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# M E M O R A N D U M

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**DATE:** November 17, 2005  
**TO:** City Council Members  
**FROM:** Jennifer Bruno, Policy Analyst  
**RE:** Comcast Statement of concerns re: Qwest television franchise agreement

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On November 10, 2005, the Council received a briefing regarding the proposed television franchise agreement with Qwest Broadband Services, Inc. This franchise agreement would be similar to the one that is still to be re-negotiated with the other major cable competitor in the market, Comcast. The proposed franchise agreement has two major differences:

1. A 5 percent of gross revenue “franchise fee” will be written into the contract, and independent of any changes to federal law that may occur.
2. Qwest Broadband Services, Inc. will not have a “build-out” requirement until they retain at least 51% of the market. The reasoning behind this exception is to remove a significant barrier to entry of a competitor to Comcast into the market. Comcast currently does have a build out requirement.

Council Member Christensen met with Comcast representatives on Tuesday, November 15 to discuss their concerns regarding the proposed agreement. The following summarizes the key concerns that Comcast has:

1. Comcast would like to have been a part of negotiating the proposed franchise agreement with Qwest. Because their video franchise agreement with the City has expired and they will be re-negotiating shortly, they feel that to have true “even” competition it would have been ideal to have all parties at the table. They have only recently been made aware of the draft franchise agreement, and see potential problems with agreeing to use this agreement for their own franchise.
2. Comcast would have liked the process to be more open and had a longer period in which to comment.
3. Comcast does not see the build-out requirement as equitable. They do not foresee cable subscription ever going above the 51% threshold, therefore there is effectively no build-out requirement. They would instead like to see some sort of time threshold that has been negotiated previously elsewhere in the market (they have indicated 3-5 years is standard).

Comcast will be providing a letter to Council Members (to be passed out at the November 15<sup>th</sup> Council Meeting) further detailing their objections to the proposed franchise agreement. They will also give the Council a brief presentation on the Thursday, November 17<sup>th</sup> work session detailing their concerns.

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# M E M O R A N D U M

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**DATE:** November 10, 2005  
**TO:** City Council Members  
**FROM:** Jennifer Bruno, Policy Analyst  
**RE:** Qwest Broadband Services, Inc. Cable Franchise agreement

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## **POTENTIAL MOTIONS:**

1. **["I move that the Council"]** Adopt an ordinance granting to Qwest Broadband Services, Inc. and its successors, a cable television franchise.
2. **["I move that the Council"]** Not adopt an ordinance granting to Qwest Broadband Services, Inc. and its successors, a cable television franchise.

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The following information was provided previously for the Council Work Session on November 10, 2005. It is provided again for your reference.

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- A. Qwest Broadband Services, Inc. (BSI - a wholly owned subsidiary of Qwest Communications), is requesting a franchise agreement from the City, to provide cable TV service within the City.
  1. Qwest BSI will offer a minimum of 175 TV channels (including local channels), and will be competitive with the local cable provider, Comcast.
- B. The final franchise agreement and accompanying ordinance are currently being finalized and are not available by the release of this paperwork. The franchise agreement will include the following:
  1. The City will charge 5% of Qwest Broadband Services, Inc.'s gross revenue (as allowed by Federal law). Regardless of changes to federal law regarding ability of municipalities to charge this franchise fee, the City will continue to collect 5% (it will be written into the contract).
  2. The typical protections for the City's rights-of-way.
  3. As required by Federal law, Qwest BSI will make the same channels available to the City for public, educational and governmental programming that Comcast provides, with identical programming, channel position, etc.
  4. As the second wireline provider in the City, Qwest BSI will have different "build-out" and line extension requirements.

- As a new entrant to the market, Qwest BSI service will not be immediately universally available to all City residents. The City will agree to a level of 51% market penetration before requiring build-out.
5. Under Federal law, Qwest will have certain rate flexibility in order to conduct promotional campaigns to be able to compete with Comcast.
- C. The attached statement provided by Qwest (see attachment to Administration's memo) summarizes the franchise agreement:
1. Qwest BSI will be an alternative choice of TV services for SLC residents, bringing with it the benefits of market competition including lower rates, better service and superior product.
  2. Qwest BSI will use existing facilities in City right-of-way (no construction).
  3. Qwest BSI will provide digital video services in SLC (including high-definition television, and video on demand).
  4. Qwest BSI will be able to offer 20 to 40 Mb data capabilities.
  5. Qwest BSI will provide cable connections to schools and libraries.
- D. The Comcast franchise agreement is currently up for renewal, and the City will be negotiating a renewal agreement in the coming months.

SALT LAKE CITY ORDINANCE  
No. \_\_\_\_\_ of 2005  
(Granting to Qwest Broadband Services, Inc.,  
and its successors, a cable television franchise)

WHEREAS, Qwest Broadband Services, Inc., a Delaware corporation (the “Company”) desires to provide certain cable television services within Salt Lake City, Utah (the “City”), and in connection therewith to establish a network in, under, along, over and across present and future streets, alleys and rights-of-way of the City; and

WHEREAS, the City, in the exercise of its police power, ownership, use or rights over and in the public rights-of-way, and pursuant to its other regulatory authority, believes it is in the best interest of the public to provide to the Company, and its successors, a non-exclusive franchise to operate its cable business within the City; and

WHEREAS, the City and the Company propose to enter into a Franchise Agreement, the substantially final form of which has been presented to the City Council at the meeting at which this Ordinance is being considered for adoption; and

WHEREAS, the City desires to approve the execution and delivery of such Franchise Agreement and to otherwise take all actions necessary to grant the referenced franchise to the Company; and

WHEREAS, the City believes this Ordinance to be in the best interest of the residents of the City,

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah, as follows:

SECTION 1. Short Title. This Ordinance shall constitute the Qwest Broadband Services, Inc. Franchise Ordinance.

SECTION 2. Defined Terms. The following terms shall have the following meanings when used in this Ordinance. Any other capitalized terms used in this Ordinance and not otherwise defined in this Section 2 shall have the meaning ascribed thereto in the Agreement (as defined below).

**Agreement** shall mean the Cable Television Franchise Agreement, by and between the City and the Company, a substantially final copy of which is attached hereto as Exhibit A, as finally executed by the parties.

**Authorized Area** shall mean the entire area from time to time within the corporate limits of Municipality.

**Public Ways** shall mean any present and future public rights-of-way, streets, highways, alleys, viaducts, bridges, roads and lanes within Municipality (including the surface, subsurface and airspace), which are owned by Municipality, or which have been dedicated to public use and which are controlled and operated by Municipality. "Public Ways" shall also include public rights-of-way, streets, highways, alleys, viaducts, bridges, roads and lanes within Municipality (including the surface, subsurface and airspace) which are not owned by Municipality and have not been dedicated to the public to the extent that despite such non-dedication Municipality has the ability to grant the rights set forth herein.

**Cable Services** shall mean (a) the one-way transmission to all Subscribers of (i) Video Programming, or (ii) other programming services, by which is meant information which Company makes available to all Subscribers generally, and

(b) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming services.

**Cable Television Business** shall mean the provision by Company of Cable Services solely by means of the Cable System.

**Cable System or System** shall mean both: A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Services which is provided to multiple Subscribers within the Authorized Area, but such term does not include (i) a facility that serves only to re-transmit the television signals of one or more television broadcast stations; (ii) a facility that serves Subscribers without using any public right of way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such a facility shall be considered a Cable System (other than for purposes of Section 621(c) of such Act, 47 U.S.C. Section 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with Section 653 of Title VI of the Communications Act of 1934, as amended; or (v) any facilities of any electric utility used solely for operating its electric utility systems, and; A facility which provides video services through wireline facilities located at least in part in the Public ways without regard to delivery technology, including networks with some or all of the following characteristics: two-way, switched, point-to-point, using Internet protocol technology.

SECTION 3. Grant of Franchise. (a) There is hereby granted to the Company, and its successors and assigns, in accordance with the terms and conditions of the Franchise Agreement,

the right, privilege, and franchise (collectively, the “Franchise”), to erect, construct, install, maintain and operate in, under, along, over, across and through portions of the Public Ways, a Cable System to provide Cable Services in the Authorized Area and to transact a Cable Television Business in such area. Upon the annexation of any territory to Municipality, all rights hereby granted, and the Franchise, shall automatically extend to the territory so annexed, to the extent Municipality has authority to so extend the Franchise. All facilities owned, maintained or operated by Company within such annexed territory shall thereafter be subject to all of the terms and conditions of this Agreement.

(b) The Franchise and all rights granted hereunder are nonexclusive. Municipality reserves the right to grant such other and future franchises as it deems appropriate. This Ordinance does not establish any priority for the use of the Public Ways by Company or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Public Ways, the first priority shall be to the public generally, the second priority to Municipality in the performance of its various functions, and thereafter, as between Company and other franchisees and permit holders, as determined by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Utah.

(c) This Ordinance is adopted, and the Franchise is granted, subject to all of the terms and conditions of the Agreement, the substantially final form of which is attached hereto as Exhibit A, and which is incorporated herein and made a part hereof as fully and completely as if set forth herein. This Ordinance contains a summary of certain provisions of the Agreement. Reference is hereby made to the Agreement for a full and complete description of such terms and

conditions. Any differences or discrepancies between this Ordinance and the Agreement shall be resolved in favor of the Agreement.

SECTION 4. Term. The term of the Franchise is for a period from and after the effective date of this Ordinance and its acceptance by the Company, until November 1, 2020, plus any extensions, subject to Section 11 hereof.

The Company shall pay all costs of publishing a notice of this Ordinance.

SECTION 5. Acceptance by Company. Within sixty (60) days after the effective date of this Ordinance, the Company shall execute and deliver to the City Recorder of the City, a copy of the Agreement. Such execution and delivery of the Agreement shall constitute the unqualified acceptance by the Company of this Ordinance and the Franchise. Failure by the Company to execute and deliver the Agreement as provided herein shall render this Ordinance and the rights granted hereunder null and void.

SECTION 6. Consideration and Payment Dates.

(a) Franchise Fee. For and in consideration of the Franchise, and as fair and reasonable compensation to City for the use by the Company of the Public Ways, the Company shall pay the City throughout the term of the Franchise an annual amount equal to five percent (5%) of the Company's Cable Gross Revenues (the "Franchise Fee"). Such payments shall be made quarterly, and are due within forty-five (45) days after the end of each calendar quarter. Each Franchise Fee payment shall be accompanied by a written report to the City, containing an accurate statement in summarized form of the Company's Cable Gross Revenues and the computation of the payment amount.

(b) Other Payments. The Franchise Fee is in addition to all sums which may be due to the City under this Agreement, or for property taxes (real and personal), income taxes, license



fees, permit fees or other fees, taxes or charges which the City or any other governmental entity may from time to time impose. It is agreed such other amounts do not constitute a Franchise Fee or any part thereof. Without limiting the generality of the foregoing, Company shall pay: (i) the City's cost of newspaper publication associated with adoption of this Ordinance, and (ii) an administrative fee of \$8,000 to reimburse Municipality for all costs and expenses associated with the preparation and adoption of this Ordinance and the Agreement, payable upon the effective date of this Ordinance.

(c) All sums not paid when due shall bear interest at the rate of ten percent (10%) per annum computed monthly or the highest lawful rate, whichever is less.

(d) The Company represents to the City that one of the purposes for entering into this Agreement is to obtain authority to build a cable television network within the City to provide cable service to customers within the City. Upon completion of the Network, the Company will actively market customer services and generate Cable Gross Revenue.

SECTION 7. Rights Reserved to the City. Without limitation upon the rights that the City might otherwise have, the City expressly reserves the following rights, powers and authorities to: (a) exercise its governmental powers now or hereafter to the full extent that such powers may be vested in or granted to the City; (b) grant additional franchises to the same property covered by the Franchise within the City to others, or (c) exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the law of Utah, or the City ordinances.

SECTION 8. Extension of City Limits. Upon the annexation of any territory to the City, the right and Franchise hereby granted shall extend to the territory so annexed to the extent the City has authority. All facilities owned, maintained, or operated by the Company located

within, under, or over streets, alleys and rights-of-way of the territory so annexed shall thereafter be subject to all of the terms hereof and of the Agreement.

SECTION 9. Early Termination or Revocation of Franchise.

9.1 The City may terminate or revoke the Franchise and all rights and privileges herein provided in accordance with Articles 9, 12 and 13 of the Agreement.

SECTION 10. This Ordinance shall take effect immediately upon publication.

Passed by the City Council of Salt Lake City, Utah, this \_\_\_\_\_ day of November, 2005.

\_\_\_\_\_  
CHAIRPERSON

ATTEST:

\_\_\_\_\_  
CHIEF DEPUTY CITY RECORDER

Transmitted to the Mayor on \_\_\_\_\_

Mayor's Action:    \_\_\_ Approved    \_\_\_ Vetoed

\_\_\_\_\_  
MAYOR

ATTEST:

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CHIEF DEPUTY CITY RECORDER

(SEAL)

Bill No. \_\_\_\_\_ of 2005.

Published: \_\_\_\_\_.

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EXHIBIT A

[Here attach form of Franchise Agreement.]