MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON MARCH 7, 2000

I. CALL TO ORDER AND ROLL CALL

The meeting was called to order by President Jack McDonald at 9:30 a.m. On roll call the following Elected Officials were found to be in attendance: Mayor Lesly S. Smith; President Jack McDonald; President Pro-Tem Sam McLendon; Councilman William Brooks; Councilman Norman Goldblum; and Councilman Allen Wyett. Also attending for all or part of the meeting were: Town Manager Robert J. Doney; Town Attorney John C. Randolph; Attorney Nick Miller; Assistant to the Town Manager David F. Jakubiak; Public Works Director Al Dusey; Recreation Director Russell Bitzer; Information Systems Manager Spencer Wilson; Human Resources Analyst Carla Kniepp; Fire-Rescue Chief Vincent K. Elmore; Assistant Police Chief Michael Reiter; Finance Director Jane Skittone; Planning, Zoning, and Building Director Robert L. Moore; and Town Clerk Mary Pollitt.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Town Clerk Pollitt gave the invocation. President McDonald led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

President Pro-Tem McLendon made a motion to approve the agenda. The motion was seconded by Councilman Brooks and carried 5-0 on roll call.

IV. FRANCHISE NEGOTIATIONS BETWEEN COMCAST CABLEVISION OF WEST PALM BEACH, INC., AND THE TOWN OF PALM BEACH REGARDING THE CABLE FRANCHISE WHICH EXPIRES APRIL 8, 2000

Assistant to the Town Manager Jakubiak explained the Mayor and Town Council received a quantity of back up materials including a February 23rd memorandum describing the process of this meeting with an attached letter dated February 8th from Bienstock and Clark, the attorney for Comcast, which highlights the Town's position and Comcast's responses to the various positions related to the Cable franchise renewal. He said there are issues that can be addressed by the Mayor and Town Council to narrow the focus, and the first issue will be the cable system upgrade followed by the issue of the creation of the Institutional Network including financing of that network. Mr. Jakubiak said other issues would be discussed that the staff thought should be part of this meeting.

Mr. Jakubiak reported that Diane Christie, Comcast, and Chuck Lane, Adelphia, had delivered their form FCC 394 which is the transfer form relating to the transfer of the cable system. He said the document was very lengthy, and it was not his intention to go over this form at this meeting; however, Attorney Miller will have brief comments regarding FCC form 394. He said he and Attorney Miller agreed that the issues discussed at this meeting should include the upgrade of the cable system and the franchise renewal negotiations. He added that a recommendation regarding the FCC form 394 will be sent to the Mayor and Town Council shortly.

Mr. Jakubiak said he would like to discuss the issue of the wiring of the Par 3 Golf Course near the end of the franchise renewal issues.

Mr. Jakubiak introduced Attorney Nick Miller who would address the issues related to the upgrade. Mr. Jakubiak said that Lee Afflerbach, President of Columbia Telecommunications Company, would also address the Mayor and Town Council.

Mr. Miller said the current Comcast television franchise expires April 8th in the Town of Palm Beach, and pursuant to federal law, Comcast sent a letter to the Town 2 ½ years ago requesting the Town proceed with the renewal process. He said the Town has had a series of meetings with Comcast representatives to discuss the details regarding what a renewed franchise should contain. He referred to the letter from Mr. Bienstock that summarized the requests of the Town's negotiating team and the company's current position on the various proposals.

Mr. Miller reported the company is willing to deal with the non capital cost items; it is willing to upgrade the subscriber network along the lines requested by the Town's negotiators; but there are two major issues that both sides remain far apart on: 1)How quickly should the Town's subscriber network be upgraded?; and 2) Should there be a governmental network built in conjunction with a subscriber network upgrade? Mr. Miller summarized Mr. Bienstock's comments: The subscriber network upgrade cannot begin until next summer and it will take two full years to complete the upgrade and the company is not prepared to promise a completed upgrade before the end of the year 2002.

Mr. Miller said that the Town requested that Comcast build fiber optics into the neighborhoods to a distance where a single piece of fiber is serving only 150 homes, and the Company has proposed that a single fiber serve 1,200 homes. He said that has various implications for the quality of service for consumers.

Mr. Miller reported that Comcast has said "no" to the issue of an Institutional Network which the staff plans to discuss in greater detail later in this meeting.

Lee Afflerbach, founder of Columbia Telecommunications Corporation, addressed the Mayor and Town Council. Mr. Afflerbach addressed the issues related to the upgrade and said historically cable systems have been one way systems or they deliver information to the subscriber. New systems are not only delivering information but are providing interactive information utilizing modems, demand services, pay per view services, etc. He noted that several of the larger cable companies are looking at providing telephone services competing with local phone companies. Mr. Afflerbach said he thought it was important that the node sizes were small to allow the capacity to be brought down to the user. The streets would not have to be excavated again, and the Town would have a competitive market place so that other providers could be in the system. He said up to 144 or more fibers could be in a cable with each fiber having enough capacity to transmit several hundred pictures at one time, and many additional services could be provided to customers.

Mr. Afflerbach said the node sizes should be as small as possible to provide reliability. He said the fibers are seamless and have no electronics, but there are electronic amplifiers every 2,000 feet in the cable system, and they are the source of unreliability. He said the closer the fiber is to a customer, the less moving parts are involved.

Mr. Afflerbach said the actual construction time on the system was important, and this system will not be easy to rebuild. One of the problems is the amount of underground construction with high-priced construction and restoration. It is important as part of the negotiation process to clearly specify a defined time frame for building this system with checks and balances to make sure that it is done in a timely fashion. Penalties should be attached if the construction is not finished in a timely fashion. This project will not be an easy one to rebuild, because most cable systems spiral out, and there is no way to spiral out in the Town of Palm Beach.

Mr. Afflerbach explained the I-Net, Institutional Network, has been around for a long time and is a fairly simple concept that ties or links buildings together. He said the opportunity exists for the cable company to install fiber cable for the town's use at the same time as the cable company builds the plan. He continued the cost of the fibers for the town's use is several hundred dollars per mile, and the real cost is the digging up the streets which could be done at the same time the cable company rebuilds the system. He said it was important to establish a partnership between the cable company and the town. This would be a long term investment because the fiber cable has no moving parts and with proper maintenance, the cable has a 20 year plus life.

Mr. Afflerbach stressed the costs of constructing fiber cable will go up because of the construction costs. He said a partnership is the best way to go which includes a viable business proposition. He said the Town has a need for a communication system which would address very basic needs.

Information Systems Manager Wilson addressed the Mayor and Town Council and said the Town currently has five remote sites that are connected through BellSouth leased lines. The speed of the connections from the internal network to those outside sites is very slow. The Town is limited to what can be done at the remote sites because of the speed. One of the advantages of the I-Net is the remote sites would not have any speed limitations whatsoever. The Town would not have to rely on BellSouth to provide the services, plus the present monthly costs would not be incurred to pay for those leased lines that connect all of the buildings in Town. The Town pays $1,432 per month, presently, to connect those five sites. In addition to the cost savings per month, the Town would have a better, faster, more reliable service than what the Town has now.

Mr. Wilson said the cabling in the Town Hall is twelve years old, and the speed is limited to 16 megabits because the cable cannot handle anything faster. He said the Town gets by with the present system, but the issue is, that at some point in time, the Town will have to consider re-cabling all of the Town's facilities to handle faster speeds as the needs will require. He gave the examples of GIS (Graphic Imaging Systems) transfers and telephone imaging.

Mr. Wilson said the issue of re-cabling the buildings will come up in the future, and will require changes. He said the Town could take advantage of an I-Net system.

Mr. Afflerbach, responding to questions from Councilman Wyett, said the Public Works Department location is a challenge because of the crossing of more than one jurisdiction. He said, assuming that the Council wants to move forward with the I-Net, that exploring the feasibility of working with Comcast to get to Public Works, utilizing some of their other systems, if possible, should be investigated. He said if that were not possible, other alternatives are available including leasing of the site or using low cost microwaves. He suggested moving forward with the cable company and bringing the proposed costs back to the Town Council for a decision.

Mr. Afflerbach said his company estimated costs, based on looking at the system and fifty previous I-Net projects, would be approximately $240,000 - $275,000. He proposed working with the cable company and having them respond to the actual figures.

Responding to a question from Attorney Nick Miller regarding incremental costs, Mr. Afflerbach replied tremendous savings can be achieved by the Town working with the cable company to achieve the best location sites, etc. "Incrementally" means the Town riding piggy back while the cable company constructs. If the Town constructed the lines itself, the cost would increase by approximately $360,000 or $600,000 total.

Mr. Afflerbach said the cost of the electronics to build the I-Net included what the Town is doing presently and expanded the data processing system so it had almost infinite capacity at a cost of approximately $50,000. If the Town chose to go with video and space age, the cost could go to approximately $325,000. He said the Town Council will have to make that decision and the decision will include moving from a data communication system to data, video and many other services. He added that making a decision to have a basic system does not preclude from moving to a newer system in two, three, or five years.

Mr. Afflerbach affirmed that the current wiring in Town Hall is obsolete and does need to be replaced as wiring has a 15 - 20 year life. The wiring is an IBM type of wiring and replacement parts and support of this system becomes very expensive. Mr. Afflerbach said the bottom line was that if the Town installed the fiber, based on his estimates, use electronic equipment only to upgrade the data systems, and replaced the existing wiring, the estimate would be approximately $365,000. The upscale version would range close to $700,000 or $690,000.

Mr. Afflerbach summarized that a customized network would be built that met the Town's needs – a system that is secure, has high performances, and the routing of the fiber would be consistent with the Town's construction of the new cable system. He said that he had not discussed who would pay for what, but had simply presented the costs of the items. The next step would be to consult with Comcast and work out the costs. He said it is cheaper to work with the cable company and not dig the streets up separately. Mr. Afflerbach reiterated that fiber communication is the technology of the future.

Mr. Wilson reported that the Town currently spends $1,432 per month, $17,184 per year, on communication costs to connect the Town's buildings. He said he expects those costs to rise over the next 5 - 10 years as the Town's needs rise. He projected that over a ten year period over $171,000 will be spent on communication costs alone between the buildings. He said another cost is the $1,500 per month spent on Internet access currently, and that cost would be over $181,000 for a ten year period. He suggested those costs could be avoided if a cable company would provide the Town with Internet access.

Attorney Nick Miller, referring to the Cost Savings sheet distributed at the meeting, said the Town could spend $1.2 million over the next ten year period if the Town does nothing. If the Town decided to do the I-Net with all the bells and whistles, Mr. Miller said the price would be approximately $690,000.

Mr. Afflerbach said the goal would be to provide everyone throughout the local government with the same access capability. Presently, the more users who tie into the system slow down the system.

Councilman Wyett requested the Town Council hear from the members in the audience who attended this meeting anticipating the discussion would center around the cable television issues related to Comcast. He questioned if they had interest in the I-Net system.

Responding to a question from Councilman Goldblum regarding the security of the Police and Fire Department's communication system, Mr. Afflerbach replied the proposed fiber system would be equal to or higher than the existing telephone system, because the fibers would be dedicated to the Town.

Mr. Miller asked Mr. Jakubiak to relay information he had received regarding other communities' activities in this area.

Assistant to the Town Manager Jakubiak reported the County of Sarasota and the City of Sarasota have negotiated with Comcast Cablevision. They estimated cost savings of $100,000 to $120,000. He said the City of Tampa has had an institutional network since 1984 and upgraded to fiber optics in 1990. He added that the residents of Palm Beach cannot have services that include high speed internet access, and the upgrade should have been done for the residents a couple of years ago. He added that was the reason the staff recommended a short term renewal with Comcast so they could move forward with an upgraded system.

Mr. Jakubiak explained that the City of Tampa used Time-Warner as their provider, and Time-Warner provided a $1 million one-time cash payment to the City at the time of renewal and they also agreed to maintain the system at no cost to the City. He said the City of Miami is currently talking to AT&T to have an I-Net, and he did not have dollar figures as they are currently in negotiations.

Mr. Jakubiak said the City of Detroit, Michigan, has gone through the same process as this Town has with Comcast Cablevision regarding their needs assessment study at a cost of $200,000. Mr. Jakubiak said the report showed that the cities have been in the forefront of negotiating with their cable companies to have their systems upgraded as quickly as possible. He said that is the reason the staff finds it unacceptable that this system will not be upgraded until the year 2002, and residents in other parts of Palm Beach County receive services that the residents of Palm Beach cannot.

President McDonald requested Attorney Miller provide additional information regarding the upgrade before public comments were received.

Attorney Miller responded that it was important to understand the legal rights of the Town and the subscribers in the renewal setting. He said the way the federal law works is it allows the Town to identify its needs, and if it needs a subscriber network upgrade and if it needs an I-net, then it is authorized to require the cable company, as a condition for renewal, to satisfy those needs. He said there is always a dispute over price, cost, etc., but that it is very important to hear from the members of the public what it is they think they need in the cable system. That establishes the base line of what the Town can require of the operators for the condition of the renewal.

Mr. Miller said cost is always an issue, and someone is going to have to pay to build the network. He said the real question is whether the company should be asked to pay for the network or should the taxpayer be asked to pay for this network? If the question is regarding subscriber network upgrades or additional capabilities in the state of the art communication system, there are two very distinct and separate questions that are merged in a renewal negotiation. He said the first question is: What is fair rent for the Town to ask the company to pay for use of its rights-of-way for the business opportunity that this franchise represents? He said the rent can come in the forms of cash as a franchise fee or in kind in the form of facilities that allow the general taxpayer to realize savings in future tax bills by cash flowing into the budget with the Town Council deciding how the money should be spent thereby not raising taxes for other issues. He said it is a misperception to think of this as a certain portion of the community is being asked to provide a benefit for the general community.

President McDonald requested public comments.

Terry Bienstock, Attorney representing Comcast, addressed the Town Council regarding the issues that were discussed. Mr. Bienstock said Comcast had a very good relationship with the Town working out the details of the renewal and have resolved most of the issues pertaining to the renewal with only one or two issues remaining, the I-net and the timing of the rebuild.

Mr. Bienstock said the issue of the I-net from Comcast's viewpoint was usually the result of an extensive needs assessment and used by municipalities with higher populations. He noted the process was expensive to analyze and to build. He said other costs associated with I-net are the rewiring of the buildings, end user equipment in the buildings, and support staff that will operate and maintain the I-net.

Mr. Bienstock said Comcast is happy to work with the Town if the decision is to build an I-net to make it as cost effective as possible; however, Comcast is not willing to take all of the cost and allocate it to its customers. He said Comcast estimated the cost to the less than 10,000 cable customers in Palm Beach would be $1 to $2 per month over a ten year period of time. He added that 7,000 of the 10,000 customers are under bulk contracts which are competitive with private cable operators, and if the rates are to be increased for Comcast and not the private cable operators, that will affect the revenue for Comcast and the Town.

Mr. Bienstock said Comcast thought that if the Town wants to do this project and it benefits the Town as a whole, cable subscribers and non-cable subscribers, then it should be passed through like any other obligation.

Mr. Bienstock said Comcast is in the process of transferring the system to Adelphia and that affects the timing of the rebuild. One issue is the likelihood that Comcast will not be rebuilding the system–Adelphia will be–and Comcast cannot deal with Adelphia on the Town's issues because the transfer deal is not completed. He said the Town could talk to Adelphia who provides all of the services to other parts of Palm Beach and Martin Counties. He said he did not think the Town will have any problems negotiating with Adelphia.

Diane Christie, Director of System Development for Comcast Cable, addressed the Mayor and Town Council. Ms. Christie recalled that Comcast did upgrade the system in Palm Beach in the mid 90's, and based on the Town's construction schedule and demographics, it takes two years to construct the upgrade. She noted that there are design differences between the Comcast and Adelphia systems, and it would be almost impossible for one company to start the rebuild and another company to complete the project. Ms. Christie said an added issue is the installation of the fiber across the temporary bridge which would be scheduled for 2001.

Councilman Brooks said he wanted to disclose that his wife's trust had 17,000 shares of Comcast stock. This was not purchased by her, but was done by the E.W. Scripps Company when they divested their cable holding, they did so by a tax free stock exchange with Comcast.

Councilman Brooks said his understanding was that the transfer of Comcast to Adelphia had to go through FTC then DOJ then the FCC and he asked Mr. Bienstock where that process was?

Mr. Bienstock responded he thought there would be responses from those agencies where an on-going review was taking place. He said nothing is completed yet but it should be resolved within the next 30 to 60 days – certainly by the time the Town would need to act on the transfer – the 120 days the Town has to respond to Comcast's request under federal law.

Councilman Brooks referred to Mr. Bienstock's letter to Attorney Miller, question 8, stating that Comcast was not agreeable to build the I-net. He said the citizens and the clients of Comcast were interested in the upgrade and how soon that could be started. He said the talk about the I-net was wonderful, but other issues come before that

Mr. Bienstock replied that the I-net dragged the rest of the process, and the construction or the mapping of the construction cannot be started unless it is known if the I-net will be part of it.

Councilman Brooks asked who Comcast's private competitors were on the island?

Ms. Christie responded she did not know the name of the company, but there was a private sattellite company that has a contract with one of the buildings on the island and they are very active negotiating with other buildings. She agreed with Councilman Brooks that Comcast currently has the majority of the cable users on the island.

Councilman Brooks, citing examples of the median of churn and piracy on multiple set usage, said the Town is way above the median, and Comcast has enjoyed a lucrative business transaction with the residents of Palm Beach. He asked what Comcast charged residents who were away from Palm Beach in the summertime?

Ms. Christie replied that typically the charge was $30 for the time they were gone.

Councilman Brooks said he agreed with Councilman Wyett that the citizens in the audience should be allowed to speak on the Comcast issues.

President Smith asked if Adelphia would build a better system than Comcast?

Rod Dagenais, General Manager of Comcast in Palm Beach County, replied many electronic vendors are available for both Comcast and Adelphia, but the system may not necessarily be better but it may be different. He said the number of homes per node was discussed earlier in the meeting, and Comcast's current design is 1,200 homes per node. He said Adelphia may be different, but Comcast's corporate engineers thought that 1,200 homes per node is adequate and reliable. Mr. Dagenais added the differences of the systems may be in the architecture and electronics.

President Smith questioned how the residents' complaints regarding Comcast would be addressed by Adelphia? She suggested Comcast may be able to deal with the concerns prior to Adelphia's take over.

Mr. Dagenais replied, "Absolutely."

Councilman Wyett compared his personal uses regarding Comcast, direct TV, and Media One in Boston and said Comcast would rank six on a ten point scale. He said he would object if Adelphia's operation would provide service at the same level. Councilman Wyett said the residents of Palm Beach should have better picture clarity. He added that the residents should have the very best system that is currently available and in the future, have the assurance of a most favored community clause in the contract that would require Adelphia to continue to provide the best that is available.

President McDonald requested public comment.

Robert Aronson said he would like to address a narrow issue that concerns the bulk users, the condominiums. He said that historically Comcast did a very good job of divide and conquer, and every bulk user has a different contract with different rates and different termination dates. Mr. Aronson said the narrow issue that faces most bulk users is that the contracts are terminating at the end of March, April, and May. The best offer that any of the bulk users have had from Comcast is to renew the contracts for three years with built-in 6% increases for each year. Mr. Aronson asked why bulk users should be forced into three year contracts with Comcast when the Comcast franchise with Palm Beach expires April 8, 2000? He requested a month to month contract with the bulk users with the same rates or at the most a one year option to allow the condominiums time to make an intelligent decision.

Mr. Aronson said the only reason the bulk users are considering going to satellite is because of the pressure from Comcast to sign a three year contract.

Responding to Mr. Aronson's comments, Ms. Diane Christie replied the number of units relates to the length of contracts, and different condominiums have different things – security cameras, etc. She said if a contract is signed today, that is a legal, binding agreement; therefore, if Adelphia takes over, the terms and rates of the agreement will be honored by Adelphia.

Harold Epstein, 3200 South Ocean Boulevard, said he appeared before the Mayor and Town Council in his capacity as Chairman of the Telecommunications Committee of the Citizens Association of Palm Beach. He said his comments concerned Comcast's response to the Town's request regarding the continuation of the Town's franchise relationship with Comcast. He said he did not understand why the Town was listening to Comcast at this meeting, because the Town will not be dealing with Comcast in very short order, and he questioned if the commitments made by Comcast could be honored by its successor?

Mr. Epstein said the Association was gratified that Comcast agreed to upgrade the system, but the Association objected strenuously to the time frame projected to accomplish the upgrade. He continued that the Town should not accept the fact that Comcast will delay the implementation of improved service for the better part of three years, and in this type of industry that seemed silly.

Mr. Epstein said the Association suggests to the Town Council that their proposal of as much as a fifteen year contract is not reasonable in an industry where the technology changes so rapidly, and it would be reckless to have the Town tied into a long term contract that may prevent the Town from taking part in new developments as they become available. The Association urged the Town not to enter into a long term contract in this matter.

Mr. Epstein said, as taxpayers, the citizens are disappointed that Comcast has rejected the Town's request for an institutional network. He said Comcast provided institutional networks for other communities, and he did not understand why the Town would not be treated in a like manner as size has very little to do with it. He said he would like to know in what communities Adelphia has provided this kind of system as was presented earlier in the meeting–Tampa, Sarasota, Miami, and Detroit in negotiations were the benefactors of that kind of system.

Mr. Epstein said the Town should be treated in a like manner and hoped the Town Council would take these comments seriously and act accordingly.

Howard Savage, 3360 South Ocean Boulevard, said it seemed to him that this was too little too late. He said the three issues residents of his condominium and others asked were:

1. When are we going to get it?
2. What are we going to get?
3. How much will it cost?

Mr. Savage said the Town could have superior service presently with satellite and much better channel selection at a fraction of the cost charged by Comcast. He said he would guess over the next several months that more and more of the bulk users will move in the direction of satellite communication.

Responding to questions from Councilman Wyett, Mr. Savage responded that pay TV was available, but they had chosen to separate the issue of the Internet and the tradeoff with the satellite system was that downloading could be accomplished fast but a telephone line was required to beam back up to a satellite. He said many of the condominium users were utilizing a DSL type of system with the telephone company, but anticipated in the future utilizing a fiber optic internet connection. He added that the unit owners were not willing to wait three years to have the programing they need today when they can achieve that with modest investments now.

Councilman Wyett said he agreed with Mr. Savage and many of the Town's residents have the same concerns.

Councilman Goldblum asked Mr. Savage if his group was able to receive the three major national network channels that were local?

Mr. Savage responded the satellite companies install antennas next to the satellite dishes to receive local stations and eventually that capability will be added to the satellites as recently passed by a federal law.

Councilman Brooks said the act that was passed by Congress in late 1999 was called local to local and related to market size. He said the West Palm Beach/Ft. Pierce market is the 43rd in the country, and within a year, local to local should be available in this area.. Councilman Brooks projected that eventually approximately 25% of the households will use satellite systems and 75% of the users will be on cable systems. He noted the big fight will not be between cable and satellite companies but who controls the pipe going to each home. The technology is not revolutionary, it is evolutionary on an exponential basis. He said he agreed with Mr. Savage that the citizens want this technology as soon as possible.

Mayor Smith asked if the Town was legally prohibited of discussing these issues with Adelphia and why would Adelphia be legally obligated to follow through with any commitments made by Comcast?

Attorney Miller responded there was no prohibition on discussing these issues with Adelphia, but it was a fairly complex situation because the franchise expires at the end of the month, and there is an application to transfer a franchise that in one level will not exist. He compared it to discussions with a prospective buyer who may not have an asset that they can buy. He said there was a reason why the renewal discussion was necessary at the same time the Adelphia transfer request is reviewed, and the question is what are you transferring to Adelphia? He said it was very important that the Town Council be confident that Adelphia will step up and do the deal that either Comcast negotiated on their behalf or that the Town negotiated independently with Adelphia as a condition of the transfer.

Mayor Smith asked Mr. Miller what information the Town Council heard during this discussion to make them feel confident that Adelphia will do something for the Town that Comcast has not done?

Attorney Miller replied that it is ultimately a decision for the Town Council to decide if Adelphia is up to the task. Mr. Miller said it was his assumption, looking at the precedent of the other transfers, the process would take twelve months at the federal level. There is no time restriction on the federal government and there are three separate approvals. He noted that the recent major acquisitions that are under consideration by the federal government have taken at least twelve months at the federal level.

Ms. Carol Gosberg, Atriums, asked if the Town Council had listened to any other cable company? She said that Comcast has been on the island for the past five years and questioned why other companies such as Time-Warner were not being solicited.

Councilman Brooks explained that approximately twenty-five years ago there were 17 to 20 cable companies in Palm Beach County, and after the transfer of Comcast to Adelphia, the total will be two. He said consolidation has taken place in the cable industry because of the economies of scale. Councilman Brooks said that from a practical viewpoint no other company will come into the area, and roughly five cable companies are in the State of Florida.

Ms. Gosberg asked who will own the fiber optics when they are installed?

Mayor Smith replied the installer or the company owns the fiber optics.

Donald Carter addressed the Town Council said he had listened to the presentations regarding I-net from Comcast and the Town's engineering consultants. He said he is the largest investor in the largest independent film studio in America as well as the largest investor in an internet portal that will be delivering media content and movies via the Internet. He said he was one of the people who was extremely interested in Internet possibilities in Palm Beach.

Mr. Carter explained although he was from New York, he lives full time in Palm Beach now. He commended Mr. Jakubiak and other Town staff, as well as the Town Council, for aggressively pursuing the answers to this very difficult problem. He said he, as are other members of the community, was extremely frustrated to have to listen to Comcast and their attorney tell the Town what they could do and how much the I-net will cost when they will not be here.

Mr. Carter said the Town Council should forget about talking to Comcast about the improvements to the system but should talk to Adelphia. Mr. Carter said that in four years there will be no more I-nets being proposed for any community in America. All of this will be on the Internet with secured inscriptions and the business of who is going to pay for the I-net is nonsense to him.

Jerry Frank, 2784 S. Ocean Blvd., said he agreed with many comments made by previous Town residents. He said he had a problem with the bulk users' rates, and he thought the system was terrible and that was the fault of the Town Council. Mr. Frank said the condominiums receive different rates from Comcast resulting in confusion. He said since a new company and a new system are being discussed, a rate structure should be established so that all rates would be fair.

Attorney Miller responded the condos do have the authority to meet and deal directly with Comcast or create a super rate among themselves, but federal law preempts local government from having any authority over anything other than the lowest tier rate. He said the Town cannot enter into a rate contract that would be legally enforceable. The citizens and association could do so with the company, but the Town could not.

Mr. Aronson said he did not think that Ms. Christie had answered his question which was, "Why Comcast insists on now extending a minimum three year contract instead of a one year contract?"

Ms. Christie said she would prefer to address that question on a private level to discuss one year extensions, etc. She said their contracts are typically for three year periods.

Mayor Smith suggested it would be a good time for Comcast to make a good faith gesture to the condominium owners for a bulk rate with a one year contract while the Town undergoes the change with Adelphia.

President McDonald asked for additional public comment, and since there was none, he requested comments from the Town Council members.

Councilman Wyett said Attorney Miller was attempting to focus the Council's attention on the transition from Comcast to Adelphia which fortunately Mr. Jakubiak had negotiated the Town's right to approve in the Town's contract with Comcast. Councilman Wyett proposed the existing contract should be extended by thirty or sixty days and send Comcast and Adelphia a serious message telling them in addition to what Comcast has already agreed to, that one node for 2,000 residents is not sufficient. Councilman Wyett said that was one motion. Councilman Goldblum seconded the motion requesting the length of time be sixty days.

Responding to Councilman Brooks question regarding the length of the extension, Councilman Wyett responded thirty days may be all right and the Council could continue to increase that if necessary.

Mayor Smith asked Attorney Miller if that was an appropriate time frame? Was sixty days long enough?

Attorney Miller said one of the questions was: Is it necessary, at this session, to extend at all and does it affect the negotiating position of the Council? He said the second question is: What are the legal consequences of an extension? Mr. Miller responded that an extension works only if a company accepts it, and because this is a contract, simply saying it is extended for thirty days does not make it happen without the company saying yea or nay. He requested the motion be deferred, and it is important that the Town Council think through the strategy of how it wants to deal with Adelphia and the transfer. He continued that there are legal consequences if the franchise has expired, and Adelphia may or may not have as many rights as they have if the franchise is in place.

Councilman Wyett said he wanted to withdraw his motion. Councilman Goldblum said he would withdraw his second.

President Pro Tem McLendon said, from his point of view, subject to legal opinions, Comcast said any agreements that are negotiated between the Town and Comcast would be accepted by Adelphia, and the Town would have the right to approve the transfer documents.

Attorney Miller said that was correct.

Councilman Brooks asked Mr. Bienstock if Comcast was having similar problems in Orange County where 98,000 subs are being transferred?

Mr. Bienstock replied he did not know anything about that situation, but if Comcast signed a deal with the Town, Adelphia would be bound by it and absent the I-net, a deal would probably have been signed by this time. He said he did not see any reason to try to put leverage on Comcast by letting the franchise expire which does no one any good. He said Comcast wants to complete the transaction with Adelphia quickly as well as the renewal with the Town, and the Town's issues have slowed the process.

President McDonald said this item would be on the March 14th agenda.

Councilman Wyett said there were a number of major issues, one of which is the 150 node vs. their 2,000 recommendation and the second is the absence of a most favored community clause which would allow and guarantee, in a long term contract, that all future technical innovations would be provided. He said the service center had not been discussed; the Town did not have Adelphia concurrence to do these things; and it is premature to think the Town could sign a contract. He suggested that negotiations continue with suggestions from other members of the Town Council.

Mr. Jakubiak replied that he did not agree with Mr. Bienstock's statements and recalled that Comcast wanted this deferred before a needs assessment study. He recalled that Comcast stated an upgrade for the Town was done in 1992, and Comcast would not upgrade the community again. He continued that staff advised the Town Council in 1996 about upgrading the community and again in 1999. In 1999, he reported that Comcast wanted to defer the upgrade issue until after the transfer issue with Adelphia was in place. Mr. Jakubiak said he disagreed that the franchise would have been signed but for the I-net issue. He noted that the community of Boca Raton was upgraded to 760 megahertz since 1994.

Mr. Jakubiak reported that he met with Adelphia representatives and told them it would be a perfect time to come into the Palm Beach market and over build the system, and Adelphia said they did not want to come into the community unless they had the bulk contracts. He said Comcast treats the bulk contracts as separate from the Town's negotiations.

Mayor Smith asked Attorney Miller what action he advised the Council to take at this time and at the March Town Council meeting or at another meeting?

Attorney Miller replied he did not think the Town Council should take formal action at this point, and the purpose of this meeting was to brief the Council and the public on the status of the negotiations and to seek the Council's guidance regarding the importance of the rebuilding of the system and the I-net. If Comcast does not get the message after this meeting, then the negotiating team can come back to the Council with a series of recommendations regarding dealing with the transfer, the extension, and Adelphia. He said his hope would be to complete the deal within the next couple of weeks.

Mayor Smith asked if Mr. Miller would be ready to return to the Council with his recommendations at the March 14th meeting?

Attorney Miller responded he would but requested to convey his recommendations by telephone.

Councilman Wyett suggested, if it were permissible, to invite Adelphia to appear before the Town Council.

Attorney Miller requested that Adelphia not appear before the Town Council on March 14th in an effort to allow Comcast a chance to react to the sense of the Council and return with their final bottom line and then set a strategy vis a vis Adelphia.

Councilman Goldblum asked if the homeowner had to expend any additional money to have fiber optics come into his home?

Mr. Afflerbach responded that the way the system worked was that fiber was brought into the neighborhood and the existing coactual cable is retained in the home, and somewhere in the neighborhood is an adaptor that converts the fiber optic energy into the cable energy and uses the old cable system. He said the user has the advantage of the fiber optics without disrupting the wire that is on the premises. Mr. Afflerbach said the internet will cover many things but the bulk conductivity will have to be handled by private lines and eventually everyone will have fiber coming into the home.

Mr. Afflerbach said Palm Beach is so attractive that competitive providers may come to the community for services including telephones and internet use.

Responding to Councilman Wyett's question regarding private internets, Mr. Afflerbach said some companies do have private networks and they lease, rather than build, private lines that go from point to point. He said these companies can secure band widths, but they use the same telecommunications protocol as the internet and are called intranets.

Councilman Wyett requested that additional costs, as mentioned by Comcast, related to owning, operating and maintaining the end user equipment be supplied to the Town Council by the next meeting.

Mr. Afflerbach responded that some of that information had been supplied including a range of terminal equipment costs starting at $50,000. He said costs were included related to re-wiring the building which needs to be done, and the operating and maintenance costs would depend on choices made by the Town Council. He continued that generally speaking the annual operating costs would be between 6% - 10% of the capital costs that would cover cable maintenance and equipment replacement and gave the example of $40,000 operating costs for an expenditure of $400,000. Mr. Afflerbach said he felt confident that if the Town decided to go with the smaller model, the $50,000 equipment model, the existing Information Services staff could handle that within the work they are doing presently.

President McDonald said there was one more question dealing with the cable at the Par 3 Golf Course.

Assistant to the Town Manager Jakubiak said it had come to his attention from the Golf Pro Manager Rick Dytrych that he had tried to procure cable service to the facility at the golf course. He said the Town's franchise does say that each governmental facility is to have a cable outlet, but Comcast wants to charge $3,800 to run cable from their nearest outlet to the club house, and the Town's attorneys think that Comcast should bear the cost.

Mr. Bienstock said he did not read the request the same way the Town's attorneys did, and Comcast thought that the Town should pay for it. He said this could be discussed, but he had not had time to study it.

V. CONSIDERATION OF PROPOSED STUDY FOR THE VALUATION OF THE TOWN'S PUBLIC RIGHTS-OF-WAY

Mr. Jakubiak said this had been an on-going issue, and it was important that this item be moved ahead because companies have expressed interest in the Town's rights-of-way. He said Attorney Miller recently addressed the issue regarding the revenue projections that were requested by the Town Council. Mr. Jakubiak said staff was proposing that a financial expert by hired by the Town at a cost of $25,000 - $50,000.

President McDonald recalled that the Town Council discussed this matter at the February Town Council meeting, and a motion was made that was defeated because the Council wanted additional information. President McDonald said he thought that information was included in the two memorandums presented at this meeting. He asked if any Town Council member had questions regarding the expense information?

Councilman Wyett said he would like to have an estimate of cost effectiveness – the costs vs. revenue.

Attorney Miller responded his memorandum addressed that question and summarized that if the Town did two franchises only, the net revenues would increase $6,500 per year or a five year deal would pay for the $35,000 cost of the study. He said he thought there was not much risk of the Town spending money that it would not recover and without the study, the Town would be stuck with just $500 per mile.

President Pro-Tem McLendon made a motion to proceed to hire a consultant at a cost not to exceed $50,000 from the General Fund Contingency. The motion was seconded by Councilman Goldblum. On roll call, the motion carried 5-0.

VI. ANY OTHER MATTERS

Attorney Randolph said the lawsuit filed by Counties Drilling Corporation vs. the Town of Palm Beach is a pending case relating to the directional boring under the Inlet. He said it was a very complex case and one which might deserve the attention of a panel of arbitrators as opposed to a jury. He said it is being considered to go to binding arbitration as opposed to a jury trial although a final decision has not been made. He requested that he have the authority of the Town Council to do that if it is determined at the attorney level to go that way.

Mr. Randolph, responding to a question from Mayor Smith, said this case has the potential to cost the Town $2 million.

Mayor Smith suggested the Town Council go along with Mr. Randolph's recommendation.

Councilman Wyett made a motion to grant Mr. Randolph the authority to enter binding arbitration on behalf of the Town. The motion was seconded by President Pro Tem McLendon. On roll call, the motion carried 5-0.

Attorney Randolph clarified that the Town Council gave him the authority to go either way it was decided to proceed.

VII. ADJOURNMENT

The meeting was adjourned at 11:45 a.m.

Mary A. Pollitt, Town Clerk