within the greater Bellingham area.</p> <p>If CenturyLink provides cable service to 30% of the Bellingham market share, then CenturyLink will be required to provide a customer service and bill payment location within the City, for matters such as receiving payments, handling billing questions, equipment replacement, and customer service.</p>

VI. Conclusion

Development of this proposed franchise was a fairly lengthy process, even with the existence of fairly recent community needs assessments and with staff familiar with existing agreements and community interests. City staff appreciate Council’s willingness to identify Council Franchise Work Group for providing guidance during this process and in guiding other franchise-related matters.

Should Council approve the proposed franchise ordinance, the franchise would be effective 15 days following Council approval, assuming that the franchise is signed by both City and CenturyLink within 60 days.