MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON JUNE 12, 2000, REGARDING THE PROPOSED CABLE TELEVISION FRANCHISE AGREEMENT

I. CALL TO ORDER AND ROLL CALL

President Jack McDonald called the Special Town Council meeting to order at 1:30 p.m. on Monday, June 12, 2000, in the Town Council Chambers. On roll call, the following Elected Officials were found to be in attendance: Mayor Lesly Smith, President Jack McDonald, President Pro-Tem Sam McLendon (arrived at 1:40 p.m.), Councilman William Brooks, Councilman Norman Goldblum, and Councilman Allen Wyett. Also in attendance for all or part of the meeting were: Town Manager Robert Doney; Town Attorney John Randolph; Assistant Town Manager Thomas Bradford; Assistant to the Town Manager David Jakubiak; Assistant Fire-Rescue Chief Kent Koelz; Public Works Director Al Dusey; Town Engineer Jim Bowser; Recreation Director Russell Bitzer; Human Resources Director William Crouse; Assistant Finance Director Cheryl Somers; Information Services Manager Spencer Wilson; Director of Planning, Zoning & Building Robert Moore; Assistant Director of Planning, Zoning & Building Veronica Close; and Town Clerk Mary Pollitt. Attorney Nick Miller from Washington, D.C., Consultant for the Town, also attended the meeting. Andrew Afflerbach, Engineering Consultant, participated via telephone.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Town Clerk Pollitt. The Pledge of Allegiance was led by President McDonald.

III. APPROVAL OF AGENDA

Councilman Wyett made a motion to approve the agenda. Councilman Brooks seconded the motion, and it carried 4-0 as President Pro-Tem McLendon had not yet arrived at the meeting.

IV. PROPOSED CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE TOWN OF PALM BEACH AND COMCAST CABLEVISION OF WEST PALM BEACH, INC.

Assistant to the Town Manager David Jakubiak provided an overview of the negotiations to date and the agreement that was presented to the Town Council at this meeting for consideration. Mr. Jakubiak identified the major issues listed in the agreement that were successfully negotiated with the cable company as follows:

<u>Capacity and Design of System</u>

> Upgrading the cable system to an 860 megahertz system. The upgrade will begin in 2001 and be completed by December 31, 2001;
>
> The Franchisee will activate the entire system for a two-way service;
>
> The Town will have an upgraded system to fiber optics with ten fiber nodes located within the Town limits. The Town's consultant estimated that each node will serve approximately 600-700 homes;
>
> The Franchisee will design the system to have channel capacity expanded up to approximately 500 channels through digital video compression throughout the franchise;
>
> The Franchisee will provide each of the Town's Governmental facilities, including one building at the Par 3 Golf Course, with one subscriber network drop and up to four outlets. Those four outlets are for cable television and do not include modem service;
>
> Responding to Councilman Wyett's questions regarding charges for modem service, Mr.

Jakubiak explained the Town will have to pay for each outlet that is hooked up to the Internet.

The Cable Company agreed that the under grounding of the cable system would be at their discretion during the upgrade; however, at the time that all utilities elected to go underground, the cable company must also go under ground;

Placement of above ground node equipment will require prior approval for each site by the Town; however, such approval shall not be unreasonably withheld.

Educational and Governmental Use and Institutional Network

At any time the Town Council wants to pursue PEG or governmental access, the Franchisee will provide all of the Palm Beach educational and governmental channels on the subscriber network that are carried pursuant to the Palm Beach County franchise;

In addition to the County PEG channels, the Franchisee shall provide one access channel to the Town for educational and government use at any time the Town requests.

Institutional network

The Institutional network will connect all governmental facilities for various services including high speed internet access, video conferencing, band width for telephone service, and the Institutional network is a cost that is separate from the franchise agreement. The cost can be passed through to the cable subscribers if the cable company elects to do that. The original franchise proposal for the I-net included various electronics for various video applications, but the cost at the time was $2,302,500. Costs for a basic I-net program that would include fiber to the Town Buildings have been negotiated at a cost of $280,000. The pass through costs would equal approximately 35 cents per monthly bill per subscriber or a total of $4.20 for one year.

The Golf Course is not included in the plans for an I-net system, and the question was is that considered a governmental facility? Expansion plans for Town Hall would include being part of the I-net system, and the cable company would connect the I-net to any new governmental facilities near Town Hall.

The Franchisee shall provide a capital grant to the Town equal to fifty thousand dollars for the purchase of Institutional Network equipment, i.e. electronics or it would provide for the Internet service the Town currently receives from BellSouth.

For a period of ten years, the Franchisee may pass through to subscribers no more than 35 cents per month. Maintenance costs would be allowed to pass through to subscribers for the remaining period of the franchise.

Other Issues

This is a franchise for cable service and at this time includes Internet service; however, legislation is on-going that may classify Internet service as not being allowed in this franchise agreement.

The Most Favored Community Clause is part of the agreement and includes a two county region – Palm Beach County and Martin County.

Franchise Evaluations allow the Town to negotiate with the cable company during the fifth and tenth years of the agreement regarding new technologies or services not provided.

The Franchise fee is 5% of gross revenues, and the term of the franchise agreement is 15 years.

Outstanding Issues

Once the Town Council approves the cable franchise agreement, the transfer of Comcast's cable system to Adelphia will be considered. That will be a separate agreement and Staff would bring that forward at the July 11th Town Council meeting if the Town Council approves the Comcast agreement at this meeting.

Legal fees are part of the agreement, and the cable company has committed to paying $30,000 of the $90,000 in legal fees as part of the transfer process.

Mayor Smith asked Attorney Nick Miller if this agreement financially binds Adelphia to the conditions listed in the proposed franchise agreement?

Mr. Miller responded that Adelphia, at the time of transfer, will have to accept this franchise without amendment. With respect to what the amendment requires on reopening, a structure and process are created for the two sides to sit down and review and meet, but it does not compel either side to agree to a change in the agreement.

Mr. Miller clarified that if the Town Council approves the Comcast agreement, the Staff will present a recommendation to approve the transfer to Adelphia at the July 11th Town Council meeting. Part of that recommendation will include a transfer agreement with Adelphia that will include both the parental guarantee of performance and an explicit contractual agreement by Adelphia that they are familiar with this agreement, and that they will, in fact, fully perform on it. Mr. Miller said the Town will have legally compelling documents that will bind Adelphia to this deal.

Councilman Wyett questioned if there was a program to decide how the agreement would be considered? He said after the summary was given by Mr. Jakubiak, many things in the agreement need examination, such as protecting the condominiums with their bulk agreements.

Councilman Brooks said he had great respect for Comcast and quoted an article by Analyst Jessica Cohen which stated Comcast was one of the best positioned MSO's with its phenomenal array of assets and its outstanding management team, and it had the strongest balance sheet in the industry. Mr. Brooks said he thought the agreement that was reached was good; however, he thought that although Adelphia wants to come to Palm Beach, Adelphia is not quite Comcast at this time.

Responding to Councilman Wyett's question regarding the order of the issues to considered, President McDonald suggested Mr. Wyett state his issues, one by one, and they would be dealt with as each one is considered.

Councilman Wyett questioned the "WHEREAS" clause that dealt with the Town's identifying the future cable-related needs and interests of the Town and its citizens.

President McDonald that was a "boiler plate" clause, and the intent should be to review the agreement as arrived at by the Staff.

Councilman Wyett questioned the Bulk Rate Agreement and the different contracts the condominiums have with Comcast. He said he thought the Town should demand, on behalf of all the Town residents who live in condominiums, that an established criterion should be published stating how the rate for each building is established.

Attorney Terry Bienstock responded that the rates for bulk contracts are outside the realm of regulatory authority; notwithstanding that, the bulk rate provisions were taken from the prior franchise agreement. He said Comcast does have criteria that is generally uniform among the different buildings; but the difference in rates usually has to do with the differences in costs to serve the buildings, i.e. number of units in the building, new or old wiring, configuration of the system, or other variables. He added the reason the rate criteria is not public is that the business is very competitive, and while there may not be multiple providers for residential service, there are multiple providers for bulk contract service.

Councilman Wyett said he thought Comcast should still let the condominiums know on what basis the rates are figured on, as the different buildings cannot figure out why their individual building rates are so different from each other.

President McDonald confirmed with Mr. Bienstock that a condominium would be able to contact Comcast to determine how their rate was being established.

Responding to Mr. Wyett's question regarding the usage of "one-way" and "two-way" transmission, Attorney Nick Miller responded the Federal Cable Act gave the Town the authority to issue a cable service franchise and these terms are defined by the Federal Act. He said performance criteria was added to the network to assure that the network will be two-way, but it does not obligate the operator to provide two-way cable service. He explained it will be a two-way activated system offering other services in addition to cable services.

Councilman Wyett questioned if the franchise tax applied to Comcast's Internet aspect of the cable?

Attorney Miller responded the franchise tax applied to anything that can be characterized as a cable service, and currently the agreement states that Internet access is a cable service. The two parties have agreed to that, but the company has reserved the right that if a court or the FCC determines otherwise, then it would come under the franchise fee calculation. He said that telephone services are not included, and this is not a telephone franchise. This is a cable television service franchise, and, on its face, it is limited to cable services only. To the extent Comcast wants to provide telephone services over this network, Comcast would have to appear before the Town Council to receive additional authority from the Town Council.

Attorney Miller confirmed that "outage" applies to the Internet also because the term "Cable System" refers to the entire network.

Councilman Wyett asked who owned the cable lines at the end of the fifteen year franchise agreement?

Attorney Miller responded the company would own the lines – they paid for the lines, they invested in it, but what they lose is the right to operate a cable service over the facilities and presumptively they lose the right to occupy the right-of-way. The Town would have the right to require them to remove their facilities, but the Town could not confiscate the facilities without paying the company the book value of the lines.

Councilman Wyett questioned if there should be a buy-out provision in the agreement?

Attorney Miller replied that was a possibility, but there is a Federal law provision that prohibits the Town from requiring the company to sell the system below market value. He added a provision could be added to the agreement providing the Town could buy the system at market value.

Councilman Wyett suggested a buy-out provision should be added.

Councilman Wyett questioned if the cable provider elected to go into the home satellite business, would there be a franchise fee on those services?

Attorney Miller responded there would not be a franchise fee on a home satellite business, and the franchise fee would apply to anything that qualifies as a cable service. To the extent that the company offered a non-cable service, then it would not be within the definition of gross revenues. Mr. Miller said when the cable operator takes a satellite programing service and puts it on their cable system, that is a cable service, and they will pay franchise fees on them. However, if the cable company decides to go into a separate business where they are marketing satellite to home earth stations in the Town, they would fit under the Town's taxing ordinance with respect to telecom services, but they would not fit under this franchise. Therefore, the franchise fee in this agreement would not apply.

Councilman Wyett asked if the Town were prohibited from assessing a franchise fee for wireless by the Federal government?

Attorney Miller replied the Town's jurisdiction is tied to the control over the use of the public rights-of-way, so the Town has general taxing authority with respect to any business that is in the Town, and that is the Town's existing telecommunications tax. In terms of collecting a user fee or a special tax, that would be subject to a fairly serious challenge. He said the Florida legislature has changed the entire taxing authority of the Town with respect to telecommunications.

Councilman Wyett asked if the $50,000 capital grant referred to in item 3.3 of the agreement would go into a reserve account should the Town not elect, at this particular time, to put in an I-net?

Attorney Miller replied that because this agreement imposes a 5% franchise fee, that is the maximum the Town can collect with the exception of capital grants that are related to public education and governmental access facilities, including an I-net. He said he thought it would not be permissible to have a set aside generic grant. If, on the other hand, the grant were ear marked for pegged, capital purposes and would be refundable if it were not used for that purpose, it could be made a part of the agreement.

President McDonald said he understood the cable company will design the system for the I-net, and that is included in the agreement.

Councilman Wyett said section 4.1 of the agreement contained no teeth.

Attorney Miller said it was important to read section 4.1 within the context of the agreement, and there were two other places in the agreement that are relevant. One is that the Town has the right, and the cable company has conceded to the Town, to adopt customer service standards and regulations. In addition, the contract has fairly extensive liquidated damages and forfeitures in the event the company does not measure up to the standards that the Town adopts. He said he would distinguish process from substance, and the document has a lot of teeth in it to make sure the company does what it promises to do and complies with whatever rules and regulations the Council chooses to put in place. He continued that this is a process that commits the company to cooperate in a semi-annual review where customers can express their concerns.

Councilman Wyett asked if there was a provision for a "hotline" in this contract? Is the Internet part of the hotline?

Mr. Jakubiak replied there is, plus the customer service standard ordinance exists, and the Internet would be part of the hotline if it were a cable service. He said the customer service standard ordinance requires seven complaints in one calendar month, and then the Town has the ability to fine $500 and $1,000 based on the complaints. He said if there were problems with modem services and installations, the Town will get the complaints.

Councilman Wyett questioned the statement in section 4.4.1 regarding the state of the art in cable system technology and services. He said the numbers of nodes and modules mentioned in this agreement are totally inadequate.

Councilman Wyett asked if the words "or transfer" should be added to the statement in Section 6: *Thereafter, the Town may extend, renew or deny a future franchise or transfer ...*

Attorney Miller referred to Section 8 Assignment, Transfer or Sale of Cable System which preserved the Town's control over any transfer process.

Councilman Wyett said he thought the six hours per day allotted for educational and governmental use in Section 9.3 was insufficient.

Attorney Miller replied Section 9.3 actually protected the Town rather than being a burden. The Town has a right to a channel if the Town Council asks for it, and the Town has a right to a second channel if the Town is using the first channel at least six hours per day.

Councilman Wyett questioned Section 9.4.1, where the words: "will dedicate at least 6 single-mode dark fibers at all points on the Institutional Network" were used. Mr. Wyett thought the word "dedicate" should be changed to "reserve", because the needs are unknown at this point.

Attorney Miller said there was a difference between dedicate and reserve. Mr. Miller said there was a fundamental policy decision for the Town Council to consider, and that was should the I-net be implemented now, and, if so, when? He said the reason to do it now is the construction cost savings. If it is not done now, the right to determine where the fibers go to is lost. Alternatively, if the language is preserved stating six fibers must be built to the locations although the I-net will not be turned on, that presents the worst of all worlds. The Town will have paid the costs with no operational service. If the Town states it has the right to ask for six fibers at any point in the future, then the Town would have the six fibers at only the points the company would choose to build the network rather than where the Town would need it built.

Andrew Afflerbach, via telephone, confirmed Mr. Miller's statements regarding the I-net issue. He added that having the work done now would incur a savings of 50% relative to having fiber built later or certainly to ask Comcast or any cable company to lease the fiber. Mr. Afflerbach said many of the cases he sees have geographical lay outs similar to the Town of Palm Beach but the users are precluded from having their own fibers, because no one will want to sell or lease it to them. He said the Town of Palm Beach, as the franchising authority, is in a position to have a telecommunications asset that the corporations and others are not in any position to ask for but would love to have it, if they could.

Councilman Wyett said the Town in Section 9.5 is asking for every consumer in the Town of Palm Beach to pay for a government facility. He suggested if the residents have to pay for it, it should be part of the ad valorem taxes to make it deductible for the residents.

Councilman Wyett referred to Section 10.1, and stated the Par 3 Golf Course should be included, and stated he had problems with the fact that the Town had to pay for additional Internet locations within the Town facilities. He said the Police Department will need more than included in the outline. He suggested the language should be changed to "unlimited outlets".

Councilman Wyett asked if the cable company will have the right, under Section 16. Working in the Public Rights-of-Way, to work during the season in the year 2001 to complete all of the work?

Mr. Jakubiak said he thought that was a policy decision by the Town Council and not part of any agreement.

Diane Christie, General Manager for Comcast Cable, responded discussions were held prior to the agreement that the Town would give some consideration to Comcast regarding the aggressive time frame for rebuilding the system. She said she understood there would be no major construction on main streets in Town during the season, but the thought was that some residential streets might be considered for construction during the season.

Mrs. Christie said that if consideration for work during season was not given, the length of time might be two - six month periods, one each in 2001 and 2002. Mrs. Christie added that Comcast typically follows the utilities–when they go underground, Comcast would go underground with their lines.

Councilman Wyett said he would like to have Section 17.1(a) explained as it related to capacities, i.e. minimum bandwidth, passive components, analog and digital channels. He also requested a statement be included that when HDTV is provided, it will be a full HDTV system, to allow all users of HDTV to have full value if they purchase those systems.

Councilman Wyett referred to Section 17.1(b) with a minimum of 10 fiber nodes and stated that was totally inadequate as discussed previously.

Councilman Wyett said he had addressed previously the issue in Section 17.9 regarding the December 31, 2001 deadline for upgrade of the system.

Councilman Wyett said he had a problem with Section 18. Most Favored Community clause. He said he would like to have Broward County added to that section, and he objected to the reference in that section to "the same headend as the Town".

Councilman Brooks commented he thought the document was extremely "well lawyered". He suggested the Town Council should give a lot of thought to supporting the I-net, and he supported the 35 cent charge to the consumer. He expressed concern regarding the length of the fifteen year contract and questioned the lack of legal ground for resolving any controversy between the company and the Town. Mr. Brooks said with the fiber optics technology developing so rapidly, the length of the fifteen year contract could be a problem. He said he would be of the mind to accept the whole deal if the Town Council could have an option year of five years (2005) and another one at ten years (2010). He added this could provide some teeth in the agreement.

Attorney Terry Bienstock responded the length of the franchise agreement was discussed extensively, and this agreement was unusual for many reasons. He said that for a community the size of Palm Beach, this agreement was one of the most comprehensive, strongest agreements from the Town's standpoint that he had seen. The agreement provided many things well in excess of what surrounding communities are receiving, and is more comparable to a franchise for a community five or six times the size of Palm Beach. Mr. Bienstock said there is give and take during negotiations and part of the give Comcast received was the fifteen year length of the agreement while giving up a host of items that normally would not be in the agreement. He cited the bulk agreement in the franchise and stated he had never seen another one anywhere in the United States.

Mr. Bienstock said the fifteen year length of the agreement may not be a perfect answer, but in the overall package, it was a reasonable answer. He noted that the Town had two sets of protection during that fifteen year period as mentioned by Mr. Miller. Mr. Bienstock agreed that the technology changes dramatically daily and multiple providers will be in every community for all kinds of services – Internet services, high-speed, low-speed, medium - speed, wireless, DBS, video services, and multiple broads of telephone service. He said this is being dictated, not because of franchise agreements, but because of the market place and the potential revenue flow. Mr. Bienstock continued that there are multiple ways to provide the same services without franchise agreements. He said the problem with franchise agreements is that it "hamstrings" the home team, and it is to Palm Beach's advantage to have the cable provider get as much revenue as possible as they are partners.

Councilman Brooks said he still would like to see five and ten year options put in the agreement.

Mr. Bienstock replied the most important things in the agreement to Comcast are the fifteen year length of the agreement and the right to operate. He said if the Town wants to cut the length, other things would have to be re-evaluated.

Attorney Miller concurred with Mr. Bienstock that the fifteen year length is a common term for contracts.

Councilman Wyett suggested the contract be opened if the Town requested an upgrade and that the contract be extended to allow the cable company the proper time to depreciate the upgrade.

Councilman Goldblum asked Mr. Bienstock when the contracts for Martin County and Palm Beach County were up?

Mrs. Christie responded she believed the Palm Beach County contract is up in the year 2003 and Martin County's contract expires in 2005 - 2007. Mrs. Christie concurred that the Town of Palm Beach would receive the same upgrades as those counties may negotiate as a result of being served off the same headend.

Councilman McLendon asked what the standard depreciation for the facilities upgrade was and was it uniform or did it vary with the equipment? Mr. Bienstock and Mrs. Christie replied they did not know.

Councilman McLendon indicated he was sympathetic to a fifteen year contract term, and the cable company did need to recover its construction and equipment costs. He said if the Town decided to reopen the contract, a dollar figure could be added for the cable company.

Mr. Bienstock mentioned Comcast received a memo with an attachment on a schedule of government facilities. He said Comcast had no problem with the schedule itself but Appendix A, the introductory sentence was inconsistent with the text language in 9.4.1. He said the configuration of the text is a star configuration from the headend out to the locations and this configuration is a point to point configuration. He said either one would work, but Comcast cannot do both of them.

Mr. Miller conferred with Mr. Afflerbach and said, "Mr. Bienstock's question goes to the introductory sentence that talks about sites 1, 2, 3, 4, 5, 9, and 10 should be connected to site 3; site 7 and 8 to site 6; sites 3 and 6 should be interconnected. As I read this, I thought it worked, but I am not that familiar with the engineering. So I need to ask you."

Mr. Afflerbach replied, "Essentially what we are looking at is a point to point connection with two separate hubs, a set of sites that connect to the Police hub and a set of sites that connects to the Town Hall and then interconnection between the Town Hall and the Police Station."

Mr. Bienstock said that was inconsistent.

Mr. Afflerbach did not see the inconsistent.

Mr. Miller clarified that Mr. Bienstock's concern was that each fiber would terminate at the headend.

Mr. Afflerbach responded it depends on what is meant by the headend, and certainly the headend in West Palm Beach is not the one talked about, but the one in the central facility that the Town operates in the Town Hall.

Mr. Miller suggested to Mr. Bienstock that the words "at the headend" be struck out and "in accordance with Appendix A" be inserted. Mr. Afflerbach added that was correct.

Mr. Bienstock agreed. He said that on the list of sites, number ten, site(s) should be singular.

Mr. Jakubiak explained that Mrs. Christie said Comcast was agreeable to more than one site if more than one building was built in the Town, and the Town Hall Historic District was the area under discussion.

Mrs. Christie responded she did not think Comcast could commit to building any future, proposed Town Hall expansion sites in plural.

Mr. Jakubiak recalled Town Hall expansion plans were discussed and Comcast indicated anything built in Palm Beach was one thing, but anything built across the bridge in West Palm Beach was an expensive proposition. He said he would like to reintroduce the issue of the Par 3 Golf Course which was next to the south Fire-Rescue station. He added that when he and Mrs. Christie discussed Town Hall expansion on the telephone, there were no problems.

Comcast requested a short time to confer on the issue.

Councilman Wyett asked if there were a reason the docks were omitted?

Mr. Jakubiak identified that number 7 should be labeled Marina Administrative Offices and Royal Park bridge, and that would be part of it.

Public Works Director Dusey identified that the pumping station north of the marina would be a logical extension of the system for the I- net.

Mr. Bienstock said it was Comcast's understanding that the only regulation that would apply to cable modem service would be franchise fees, and essentially the cable modem business would be outside the purview of the types of provisions that govern cable. He said the bottom line was, during the discussions that were held, that the customer service standards would not apply to the cable modem business.

Mr. Miller said the Town does have the discretion to adopt customer service standards with respect to Internet service specifically providing that over time, Internet service remains a cable service. He said he did not think the agreement language bound the company for Internet service with the same terms and conditions that are offered to video one-way services, but he did think it gave the Town discretion to adopt specific customer regulations provided they are in accordance with the FCC standards. He said it was a reservation of powers by the Town rather than an implementation.

Mr. Bienstock, responding to Mr. Jakubiak's comments on the Town's Customer Service Standards ordinance, said that the ordinance was adopted before cable modem service even existed and some of the rules would apply and some would not work. If the Town adopts some rules pertaining to the cable modem service, Comcast would deal with that at that time.

After discussion regarding the customer service standards, President McDonald ascertained the language in the agreement needed to be clarified to the satisfaction of both parties.

Mrs. Christie said Comcast could supply I-net service to the Golf Course, the new proposed Town Hall

expansion site (singular), plus two sites within a two block radius of existing I-net sites that are presently being built.
Councilman Brooks asked Mr. Bienstock if the language could be amended in Section 4.4.1 to include the language "both parties make a good faith effort to come to a resolution of whatever is decided in five or ten years"? Mr. Bienstock replied that Comcast would agree to that.

Mr. Miller suggested the following language (Section 4.4.1): ....Upon receipt of the report resulting from the Town's review, the party shall make a good faith effort to negotiate and amend...."with the rest of the paragraph staying the same.

President McDonald asked Mr. Bienstock the following questions:

How about buying the system at the market value at the end of the term of the agreement?

Mr. Bienstock responded said he did not think this was a realistic problem, and under state law, a municipality has the right to build its own cable system at any time.

The construction period deadline of December 31, 2001, if Comcast is allowed to work only 6 months per year?

Mr. Bienstock replied the next summer would be needed if the cable company was not allowed to work during season.

Would Comcast include Broward County in the most favored cable system clause?

Mr. Bienstock said Comcast would not because if Adelphia owns the Comcast system, Adelphia does not have systems in Broward County and could not comply. He said this was a heavily negotiated position, and Comcast did not want to agree with anything other than what was previously resolved.

The customer service standards issue must be worked out.

Mr. Miller stated the question is if the parties want to take the existing rules that were written for a different purpose and simply apply them to a new service. He suggested a compromise where the Town would undertake a review of its customer service standards and adopt appropriate standards for Internet services, but until such action by the Town, the customer service standards do not apply to Internet services.

Mr. Bienstock said Mr. Miller's suggestion would be fine.

President McDonald asked that the Town Council make a policy decision on the I-net. After polling the Council, Mr. McDonald said the Town Council is in favor of an I-net and passing the 35 cents/month per subscriber charge on to the subscribers. Mayor Smith and Councilman Wyett were not in favor of passing the charge through.

Mr. Miller reported that Finance Director Jane Skittone figured the cost of the Town picking up the subscriber charges would be approximately $270,000 over a ten year period, and that does mirror the costs determined by the engineer that it will cost Comcast to build the facilities. Councilman Goldblum said this translates to approximately $4.50 savings per taxpayer per year.

After hearing Mr. Miller's comments regarding the pass through provision, President McDonald said he thought passing the 35 cent per customer charge through to the customers was the better way to go.

Mr. Bienstock said that Comcast preferred to see the 35 cent charge added to the ad valorem taxes, and was so much in favor of doing that, the only additional costs would be maintenance costs, and Comcast would not charge for those maintenance costs and would do maintenance for free.

Mr. Bienstock said his only remaining open issue was the question of the I-net; if it will passed on through the rate base – that way the $50,000 and the 35 cents comes out of the franchise fees or if it will go through the ad valorem taxes.

President McDonald replied the Town Council wanted to include the I-net. President polled the Town Council with the results being 3-2 in favor of passing the 35 cents on to the consumers.

Councilman Brooks made a motion to accept the agreement with the modifications as discussed at this meeting. President Pro-Tem McLendon seconded the motion.

After a discussion of the number of homes (600-700) per node, Comcast said the company could be at 40 nodes in lieu of the 10 nodes without further modification to the system plan, and the Council accepted Comcast's explanation.

Mrs. Christie said Town Hall would have free Internet monthly service, but Comcast did not want to rewire Town Hall after four outlets.

Town Manager Doney requested the agreement be approved by all the attorneys and Mr. Afflerbach's company.

On roll call, the motion carried 5-0.

V. ORDINANCE (First Reading)

A. Ordinance No. 14-00 - Granting to Comcast Cablevision of West Palm Beach, Inc., a Non-Exclusive Franchise to Construct, Operate, and Maintain a Cable System in the Town and to Provide Cable Service in the Town of Palm Beach, Florida, Pursuant to the Terms of the Agreement

Attorney Randolph suggested the first reading be done at the June 14th meeting to allow completion of the changes to the agreement.

Councilman Brooks made a motion to defer the first reading of Ordinance 14-00 to the June 14, 2000, Town Council meeting. The motion was seconded by President Pro-Tem McLendon and carried 5-0.

VI. ANY OTHER MATTERS

There were none.

VII. ADJOURNMENT

The meeting was adjourned at 3:45 p.m.

Mary Pollitt, Town Clerk