

# **PERFORMANCE EVALUATION OF TIME WARNER CABLE SERVICE**

**City of Lincoln**

**Telecommunications/Cable Advisory Board**

August 4, 2014

## **Executive Summary:**

Time Warner Cable (TWC) provides cable television service to the City of Lincoln through a franchise granted in 2005. That franchise allows the City to periodically conduct a Performance Evaluation of the franchisee. The City's Telecommunication/Cable Television Advisory Board (TCTAB) conducted such an evaluation on July 16, 2014, and herein reports its findings, conclusions and recommendations.

During its process, the Board sent written questions to Time Warner Cable, took public testimony, and received email and online comments from citizenry and customers regarding TWC's cable service. The TCTAB was especially interested in the public's opinions about the recent partial digital conversion of the cable system which required many customers to request, install and operate a digital adapter to receive all of the same programming that the customer had access to prior to the conversion. There was also significant interest and dissatisfaction with the reporting of customer complaints required under the franchise. TWC declined answering many of the Board's questions citing proprietary interests. Therefore, this report is based partly on the only sources of information the TCTAB had available, i.e. online sources, emails and letters received, phone calls from customers and previous experience of the Board members.

The TCTAB determined there were 5 major issues to address. The findings on each were as follows: First, the Board requested viewership information from TWC on PEG programming. TWC stated it had no such information or the ability to obtain such information. The TCTAB concluded TWC has the ability and should provide such information to the City. Secondly, the partial digital conversion and transition of certain programming has caused significant confusion among customers as to where the programming currently is or how to access it. It has resulted in the loss of viewership to some of the PEG programming. Thirdly, the customer complaint reporting is inadequate. TWC reports only complaints that are written on paper and sent to the company. There is no reporting on phone calls, emails or other online communications. Fourthly, TWC's participation in the evaluation process was disappointing. Its lack of responsiveness to inquiries made the TCTAB's efforts more difficult. Lastly, the cost of cable service was an area of significant concern to customers.

The report includes seven recommendations to the City. 1) The franchisee should provide periodic viewership reporting on the PEG channels and its programming. 2) To assure that PEG channels are available to all customers, the franchisee should provide digital adapters, their installation, and their operation to customers at no cost. 3) The franchisee should work with the City to provide a report containing periodic aggregated data and trend data, identified by type of

complaint. The report will include complaints telephoned, mailed, or transmitted by any form of electronic communication (emailed, tweeted, texted, etc.) to the franchisee and the company's responses. 4) The franchisee should provide notifications of major system changes to the City at least 90 days in advance of implementation. Such changes include, but are not limited to, total digital conversion, major repackaging or bundling of services, and other changes which will substantially change customer viewing experience and/or cost. 5) The franchisee should be required to report to the City and the TCTAB a mutually agreeable service cost report metric comparing other comparable market programming costs, cost per megabit of broadband service and system maintenance/upgrade activities in the market. 6) Institute a standing request for all current and updated channel rates, fees, and subscription options for customers to be provided by the franchisee to the City. 7) Develop an annual evaluation performance template for reporting by the franchisee.

### **Background:**

Through a non-exclusive franchise agreement reached in November 2005, cable television service is made available to the citizens of Lincoln, NE, by TWC. The franchise allows TWC to be in the City's right of way in exchange for a franchise fee. Lincoln is responsible for managing the right of way for all users. TWC's Southeast Nebraska Division operates this service for Lincoln and surrounding communities.

Under the City cable ordinance, the City of Lincoln created a Telecommunication/Cable Television Advisory Board (TCTAB). Board members are appointed by the Mayor and confirmed by the City Council. As regards cable television matters, the Board is charged, within limitations imposed by Federal Communications Commission regulations, to review cable TV service in the City annually, to examine specific issues as ordered by the City Council or Mayor, and to report back findings and recommendations. Under the City's franchise there are certain required channels. They are described as PEG (Public, Educational, and Governmental) access channels. The Public access channel is provided for the use of the citizenry to place their own programming on the TWC line-up. The Educational access channel is used by the educational community for the same purpose. The Government access channel is available for governmental entities for similar purposes.

On July 16, 2014, the TCTAB held a Performance Evaluation hearing to examine franchise and customer service performance by TWC. This evaluation was, in part, to baseline TWC performance prior to a potential transfer of the franchise to Comcast. This report responds to the ordinance objective of conducting a performance review and evaluation.

The TCTAB formally submitted 14 questions with various subparts to TWC. Those questions and responses are attached as Attachment 1.

## **Evaluation Process:**

Under the 15-year franchise agreement between the City of Lincoln and TWC, this Performance Evaluation process may lead to negotiations to modify the franchise terms. TWC is required by the franchise to undertake good faith efforts to reach agreement on requested modifications to the franchise when those modifications are “both economically and technically feasible.”

The TCTAB decided to generate questions and requests for information for TWC, and encouraged public comment through email via the Citizen Information Center. The written questions generated by the TCTAB were sent to TWC July 1. TWC delivered written answers to all questions on July 14. Many of those questions were not answered because TWC stated that the answers would violate TWC proprietary interests. Therefore, the TCTAB was forced to investigate the issues involved through complaints received from customers, from online sources such as cable industry websites, review sites and TWC web pages, and from discussions with citizens and with TWC representatives.

At the public hearing that was held July 16<sup>th</sup>, 2014, testimony was presented by TWC representatives and staff, City staff and several cable customers. The public testimony was sparse but negative on TWC customer service. There were approximately 58 email comments and 51 Facebook comments (Summary table Attachment 2). The comments were overwhelmingly negative on TWC’s performance. At the hearing, TWC was given multiple opportunities to supplement their written responses but did not do so.

## **Major Issues and Conclusions:**

### 1) Request for PEG (Public, Education and Government) Viewership Information.

TWC says it has no such information nor has it performed any surveys to determine PEG viewership. When asked about viewership of the other channels on the Lincoln line-up, TWC indicates they have conducted no surveys or attempted to ascertain what programming customers are watching. When questioned on this response, TWC acknowledges that they subscribe to Nielson reporting information that does give them some viewership information on a variety of programming but could not identify whether the information was based on the Lincoln franchise, some larger region or was national information. Prior to and at the hearing, TWC did not answer questions as to whether there was any information on the PEG channels in such Nielson information. Subsequent to the hearing, TWC determined that the Nielson ratings reports contained no information about PEG programming.

It is the belief of the TCTAB that TWC has the ability to obtain some viewership information. TWC’s representatives indicated that some of their systems are able to track such information, at least when cable boxes are involved. The TCTAB is not interested in who specifically is watching any particular programming but rather is interested in gross numbers of viewership. This information would be vital in determining the value of specific PEG programming.

It is the TCTAB's conclusion that TWC has the ability to gather some viewership information on PEG channels.

## 2) Partial Digital Conversion.

In 2013, TWC began an effort to transfer the PEG channels from the analog tier to a location on the digital tier. This transition would free space on the system for TWC to use in other ways. In a larger sense, the moves are part of what will eventually be a complete conversion from the current analog and digital channel distribution to digital only distribution. Despite multiple requests, TWC has been unable or unwilling to provide the TCTAB with a projected completion date for this larger effort.

This transition of the PEG channels required some subscribers to install and use digital adapters to maintain access to all previously available programming. TWC had undertaken a limited effort to assist customers with these adapters. That effort included: 1) a limited timeframe (90 days) to obtain the digital adapters at no charge, 2) a limited timeframe to use the adapters at no charge (free through 2014 and \$.99/month thereafter), and 3) an offer to assist customers (charged at standard service rates) who were having difficulty installing and using the digital adapters.

The TCTAB and City staff have received numerous complaints and concerns from subscribers about the ability to receive PEG programming. Customers using older analog televisions are unable to receive this programming without some form of cable box or digital adapter. Customers using newer digital televisions can receive PEG channels via QAM (Quadrature Amplitude Modulation) channels (for example what is City channel 5 on the cable boxes is QAM channel 71.14 on TVs with digital tuners). TWC indicates that approximately 60% of their customers have cable boxes or digital adapters to receive PEG. TWC has no knowledge as to how many customers are utilizing the QAM channels.

The use of the digital adapters has proven to be problematic. There was a variety of conflicting information regarding the ease/difficulty with which such digital adapters could be attached and made to operate with the older televisions. Jarad Falk, TWC representative demonstrated the method by which a customer could attach such adapter to receive such programming. A number of the Board members, as well as City staff, have heard from customers indicating that they couldn't understand how to install and use the equipment. Comments received indicated that customers did not understand, 1) That the adapters were needed to continue to receive channels they expected; 2) The availability of a window of time to request free adapters; 3) An apparent mandatory price hike (digital adapter charge) to continue to receive channels they previously received without having to pay this additional charge; and 4) That PEG channels were moved to a new channel. As a result, many individuals are not receiving programming that had been affected by the digital conversion. Diane Gonzolas, Citizen Information Center, shared that she had received concerns regarding underwriting of PEG programming after the digital conversion

had occurred. The underwriting concerns were in response to the increased difficulty of figuring out where/how to receive the PEG programming.

When questioned about how many subscribers had requested digital adapters, TWC indicated receiving requests from 3,332 subscribers in Lincoln. When asked, in the written questions, how many of those requested digital adapters were returned, TWC indicated they didn't know. City staff received accounts indicating that customers unable to successfully install the adapters returned them to TWC. Since TWC intends to or is charging customers for the adapters, the board is skeptical that information about the number of adapters returned does not exist.

The TCTAB concludes that there are TWC customers who are no longer able to receive the PEG channels or are being forced to pay an additional sum to receive these channels where they were not in the past.

### 3) TWC Customer Complaint Reporting.

Under Section 7.3 of the franchise agreement, TWC is required to report to the City on the number of written (interpreted by TWC as paper mailed) complaints it receives, provide a service call summary, and provide a summary of any material trend of complaints received. The ability to track and understand customer complaints is vital for the TCTAB to determine franchisee performance. Mailed written complaints represent a very small portion of customer complaints as opposed to complaints phoned into or emailed to TWC. Limiting reporting to mailed written complaints only has been controversial since the establishment of the franchise in 2005. During the Performance Evaluation effort, the City received, 1) Oral testimony from 3 citizens, 2 City staffers; 2) Emails from 63 customers; 3) Facebook comments from 51 current or former customers; and 4) 8 comments in paper letters. Applying TWC's interpretation of the franchise agreement this would have been reported as 8 complaints. This is wholly unrepresentative of the customers' concerns.

The comments/complaints received are tabulated in the Attachment 2 table. Those comments indicate that price, lack of competition and customer service are the most significant issues for these customers.

When questioned about the number of complaints TWC has received on any issue, TWC simply stated that they are complying with the franchise requirement. TWC suggests that they do not track customer complaints or analyze complaint trends. During the hearing the discussion implied that TWC tracks complaint and support response information on service records for individual customers.

It is TCTAB's conclusion that despite having the requisite data, TWC does not provide sufficient information for the Board to accurately assess franchisee performance and that TWC should provide much greater information on complaints received.

#### 4) TWC Responsiveness.

TWC refused or claimed an inability to answer questions on channel viewership, surveys, the number of digital adapters installed, complaints, reporting, income, system investments in the community, service response times and comparisons to other TWC owned systems.

The franchise requires that the franchisee fully cooperate with the City and provide the information the City may reasonably require to evaluate performance. While there may be some issues of proprietary information on some topics, the TCTAB believes this concern is inapplicable for much of the specific information requested. TWC has not established a legal basis for refusing this information.

The TCTAB concludes that TWC has not complied with the franchise requirement to fully cooperate with the Performance Evaluation effort and provide the information and documents that have been requested.

#### 5) Cost of Service.

Many complaints were received about price increases that far exceed the rate of inflation or perceived improvement of service. Many complaints indicated that services received were not commensurate with cost. Application of refunds and actual fees charged seem dependent upon the negotiation ability of individual customers. Since federal law preempts rate regulation by a City, the City cannot directly address franchisee rates. However, we acknowledge that this is an area of significant customer concern. We encourage the franchisee to provide greater transparency to the City on its pricing policies, the reasons behind price increases, and its refund policy. Further we encourage the franchisee to avoid situations where the price of services is directly dependent on the negotiating skills of the customer.

#### **Recommendations:**

Recommendation 1. Because it is vital and a benefit to both the City and the franchisee to understand viewership of PEG channels, require the franchisee to provide periodic viewership reporting.

Recommendation 2. To assure that PEG channels are available to all customers, provide digital adapters, their installation, and their operation to customers at no cost. To maintain the branding of PEG channels, channel designators (e.g. channel numbers) must be the same (or substantially similar) with all cable boxes, digital adapters, and QAM receivers.

Recommendation 3. To aid in ascertaining the quality of service provided to the citizens of Lincoln, pursuant to Section 7.3b of the franchise agreement, the franchisee will work with the City to provide a report containing periodic aggregated data and trend data, identified by type of complaint. The report will include complaints telephoned, mailed, or transmitted by any form of

electronic communication (emailed, tweeted, texted, etc.) to the franchisee and the company's responses.

Recommendation 4. To facilitate the partnership inherent in the franchise relationship between the City and the franchisee, the franchisee will provide notifications of major system changes to the City at least 90 days in advance of implementation. Such changes include, but are not limited to, total digital conversion, major repackaging or bundling of services, and other changes which will substantially change customer viewing experience and/or cost.

Recommendation 5. The TCTAB performance research shows lack of competition and pricing to be the highest reported areas of concern. The City will work with the franchisee to develop a service cost metric to better explain to customers how Lincoln services and rates compare with other similarly sized cities.

Recommendation 6. Under the provision of franchise agreement section 4.3, institute a standing request for all current and updated channel rates, fees, and subscription options for customers to be provided by the franchisee to the City immediately after receiving this performance evaluation and on the same day that there are any changes in rates, fees, and subscription services and/or bundles.

Recommendation 7. As the method for fulfilling the franchise requirement outlined in section 4.5 of the franchise agreement, the TCTAB will work with the franchisee to develop an annual evaluation performance template based on the requirements established in the franchise agreement and those set down by the FCC Consumer Service Obligations as well as other agreed upon metrics. The TCTAB will request a completed report based on the template at each annual performance evaluation.

### **Conclusions:**

The TCTAB notes that meeting the Board's recommendations may entail negotiation of changes to the franchise agreement. While we are concerned about the difficulties of the process, we note that TWC has been a good corporate citizen of Lincoln. They have contributed to City causes and provided significant contributions to the quality of life in Lincoln by keeping the City up to date in entertainment and information technology. In recognition of this spirit and commitment, we hope that TWC and the City can quickly resolve the issues raised in this report.

### **Attachments:**

- 1) Written questions and answers.
- 2) Summary of comments received from TWC customers.
- 3) Lincoln-TWC franchise agreement.