

SULTAN CITY COUNCIL AGENDA ITEM COVER SHEET

ITEM NO: Consent C-6

DATE: May 24, 2007

SUBJECT: Second Reading Ordinance No. 950-07 Extension of Cable TV Franchise.

CONTACT PERSON: Deborah Knight, City Administrator

SUMMARY:

Extending Cable TV Franchise Agreement

This report recommends having second reading and adoption of Ordinance No. 950-07 (Attachment A) to extend the cable television franchise agreement with Tele-Vue Systems, Inc. (now Comcast) to September 30, 2007.

The original franchise agreement (Ordinance No. 502 - Attachment B) expired on August 8, 2004. The Cable TV ordinance is codified in Section 5.28 of Sultan Municipal Code. In December 2006, the City Council approved Ordinance No. 946-06 (Attachment C) extending the franchise agreement to March 31, 2007. The City is continuing its negotiations with Comcast. The final issue under negotiation is Section 2.5 Grant of other Franchises/Competitive Equity (See Attachment D). Comcast is concerned about new companies such as telephone and internet carriers entering the cable market. The local cable negotiator has sent the Consortium proposed language to the corporate office in Philadelphia for review. This is likely to hold up negotiations for several months.

Negotiations are expected to be finalized by September 30, 2007.

Cable TV Franchise Negotiations

Since February 2006, the City has been working with its partners in the East County Cable Consortium (Snohomish, Monroe, and Lake Stevens) and a consultant, River Oaks Communications to complete the franchise negotiations with Comcast. Negotiations with Comcast have reached a stalemate on several points and the Consortium is almost to the end of the contractual limit of \$22,500.

The purpose of this report is to provide the City Council with an outline of the remaining points of conflict, provide direction to staff on any of the specific issues, and request authorization for \$900 to continue the negotiations and finalize the agreement and ordinances. Attachment D is final draft of the issues on which Consortium and Comcast have not reached agreement.

Staff foresees one joint session via a conference call with Comcast, two members of the Consortium, and our negotiator. If this session reaches consensus on the remaining

issues, then River Oaks would be directed to finalize the franchise agreement and ordinance. If the session does not reach consensus, then we would return to the City Council for direction before authorizing River Oaks to finalize the franchise agreement and ordinance.

FISCAL IMPACT:

In February 2006, the Consortium authorized a professional services contract with River Oak Communications Corporation to represent the Consortium in negotiations with Comcast Cable and complete the franchise agreement and cable ordinance. The contract provided a high estimate of 90 hours of work in an amount not to exceed for \$22,500. The tables below present the allocation of costs for each of the member cities based on the number of cable subscribers.

Initial Contract Allocation

Lake Stevens	1,897	24.90%	\$ 5,602.11
Snohomish	2,525	33.14%	\$ 7,456.69
Monroe	2,199	28.86%	\$ 6,493.96
Sultan	998	13.10%	\$ 2,947.24
	<u>7,619</u>	<u>100.00%</u>	<u>\$ 22,500.00</u>

Change Order #1

Lake Stevens	1,897	24.90%	\$ 1,618.39
Snohomish	2,525	33.14%	\$ 2,154.15
Monroe	2,199	28.86%	\$ 1,876.03
Sultan	998	13.10%	\$ 851.42
	<u>7,619</u>	<u>100.00%</u>	<u>\$ 6,500.00</u>

Sultan's proportionate share of the contract extension with River Oaks Communication was estimated at \$851.42 (See Change Order #1 above). At the May 10, 2007 Council meeting, the Council approved authorization for an additional \$900.00 to cover any minor work that may need to be done by the consultant specifically to prepare the adopting ordinance for Sultan.

There is money in the 2007 general fund budget to cover 2007 expenses.

BACKGROUND:

As required by federal law, the City of Sultan and its East County Cable Consortium partners formally began the cable franchise renewal process in April 2004. On June 11, 2004, Comcast Cable Communication responded with a proposal.

Based on information gathered by a 2004 regional needs survey, the Consortium issued a request for proposals for a consultant to negotiate with Comcast on behalf of the Consortium. Since then, the Consortium has hired three firms to provide professional services to renew the franchise agreement and ordinance. The owner of the first firm hired by the Consortium passed away and the services of the second firm were not acceptable to the Consortium. River Oak Communications was retained by the Consortium in February 2006.

ANALYSIS:

The negotiating environment has been effected by potential Federal and State legislation and the Consortium's previous compromise points have yielded little from Comcast. Comcast has communicated concerns about the competitive changes within the cable industry by both satellite and telephone cable services and an equal business environment.

The consortium is concerned about the impact of bundling of cable, telephone, and internet services on franchise fees, authorizations for extension of the agreement, cable services to municipal buildings, low income senior discounts, and other issues.

A new condition that will impact the negotiating environment is a recent Washington State Supreme Court decision that has held the City of Renton liability to a contractor for a franchisee's late movement of their infrastructure based on their franchise agreement. City staff will be recommending a contractual hold harmless to address this issue; however, since this is a new and emerging issue, we expect some additional negotiating time with Comcast.

RECOMMENDED ACTION:

- 1. I move that the City Council adopt Ordinance No. 950-07 extending the cable television franchise agreement to October 1, 2007**

ATTACHMENTS:

- A. Ordinance No. 950-07
-

COUNCIL ACTION:

DATE:

CITY OF SULTAN
Sultan, Washington

ORDINANCE NO. 950-07

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, AMENDING ORDINANCE NO. 946-06, AS PREVIOUSLY AMENDED BY SUBSEQUENT ENACTMENTS; EXTENDING UNTIL SEPTEMBER 30, 2007 A NONEXCLUSIVE CABLE TELEVISION FRANCHISE GRANTED TO TELE-VUE SYSTEMS, INC., PURSUANT TO CHAPTER 5.28 OF THE SULTAN MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND AUTHORIZING THE MAYOR TO EXECUTE AN ACKNOWLEDGEMENT OF EXTENSION OF CABLE FRANCHISE.

WHEREAS, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, all codified in Title 47 of the United States Code, authorize local Governments to grant franchises for the provision of cable television service within their corporate boundaries, and

WHEREAS, the City of Sultan conferred a non-exclusive cable television franchise to Tele-Vue Systems, Inc. by Ordinance No. 502 (the "Franchise"); and

WHEREAS, on November 18, 2002 the merger of AT&T Corp, with Comcast was completed, and the name of Tele-Vue's ultimate parent changed from AT&T Comcast Corporation to Comcast Corporation, and

WHEREAS, the Franchise expires by its own terms on August 8, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgment of Extension and Ordinance No. 859-04 to November 11, 2004; and

WHEREAS, the term of the Franchise was extended by an Acknowledgement of Extension and Ordinance No. 866-05 to May 12, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to November 10, 2005; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 878-05 to June 10, 2006; and

WHEREAS, the term of the Franchise was extended further by an Acknowledgement of Extension and Ordinance No. 946-06 to March 31, 2007; and

WHEREAS, the City of Sultan, in conjunction with other cities, has been negotiating a franchise renewal in accordance with Section 626 of the Cable Communications Policy Act of 1994; and

WHEREAS, negotiations with Comcast Cable, Inc. are expected to be complete by September 30, 2007;

NOW, THEREFORE, to provide continued service to the residents of the City and to provide an opportunity to finalize negotiations, it is hereby ordained by the City Council of the City of Sultan, Washington as follows:

Section 1. The Mayor of the City of Sultan is hereby authorized to execute that certain Acknowledgement of Extension of Franchise attached to the Ordinance as Attachment A.

Section 2. Sultan Municipal code Section 5.28.020 (D) is amended to read as follows:

5.28.020(D) Term

This franchise or renewal and all rights, privileges, obligations and regulations pertaining thereto shall commence on the effective date of Ordinance No. xxx-xx and shall expire on September 30, 2007. Notwithstanding 5.28.360 relating to franchise renewal, negotiations for renewal of the franchise agreement shall commence in the year 2001.

Section 3. Should any provision of this Ordinance be declared unlawful, the remaining portions of this Ordinance shall remain fully lawful and in effect.

Section 4. This Ordinance shall become effective five days after publication as required by law.

PASSED by the City Council and APPROVED by the Mayor this 24th day of May 2007.

CITY OF SULTAN

By _____
Benjamin R. Tolson, Mayor

ATTEST:

By _____
Laura Koenig, City Clerk

Approved to Form:

By _____
Thom H. Graafstra, City Attorney

Published: _____

ACKNOWLEDGEMENT OF EXTENSION OF FRANCHISE

This Acknowledgement of Extension of Franchise is made this 24th day of May, 2007 between Comcast of California/Colorado/Texas/Washington, Inc. ("Franchisee") and the City of Sultan, Washington, a Washington Municipal Corporation ("City").

Whereas, the City conferred a franchise on Tele-Vue Systems, Inc. by Ordinance No. 502; and

Whereas, the term of that franchise was extended by Ordinances Nos. 699-99, 859-04, 866-04, 878-05, 896-05, and 946-06; and

Whereas, by assignments the franchise conferred is now held by the Franchisee; and

Whereas, the parties wish to agree to and acknowledge the continued effect of the franchise until September 30, 2007;

Now, therefore, Franchisee and City acknowledge and agree as follows:

1. Term. That certain Franchise conferred by the City by Ordinance No. 502 and extended by Ordinance No. 699-99 and re-extended by Ordinance No. 859-04, and further extended by Ordinance No. 866-04, and further extended by Ordinance No. 878-05 896-05 and 946-06 is hereby acknowledged and agreed to be extended until September 30, 2007.
2. Ratification. All terms and conditions of the Franchise are hereby ratified and confirmed, except the provision for the duration of the Franchise which is hereby acknowledged to be September 30, 2007.

Dated:

FRANCHISEE

By: _____

CITY

City of Sultan

By: _____
Mayor Benjamin R. Tolson