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## **M E M O R A N D U M**

To: Denise Jakan, Director of Information Technology  
Town of Erie

From: Ken Fellman, Esq.  
Gabrielle Daley, Esq.

CC: Malcolm Fleming, Town Administrator

Date: April 16, 2020

Re: Status of Comcast Cable Franchise Renewal

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In preparation for the April 28<sup>th</sup> Board of Trustees meeting, this memo will update you on the recent activity, status and recommended next steps in Erie's cable franchise renewal negotiations with Comcast. The memo has been written so as to exclude any sensitive, privileged negotiations information, and therefore can be shared publicly if you decide to do so.

During 2019 we completed most of the negotiations, including Comcast's agreement to provide the Town with a high definition channel for government access programming, and Comcast's commitment to upgrade equipment to allow for improved video and audio signals. The equipment upgrade is complete, and the high definition channel will be provided within 120 days of the new franchise effective date. There are two significant issues still outstanding, one related to implementing the new FCC order dealing with franchise fees, and one related to how staff is going to address issues identified in the technical report prepared about the cable system infrastructure. These two issues are discussed in more detail below.

### **IMPLEMENTING THE NEW FCC FRANCHISE FEE ORDER**

Last fall the FCC adopted a new order interpreting what kind of franchise benefits should be considered franchise fees and subject to the federal statutory cap that franchise fees may not exceed 5% of a cable operator's gross cable revenues. The new order changes 35 years of how the Cable Act's interpretation of franchise fees have been understood by municipalities, cable operators and the FCC. For the first time ever, franchise benefits like free cable service to public buildings may now be considered part of the franchise fee compensation paid to municipalities, and the value of those services can be deducted from the quarter franchise fees paid for the use of the rights of way. There was serious concern among the local government community nationwide that cable operators would begin exercising self-help under the new Order, and begin deducting certain amounts from franchise fees, without first attempting to work these issues out with individual local governments.

The Colorado Communications and Utility Alliance (CCUA) has worked with Comcast over the past few months to develop model franchise language addressing how to implement this

new FCC Order, and as a CCUA member, Erie will benefit from this new language. This process of negotiations between CCUA and Comcast has recently been completed, and we can now incorporate the new language into our franchise draft.

## **ADDRESSING ISSUES RAISED IN TECHNICAL EVALUATION OF CABLE SYSTEM**

Part of our preparation for negotiations involved retaining a cable system technical expert through our office, to evaluate how the cable system complies with federal, state and local requirements. While the cable system was generally found to be high quality and in compliance with FCC standards, there were multiple findings of safety code violations, including damaged facilities, attachments made without proper grounding and other issues. As a follow up to receiving the report, Town staff has undertaken a preliminary review of facilities in the rights of way and has determined numerous additional problems – some related to cable and some related to facilities of other utilities within the Town.

We understand that staff's current focus on COVID-19 issues has impacted this process. It is however, staff's plan to begin a more concerted effort of reaching out to Comcast and other utilities in the rights of way, with the examples of problems we have identified, and with the intent to bring all utility facilities into compliance with applicable safety codes. We are also aware that staff has begun, and expects to continue, a public information campaign within the community, to help address any code related issues related to how network wiring is installed on private property in Erie. As this process develops, we expect staff will be increasingly more proactive in ensuring that cable and all other utility facilities are installed and maintained within the Town in full compliance with all applicable codes. There will likely be some additional language in our franchise agreement addressing these issues, and our office expects to have a new draft to review with you, and then share with Comcast, over the next couple of weeks. Once we get a new draft to Comcast, we are hopeful that we can complete negotiations within a month or two afterwards.

Please let us know if you have any questions or concerns.