

1 February 10, 2016

2
3 Delivered as a .pdf file attachment emailed to the following recipients:
4 whatcom county cable tv history narrative_02102016.pdf

5
6 **TO:** Office of Whatcom County Executive Jack Louws - jlouws@co.whatcom.wa.us

7
8 Whatcom County Council Members:
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10 Rudd Brown - rbrowne@co.whatcom.wa.us
11 Barry Buchanan - bbuchanan@co.whatcom.wa.us
12 Todd Donovan - tdonovan@co.whatcom.wa.us
13 Ken Mann - kmann@co.whatcom.wa.us
14 Satpal Sidhu - SSidhu@co.whatcom.wa.us
15 Carl Weimer - cweimer@co.whatcom.wa.us

16
17 Robert Simmons – Independent Journalist - simmonsrc@comcast.net
18 Tim Johnson – Editor Cascadia Weekly - editor@cascadiaweekly.com

19
20 **FR:** Michael A Kominsky – makosmic@gmail.com

21
22 **RE: WHATCOM COUNTY CABLE TV FRANCHISE AGREEMENT ETC.**

23
24 My name is Michael Kominsky. I have been a resident of Whatcom County since 1997 and a subscriber
25 of cable tv and internet service starting with TCI and eventually the successor in assignment, Comcast
26 Inc. on and off for almost twenty(20) years. I currently subscribe to Comcast broadband internet
27 service and I am a customer of Directv, DBS(Direct Broadcast Satellite) for video services for the past
28 several years. And frankly if there was an efficient competitive alternative for Broadband Internet
29 available in my area at the 100mbs speed I need for my business, I'd leave Comcast in a NY minute.

30
31 By way of background, I was an executive with TCI from 1982 for about ten(10) years, as a regional
32 manager involved in cable tv system operations, including the negotiation and renewal of cable tv
33 franchise agreements in California and Nevada. Part of my job description was the
34 implementation/operation of PEG (Public Educational Government) channels and local
35 origination/public access channels.

36
37 As president of the Nevada State Cable TV Association in the early 1980's, my legislative
38 responsibility included lobbying for cable tv deregulation legislation at the state level and Washington
39 DC, ultimately spawning *The Cable Communication Act of 1984*. This federal legislation was the result
40 of an intense lobbying effort for various state and national NGO's, including the NCTA(National Cable
41 TV Association) with a great deal of telecom/cable corporate influence AKA money behind it. It greatly
42 diminished local, state and federal regulatory authority over cable tv franchises and its purveyors. Some
43 for the good...but much more for the not-so-good side of the ledger for regulatory entities. In retrospect,
44 frankly not one of my proudest professional accomplishments.

45
46 Because of my cumulative professional experience working in telecommunications I believe it may
47 offer some unique insight in the technical, operational and contractual aspects and issues of the

48 relationship between a franchisor, like Whatcom County and the franchisee, Comcast.

49

50 So you are probably asking yourselves, why would he bother to invest so much of his time to write this
51 meandering technical tome? Doesn't he have a life? Fair question...one which I confess I have asked
52 myself many times over the past now five(5) months. Trying to get information, which I feel should be
53 available to the public without bureaucratic road blocks from Whatcom County/Comcast, at times, has
54 been one of the more exasperating experiences of my professional life. Sorry, but it's just not supposed
55 to be this hard...or excessively time consuming. In this case—gratuitously so.

56

57 Frankly it is in stark contrast with the level of cooperation and responsiveness I have received from
58 same/similar requests for information from the City of Bellingham just last week. All of the questions
59 proffered (as relevant), below were answered completely and comprehensively by the City of
60 Bellingham within three(3) days of request with several follow-up questions answered in another
61 two(2) days.

62

63 But the more I begin to investigate...to dig deeper, the more I realized that there was a fundamentally
64 unfair, superior bargaining position held, and exploited, by Comcast Corporation, over its
65 customers/subscribers(as an ostensible monopoly by virtue of the economic impracticability of an
66 over-built, efficient competitive alternative cable tv/broadband internet provider). And that any
67 attempts at correction or reform would be met with substantial corporate bureaucratic resistance—a
68 frustrating gauntlet, designed eventually to cause the customer to throw up their hands in disgust and
69 give up. I know this, because it almost worked with me...*almost*.

70

71 So the answer to the question of *why*, is a very simple one. After numerous rancorous dealings with
72 Comcast and hearing the horror stories of other customers locally and on the internet, with same or
73 similar unsatisfactory resolution of complaints, I can best distill my motivation as eloquently stated by
74 Howard Beale, the fictional disaffected antihero main character in the 1976 film Network, "*I'm mad as
75 hell...and I'm not going to take it any more...*"

76

77 What follows is a narrative of my impressions, of the status of cable tv/internet service, my critique of
78 contractual performance by both Whatcom County and Comcast Inc. based on information released by
79 the County, (albeit limited and in some cases non-responsive and incomplete) with the desired result
80 that perhaps an amelioration of the quality of service and customer satisfaction can be achieved, both
81 on the supply side, and the regulatory side. You will notice that some of the issues raised appear more
82 than once, sometimes in multiple sections. Because of their perceived critical importance, I felt it
83 necessary to reaffirm the point, in different sections and different ways. I apologize for any perceived
84 unnecessary redundancy.

85

86 Should the County be interested, I would be willing to entertain the possibility of the submission of a
87 more detailed list of my recommendations, which perhaps could provide constructive input in crafting a
88 franchise renewal. Your questions or comments can be forwarded to my email: makosmic@gmail.com
89 using line numbers in the left margin to more easily reference sections of this document.

90

91 **A Caveat:** While not brief, this narrative is extremely direct and candid, by some standards perhaps
92 gratuitously so. It was not my intention to cause offense to anyone...it's a gift. If I have done so I do
93 apologize. Please forgive, I'm sure, the many typos etc. That now out of the way, please read on...

94

95 **I. - CABLE TV FRANCHISE HISTORY - WHATCOM COUNTY/CITY OF BELLINGHAM:**

96

97 1. 1996 – January: Franchise Agreement ratified between Whatcom County and TCI

99 2. 1996 – February: Franchise Agreement ratified between the City of Bellingham and TCI

101 3. 1999 – TCI was purchased in 1999 by [AT&T](#), whose cable television assets were later acquired
102 by [Charter Communications](#) and then [Comcast Corporation](#). The franchise is assigned to AT&T
103 with tacit ratification by Whatcom County of all the original terms/conditions without apparent
104 review or revision.

106 4. 2002 - Comcast acquired all assets of AT&T Broadband, thus making Comcast the largest cable
107 television company in the United States with over 22 million subscribers. The franchise is
108 assigned to Comcast with tacit ratification by Whatcom County of all the original
109 terms/conditions without apparent review or revision.

110 5. 2008 – The City of Bellingham received a renewal notice from Comcast in March 2008, which
111 was in advance of budget and planning efforts. The City budgeted for legal consulting and
112 began negotiating in 2010 ending with a renewal agreement in December of 2011.

113 6. 2008 – Whatcom County received a renewal notice from Comcast in March 2008, in which no
114 formal action was taken by Whatcom County to initiate negotiation for a franchise renewal.

115 7. 2011 – Cable TV Franchise agreements with the City of Bellingham and Whatcom County
116 expired.

117 8. 2011 – City of Bellingham and Comcast complete negotiations and ratification of Cable TV
118 franchise in December of 2011. There is no record provided to me by Whatcom County as to
119 any response to Comcast or the disposition of that request.

120 9. 2011 – July of 2011, one year after the expiration of the subject franchise agreement, Comcast
121 formally files an application for Franchise (renewal). After querying Whatcom County there is
122 no record of any substantive/meaningful or otherwise attempts at initiating negotiations with
123 Comcast for a franchise until February of 2016.

125 10. 2014 - COMCAST OF WASHINGTON IV, INC., a Washington corporation merges into
126 COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, a Delaware limited
127 liability company with tacit ratification by Whatcom County of all the original terms/conditions
128 without apparent review or revision.

130 11. 2016 – There is no record of Whatcom County having made any attempt to enter into
131 negotiations with Comcast to renew the original franchise agreement of 1996, which again,
132 expired in 2011. When asked the direct question by me on January 29, 2016:

133

134 *If not, **what are the official reasons of record for the County not pursuing a franchise***
135 *agreement renewal, especially in light of the fact that it was common knowledge that the City of*
136 *Bellingham had initiated renewal negotiations (a concurrently expiring county franchise*
137 *agreement) with Comcast in 2011 and completed the renewal process in 2011? **There has been***
138 ***no meaningful explanation from Whatcom County from the County as of February 5,***

139 2016 as to why?

140 **II. - COMCAST INC. - A BRIEF CORPORATE HISTORY:**

141 1. 1969 - The company was re-incorporated in Pennsylvania in 1969, under the new name
142 Comcast Corporation. The name "Comcast" is a portmanteau of the words "Communication"
143 and "Broadcast". Comcast's initial public offering occurred on June 29, 1972, with a market
144 capitalization of US \$3,010,000.

145
146 2002 - Comcast acquired all assets of AT&T Broadband (the successor to TCI), thus making
147 Comcast the largest cable television company in the United States with over 22 million
148 subscribers.

149 2. 2014 - COMCAST OF WASHINGTON IV, INC., a Washington corporation merges into
150 COMCAST CABLE COMMUNICATIONS MANAGEMENT, LLC, a Delaware limited
151 liability company.

152 **III. - COMCAST INC. - RECORD FOR CUSTOMER SATISFACTION AND SERVICE:**

153 1. In 2004 and 2007, the American Customer Satisfaction Index (ACSI) survey found that
154 Comcast had the worst customer satisfaction rating of any company or government agency in
155 the country, including the Internal Revenue Service. The ACSI indicates that almost half of all
156 cable customers (regardless of company) have registered complaints, and that cable is the only
157 industry to score below 60 in the ACSI. Comcast's Customer Service Rating by the ACSI
158 surveys indicate that the company's customer service has not improved since the surveys began
159 in 2001. Analysis of the surveys states that "Comcast is one of the lowest scoring companies in
160 ACSI.

161 (Source: Wikipedia Jan 2016

162 https://en.wikipedia.org/wiki/American_Customer_Satisfaction_Index)

163 2. As its customer satisfaction eroded by 7% over the past year, revenue increased by 12%." The
164 ACSI analysis also addresses this contradiction, stating that "Such pricing power usually comes
165 with some level of monopoly protection and most cable companies have little competition at the
166 local level. This also means that a cable company can do well financially even though its
167 customers are not particularly satisfied."

168 3. *The Consumerist* runs an annual "Worst Company In America" contest with the winner
169 determined by a series of reader polls. The single-elimination tournament is similar in format to
170 college basketball's March Madness being held simultaneously. Companies that have advanced
171 to the final four are included in the table below. The winning company is sent a "Golden Poo"
172 trophy. In recent years, silver and bronze poos have been sent to the other finalists (Source
173 Wikipedia Jan 2016 - <https://en.wikipedia.org/wiki/Consumerist>) :

Year	Winner	Runner-up	Third place
2006	Halliburton	Choicepoint	Wal-Mart and US Government
2007	RIAA	Halliburton	Wal-Mart and Exxon
2008	Countrywide Financial	Comcast	Diebold and Wal-Mart
2009	AIG	Comcast	Bank of America and Ticketmaster
2010	Comcast	Cash4Gold	Bank of America and Ticketmaster

2011	BP	Bank of America	Comcast and Ticketmaster
2012	Electronic Arts	Bank of America	AT&T and Wal-Mart
2013	Electronic Arts	Bank of America	Comcast
2014	Comcast	Monsanto	Wal-Mart and Sea World

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4. Comcast customers filed more than 2,000 complaints against the company from April to June 2015, according to documents released by the Federal Communications Commission. (Source: <http://arstechnica.com/business/2015/09/comcast-customers-filed-2226-complaints-in-3-months-fcc-records-show/>)

The documents were obtained from the FCC through a Freedom of Information Act request by CityExplainer, a Baltimore-based blog. CityExplainer yesterday posted an article about the complaints and made them all available to read in a spreadsheet: https://docs.google.com/spreadsheets/d/1mOKpsfctvhWVEhAjZ3NnFZRxxvEU26y4_nzU_qEq79GQ/edit#gid=0 and PDF: https://drive.google.com/file/d/0B6xNNmU_YSifNGM4QmVXNGxCdms/view

There were many complaints about data caps, billing problems, service outages, slow speeds, and poor responses from customer service representatives.

"You'll see senior citizens and others complaining about unrelenting billing errors, people complaining about alleged data throttling and data caps, and residents' sad tales of dealing with technicians who come—or don't come—to their homes to fix problems," the blog post said.



Some consumers claimed Comcast is violating net neutrality rules, though this was often due to people misunderstanding the FCC's regulations. One person claimed that Comcast "charg[ing] more for faster Internet services... violates the regulations on net neutrality," which is not correct. The core net neutrality rules prohibit blocking, throttling, and charging Web services for faster access to consumers, but not different price tiers for home Internet service.

Comcast is the largest cable and broadband provider in the country, with about 22.3 million TV customers and 22.5 million Internet customers (with a lot of overlap between those two groups).

5. TV, phone, and Internet providers are required to respond to consumers who file complaints on the [FCC's complaint site](https://consumercomplaints.fcc.gov/hc/en-us) (<https://consumercomplaints.fcc.gov/hc/en-us>). As we've [previously reported](http://arstechnica.com/business/2015/06/want%C2%AD-a-lower-comcast-bill-complain-to-the-fcc/) (<http://arstechnica.com/business/2015/06/want%C2%AD-a-lower-comcast-bill-complain-to-the-fcc/>), customers of Comcast and other companies have sometimes had better luck resolving problems by complaining to the FCC than to the providers directly.
6. **A personal note:** The genesis of my efforts to undertake this mission to attempt to help insure local governmental transparency and accountability in dealing with Comcast Inc. started with a Letter to Comcast Corporate Customer Complaint Resolution Dept. of September 18, 2015 after a tedious, unpleasant and very unsatisfactory resolution with Comcast on billing and service issues, commencing in August of 2015.

216 My exposure to the Byzantine Comcast complaint resolution process, subjected me to:
 217 • a gauntlet of protracted periods on hold, being ping-ponged from one rep to another, some of
 218 which sadly were barely intelligible, with English a second language at best, from remote
 219 locations like India, the Philippines and Mexico, with little or no authority to make any
 220 exceptions/concessions to the dogmatic parochial company policy.
 221 • incompetence, incoherence and arrogance. All too familiar to many customers.
 222 • Comcast’s “corporate resolution team” reeked with high-handed disdain. I found their rote
 223 recitations of arguments against, for essentially fair customer treatment, shallow, condescending
 224 and without merit—legal or otherwise delivered with relative impunity, due to their dominant
 225 market share.

226 As one can see from the chart below Comcast's subscriber base of 22.3 million is twice that of
 227 it's nearest cable tv purveyor competitor, Times Warner at 11 million subs. In 2015, Comcast
 228 attempted to acquire Times Warner Cable, but in April of 2015 Federal Regulators refused to
 229 allow the merger based on an anti-competitive hegemonic market share. But it clearly
 230 demonstrates the intent of Comcast Inc. to create a monopolistic market share—a cable cartel.

	SERVICE	SUBSCRIBERS		SERVICE	SUBSCRIBERS
1.		43.2 MILLION	6.		9.0 MILLION
2.		25.4 MILLION	7.		5.8 MILLION
3.		22.3 MILLION	8.		4.4 MILLION
4.		13.9 MILLION	9.		4.0 MILLION
5.		11.0 MILLION	10.		2.6 MILLION

(Source 2016 NCTA: <https://www.ncta.com/industry-data>)

231
 232
 233 After numerous attempts to get some satisfaction from Comcast/Whatcom County for my
 234 complaints for poor service and billing/business issues, sufficiently exasperated with the
 235 dismissive and unhelpful treatment, I realized that many others were probably suffering from
 236 the same kind of corporate misconduct. I begin to record the conversations with Comcast to
 237 preserve the discussions for the record. When I informed the corporate complaint
 238 representative, he vehemently objected to my doing so. Why, I asked “would you have a
 239 problem with recording a conversation with your company, especially when your company at
 240 the very beginning of each call states, “This call may recorded for quality assurance purposes...”
 241 “No...You cannot do that!” he said.

242
 243 “Oh?” I replied, “Unless Comcast is concerned with the poor quality of customer service

244 offered being documented, what is the legal or other basis for this prohibition?” He said “you
245 do not have permission...period.” But refused to offer a legally valid reason for doing so. I then
246 informed him that if a customer had any objection to having the call recorded which might
247 include the release of personal customer information etc.(that Comcast required for
248 authentication) which might allow a nefarious staff person to co-opt one's identity, that there
249 was no other option for the customer available offered by Comcast to avoid this recording
250 policy. This potentially creates a moral hazard, as some of these customer reps are paid
251 relatively little compared to their American counterparts, living in economically challenged
252 places like Manila, Philippines and Guadalajara, Mexico, which would make it almost
253 impossible to trace the origin of the breach of security/privacy of the customer.
254

255 I further advised him that I, and anyone else calling Comcast was granted explicit permission by
256 Comcast's own initial preamble, “This call may be recorded...” as this statement taken on its
257 face clearly does not differentiate who may...or may not...record the conversation. The
258 recordings speak volumes of the perverse practices of customer service. This I believe
259 demonstrates Comcast's selective invocation of legal/privacy issues, and high-handed corporate
260 attitude in dealing with its customers. Because of their superior bargaining position and
261 apparent lax regulatory oversight, as was/is the case with Whatcom County, they believe that
262 they can get away with just about anything without fear of regulatory
263 consequence/enforcement.
264

265 I suspect this is the real reason Comcast does not want their phone conversations recorded—
266 having had a similar experience “I feel your pain...”:
267

268 Time Magazine 2014 - [Recording of Man's Attempt to Cancel Comcast Will Drive You Insane](#)
269 *“If Dante's Inferno had been written today, an extra circle of hell would be dedicated to*
270 *dealings with cable providers. Former tech editor Ryan Block posted a maddening 8-minute*
271 *portion of his phone call with a Comcast “customer retention” specialist desperately (and*
272 *aggressively) trying to stop Block from canceling his service.*
273 *This recording picks up roughly 10 minutes into the call, whereby she and I have already played*
274 *along and given a myriad of reasons and explanations as to why we are canceling...”*
275 (Source: <http://time.com/2985964/comcast-cancel-ryan-block/>)
276 (8 min. of the actual call <https://soundcloud.com/ryan-block-10/comcastic-service>)

278 Customer Recorded 2014 - Comcast's 'Embarrassing' Customer Service Phone Call – You Tube
279 365,964 views - Over 1,300 almost all negative comments about Comcast.
280 (<https://www.youtube.com/watch?v=yYUvpYE99vg>)
281

282 Customer Recorded 2013 - Customer Service Meltdown (non-edited) - You Tube 851,215
283 views (The poor guy has a nervous breakdown...if it wasn't so pathetic it would be hilarious)
284 Over 2,600 95% negative comments about Comcast
285 (<https://www.youtube.com/watch?v=RVdNobKNMig>)

287 As one can see from the above references/citations I am not alone in my dissatisfaction. The
288 high volume of complaints to the FCC as referenced above of over 2,000 in just a three month
289 period of 2015 speaks volumes of Comcast's deficiencies and apparent big-corporation
290 disregard and dismissive attitude toward its customers. From personal experience I can tell you

291 that it is no small investment in time to file a complaint, even on-line, with FCC, usually done
292 as a very last resort after exhausting all avenues of dispute resolution with the local franchising
293 authority and beyond exasperating Comcast “customer service”.

294
295 Comcast holds the dubious honor for the highest volume of such FCC complaints for any
296 purveyor of video/internet providers including wireless and DBS (Direct Broadcast Satellite).

- 298 7. This prompted further attempts to obtain some semblance of a timely, fair and equitable
299 resolution, which eventually lead me to the revelation that Whatcom County and Comcast were
300 ostensibly operating without a franchise renewal (the original agreement had expired in 2011).
301 This in turn caused me to review the expired agreement as to provisions for redress for
302 unsatisfactory customer service and other issues, such as quality of service. I discovered that
303 Comcast was, in my opinion, in material breach of contract by not meeting the provision
304 specifically addressing customer service and complaints for over thirteen(13) years at least
305 (since the acquisition by Comcast in 2002). More later on that.

306
307 After over three(3) months of trying to get some material/comprehensive answers from
308 Whatcom County—for some very simple and direct questions— only after filing a complaint
309 with the Assistant Attorney General of Washington State (Advocate for Open Government) did I
310 begin to receive a written, somewhat material response (January 25, 2016) from the Whatcom
311 County Executive's Office, which administrates the cable tv franchise agreement.

312
313 As alluded to earlier, this spawned the creation of the website Howard Beale.

314 (<http://howardbeale.org/>)

315 (*Outrage is contagious...catch it here and become a carrier*) inspired by the classic never more
316 timely, relevant and prescient film **Network** (1976).

317
318 “*I’m mad as hell...and I’m not going to take this anymore!*” the immortal clarion call of
319 **Howard Beale** a fictional character from the film and the central character therein.

321 IV. - PAST/CURRENT ISSUES—THE FRANCHISE AGREEMENT

322 323 1. Expired Franchise:

324 As Whatcom County has not responded to the question as to whether there have been any
325 amendments or revisions to the terms/conditions of the original franchise agreement, one would
326 assume that the terms/conditions of the original agreement of 1996 remain unmodified with no
327 written extension for over five years from the expiration date of 2011 which under Washington
328 State RCW 62A.2.201 Formal requirements; statute of frauds.

329 (<http://app.leg.wa.gov/Rcw/default.aspx?cite=62A.2-201>)

330 and

331 RCW 18.36.010 Contracts, etc. void unless in writing.

332 (<http://app.leg.wa.gov/RCW/default.aspx?cite=19.36.010>)

333 *In the following cases, specified in this section, any agreement, contract, and promise shall be*
334 *void, unless such agreement, contract, or promise, or some note or memorandum thereof, be in*
335 *writing, and signed by the party to be charged therewith, or by some person thereunto by him*
336 *or her lawfully authorized, that is to say: (1) Every agreement that by its terms is not to be*

337 *performed in one year from the making thereof; ...*

338 it would seem to me, render the franchise agreement/contract void and therefore unenforceable
339 with regard to the obligations of Comcast to Whatcom County, otherwise why even have an
340 effective expiration date? It is now going on 6 years with no new agreement. An ostensibly
341 exclusive contract(natural/functional monopoly) with Comcast of approximately \$14 million
342 dollars (\$34 million City and County) total annual gross cable tv revenues(not including
343 "unregulated" internet and VOIP telephony) from the County. On a essentially a handshake?
344 Why?

346 **On the COB website under Comcast cable franchise:**

347 (Source: <http://www.cob.org/gov/dept/it/Pages/franchise.aspx>)

348 COB Home > Government > Departments > Information Technology

349 Comcast cable franchise

350 A cable television franchise agreement is a legal
351 agreement between the City and Comcast Cable, and
352 is required by **state and federal law.** The agreement
353 authorizes Comcast to install facilities in City streets,
354 and mandates obligations that Comcast must meet.

355
356 Assuming this statement to be factually correct as evidenced by the relatively timely renewal of
357 the franchise agreement with the City of Bellingham, is Comcast's operation of a cable
358 tv/internet system in Whatcom County in violation of state and federal law? As it is now going
359 on six (6) years with no new agreement, at the very least it begs the question: Why?

360
361 1.a.) The question as originally proffered to the County on December 18, 2015:
362 *If so, under what legal/contractual basis of an expired agreement? If not, under what*
363 *legal/contractual basis is Whatcom County administrating the Federal and Statutory legally*
364 *mandated contractual relationship between the County and Comcast?*

365
366 The response from Whatcom County on January 25th 2016: *By implied working agreement of*
367 *the parties, which mirrors the prior formal agreement of the parties. Case law arising from*
368 *disputes between jurisdictions and cable providers over continued payment of franchise fees*
369 *following expiration of an agreement supports the requirement of continued payments by the*
370 *providers so long as they continue to use the right-of-way. In this case there has not been any*
371 *such dispute, and Comcast has continued payment of its franchise fees as it had under the*
372 *previous agreement.*

373 and;

374 1.b.) And again on December 18, 2015: *While the City of Bellingham renewed the Comcast*
375 *Franchise Agreement in 2011, which expired in 2010, after over five (5) years, what is the*
376 *reason that Whatcom County has not complied with Federal and State Law re Cable Franchise*
377 *Agreements?*

378
379 Whatcom County on January 25th 2016: *The County is not out of compliance with federal or*

380 *state law pertaining to cable franchise agreements. The County continues to receive the*
381 *franchise fee and for all practical purposes Whatcom County and Comcast have been working*
382 *under the terms of the expired agreement.*

383
384 My response to the above explanations proffered by Whatcom County:
385 (Disclosure: I am not an attorney)

386
387 While I disagree with the legal interpretation/posture advocated by the County, so as not to
388 further waste any more of my valuable time, I do not elect to debate the finer points of the legal
389 argument offered, which would only, in my opinion, succeed as intended in obscuring the larger
390 issues and principal relevant question posed which has never been directly answered: Why
391 would the County with an ostensibly exclusive contract with a date certain expiration of over
392 six(6) years ago, worth by my calculation annual cable tv gross revenues (not including
393 "unregulated" internet and VOIP telephony) of approximately \$14 million dollars (\$34 million
394 City and County) annual total in the County, pursuant to **RCW 18.36.010 Contracts, etc. void**
395 **unless in writing** not deem it necessary to have a current, valid written contract? To allow this
396 condition to persist for over five(5) years, essentially on trust? With not one compliance audit of
397 franchise fees payments in over twenty(20) years?

398
399 For further illumination on the requirements of FCC Rules and Regulations re Cable TV:
400 Please go to: *Registration of a Cable System and State and Local Regulation of Cable Systems*
401 *at: <https://www.fcc.gov/media/engineering/cable-television>*

402 If even a minute fraction of the large amount of money at stake was personally that of the
403 County Executive or any member of the County Council, would they not *demand* that the
404 contract be current, enforceable and in writing?

405 It is quite clear that due to the unique technical and geographic circumstances, that the franchise
406 agreements with the City of Bellingham and Whatcom County, do not exist in a vacuum and as
407 a practical matter their respective interests are indivisible. Because they both utilize one in the
408 same provider with one system of common infrastructure of delivery which extends through the
409 City to the outermost parts of Whatcom County should make it obvious that some sort of
410 symbiotic relationship should have prevailed to preempt this obvious policy/operational
411 inconsistency, and political confusion to prevent:

- 412 ● further economic detriment to the County and customer dissatisfaction from arbitrary policy
413 by Comcast, and;
- 414 ● anachronistic technological provisions (1996—which according to Moore's law equivalent to
415 almost a century ago in technological time, Source: https://en.wikipedia.org/wiki/Moore's_law).

416
417 I can conceive of no beneficial economic, technical, customer...or any other
418 reasons/circumstances whereby it would have been to the advantage of Whatcom County not to
419 have renewed the franchise agreement at the very least concurrently with the City of
420 Bellingham, and preferably in concert with that process, including terms and conditions. The
421 above responses provided by the County seem to reflect more of a protective/defensive posture
422 —rather than advocacy on behalf of its residents and the Comcast ratepayers. On the contrary.
423 This apparent Laissez-faire policy may have inured to the great economic/operational benefit of
424 Comcast, with I submit, perhaps a tacit motivation to perpetuate the expired contractual status
425 quo. Or...a legal term of art, with perhaps applicable meaning here, *Cui bono (Latin)*...who

426 benefits?

427 (Source: https://en.wikipedia.org/wiki/Cui_bono)

428

429 Frankly, the explanation is perceived by me—intellectually and legally— as lacking merit, even
430 meretricious...a self-serving excuse for inaction. After querying the County in several separate
431 correspondences and several different ways, the absence of the County being open and willing
432 to provide some valid rationale, leaves one being forced to conclude that the *why* was, *just*
433 *because we can(?)*, which creates the appearance of hubris—counter-productive to open,
434 transparent governance.

435

436 I believe that Whatcom County for the past at least five(5) years, and most probably eight(8)
437 total will have been deprived of franchise fee payments based on the current 4% instead of 5%
438 (by Federal statutory limit, with no justification necessary to the franchisee for the maximum)
439 from Comcast, which extrapolated could potentially be as much \$1,000,000 – \$1,200,000 of
440 lost revenue, never to be reclaimed. By no means sofa cushion small change. Like the man said,
441 *a million here...a million there...pretty soon you're talking real money*. More on that below.

442

443 Additionally, this does take into consideration critical issues like the increased liability exposure
444 per occurrence of an excess judgment against the County with liability insurance limits
445 (contractually required of Comcast including the cost of the premiums) almost half of that of
446 the City of Bellingham and a Performance Bond of one-tenth of the City (\$25,000 vs \$250,000)
447 which would give the County far more leverage(with a higher ceiling of \$250K) to enforce a
448 more comprehensive customer satisfaction/service requirements through fines, penalties and
449 liquidated damages. More later below.

450

451 According to the County, there is no record of any substantive/meaningful or otherwise,
452 attempts by the County at initiating negotiations with Comcast for a franchise until February of
453 2016, with the initiation of discussion set on the agenda in late February by the relevant
454 committee of beginning the process of “discussion” before even entering into
455 negotiation/renewal almost six(6) years later. From my experience, typically these negotiations
456 and ratification take a minimum of twelve(12) to twenty-four(24) months as in the case of the
457 City of Bellingham. Which means that the provisions, including but not limited to critical issues
458 such as customer service safeguards, franchise fee payments/percentages, Performance Bonds
459 and Liability Insurance limits etc., in the absence of any mutually agreed amended extension,
460 the expired franchise agreement as initiated in 1996 will continue possibly into 2018, twenty-
461 three(23) years since inception and eight(8) years after expiration.

462

463 This fact seems to reinforce an attitude of governmental insouciance by the County, and yes,
464 sadly the malodorous whiff of malfeasance, especially in light of the fact the City of
465 Bellingham franchise renewal (the original of which expired in 2011 concurrently with
466 Whatcom County) is only for ten(10) years expiring on 2021. One has to wonder, just how long
467 this franchise renewal issue would have been further neglected, had it not been raised by the
468 subject inquiry resulting in further lost revenue to the County?

470 2. **Failure to maintain complaint logs as specified in the original franchise agreement:**

471 **Pursuant to Section 9. CUSTOMER SERVICE POLICIES:**

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Section 9. CUSTOMER SERVICE POLICIES.

9.1 Response to Customers and Cooperation with County. TCI shall promptly respond to all requests for service, repair, installation and information from subscribers. TCI acknowledges the County's interest in the prompt resolution of all cable complaints and shall work in close cooperation with the County to resolve complaints.

Definition of Complaint - For the purposes of Section 9, with the exception of Subsection 9.3, a "complaint" shall mean any communication to TCI or to the County by a subscriber or a person who has requested cable service; a person expressing dissatisfaction with any service, performance, or lack thereof, by TCI under the obligations of this Franchise.

9.4 Reporting Complaints. TCI **shall maintain a log of all subscriber complaints and make this log available for County inspection.** The log shall include the date, name, address, telephone number of complainant. The log shall also contain the subject of the complaint, date and type of action taken to resolve the complaint, any additional action taken by TCI or the complainant and record whether or not the complainant was satisfied with the resolution or action taken. The log shall be maintained in a way that allows for sorting, deletion of fields, and manipulation of data per County specifications.

Upon request by the County, TCI shall provide a comma delimited ascii file of all subscriber complaints containing the above information.

The log shall be submitted on a monthly basis to the County or person or agency designated by the County. The County may request the log more frequently if it is deemed necessary. The County may contact any complainant listed in the log in order to insure satisfactory resolution of complaints with respect to this franchise.

The official written County response: "While Whatcom County occasionally receives complaints about Comcast from citizens, these are forwarded on to Comcast. No log of such complaints is maintained."

The expired Franchise Agreement language cited above clearly indicates that this requirement is not discretionary with the unequivocal use of mandatory shall, and therefore should be deemed critically important, and as such, should only be waived by a mutually agreed duly executed document. There is no record with the County of any such waiver being granted.

After pursuing customer complaint logs from Comcast through the County, for over three(3) months, finally this is one example, of five(5) years) of the risible Comcast reports for year ending 2014 declaring only thirty-four (34) total complaints which strains the outer boundaries of credulity/credibility. At best, it can only be characterized, charitably as self-serving. Clearly, the legislative intent of this provision was to enable the County to monitor the performance of Comcast so The County may contact any complainant listed in the log in order to insure satisfactory resolution of complaints with respect to this franchise.(actual language from the agreement)

518 "Escalated" Complaints "Logged" and prepared by Comcast for Y/E 2014:

Type of Complaint	Video
Appointments	4
Billing	15
Cable Repair	7
Collection	2
Customer Service	3
Programming	1
Sales/Marketing	1
Service Requests	1
Total	34

519
520 As such, I believe this to be so serious a contractual transgression, that it should have been,
521 (and currently) considered a material breach of contract with immediate remedial action
522 required by Comcast, subject to:

523
524 *7.5.1 Remedies. Other than the liquidated damages specified in Section 4.3.3 of this Franchise*
525 *agreement which relate to the construction schedule, the County shall have the right to assert*
526 *the remedies set out below in the event TCI violates any provision of this Franchise agreement.*
527 *These remedies are intended to embody the County's and/or the public's rights under The*
528 *Whatcom County Home Rule Charter to the extent permitted by law.*

- 529 a) To the extent the County deems necessary to remedy the default, proceeding against
530 all or any part of any security provided under the Whatcom County Code or this Franchise,
531 including without limitation, any bonds, security funds, or other surety. Should the County take
532 this action, TCI shall be responsible for all direct and actual costs related to the foreclosure
533 action including, but not limited to, legal and administrative costs;
534 b) Commencing an action at law for monetary damages or seeking other equitable relief,
535 including specific performance;
536 c) In the case of a TCI's default as to a material provision of the Franchise, proceeding to
537 revoke the Franchise; or,
538 ***d) Requiring TCI to correct or otherwise remedy the violation prior to considering the***
539 ***approval of any proposed rate increase if rate regulation is authorized by law and is in effect.***

540
541 Without compliance with this reporting provision, which has been the case since Comcast was

542 assigned the franchise agreement in 2002, the County is left with no objective data to gauge
543 Comcast's compliance, and therefore, no power of enforcement of this very critical issue of
544 customer satisfaction and service, especially in light of the highly questionable/dubious record
545 of Comcast as cited in **III. - COMCAST INC. - RECORD FOR CUSTOM**
546 **SATISFACTION AND SERVICE:(supra)**.

547
548 In doing some research with the City of Bellingham it would appear that Comcast has also been
549 derelict in its obligation re Customer service/complaints reporting required under provision:

550 **8.3 Quarterly Report**

551 *Grantee shall, provide City with information which shall describe in detail Grantee's*
552 *compliance with customer service standards.*

553
554 Until called to their attention from this inquiry, COB was not aware of this deficiency—it is
555 currently being addressed by the COB staff.

557 **3. Franchise Fees:**

558 In response to the County below the question re franchise fees:

559
560 3.a.) December 18, 2015: *Why hasn't Comcast tendered the additional 1% franchise fees above*
561 *the 4% paid for a total as evidenced by the accountings provided to the County by Comcast for*
562 *the last five(5) years at least?*

563
564 Whatcom County on January 25th 2016 : *The County's interpretation of implementation of*
565 *Section 6 as outlined in Section 11 requires the County to have 2 PEG channels to prior to*
566 *collecting a 5% franchise fee. The County is not aware of the need for additional PEG channels*
567 *especially with the use of BTV10 from the City of Bellingham.*

568 My response:

569 Setting legal points and authorities aside for my disagreement with this legal interpretation of
570 contract law of this provision, which frankly, I believe to be a moot point, had Whatcom County
571 renegotiated the franchise agreement in a timely manner and had a final agreement been ratified
572 before the expiration date of 2011, under Federal statute: *Franchising authorities may charge*
573 *the cable operator a fee for the right to operate a cable system in that franchise area; however,*
574 *the franchise fee paid by the cable system can be no more than five(5) percent of its annual*
575 *gross revenue. A franchising authority may use the money collected from this fee for any*
576 *purpose. A cable operator may list any applicable franchise fee as a separate item on the*
577 *subscriber's bill.*

578 (Source FCC website: State and Local Regulation of Cable Systems
579 <https://www.fcc.gov/media/engineering/cable-television>)

580
581 In other words, there is no justification necessary—no state/federal regulations or statutory
582 requirement to list the reasons or how it will be allocated in the franchise agreement to the
583 franchisee(Comcast) for the franchisor(the County) to be able to charge the maximum 5%
584 which then can be internally allocated in any manner that the franchisor sees fit.

585 **4. Difference in Franchise Fees Between the City of Bellingham and Whatcom County:**

586 With regard to the flawed argument some may attempt to proffer that an increase in franchise

587 fees would have just been passed-through to the County subscriber in the form of a rate
588 increase: I am able to find no language in the subject franchise agreement explicit or implied,
589 nor should/would there be in a novation of the contract, which would allow a direct pass-
590 through dollar-for-dollar provision by the franchisee. If the City of Bellingham subscribers are
591 paying 1% more on their applicable franchise fee services for the same services at billed the
592 same price(ie. Limited Basic Service \$25.91/mo. which has been verified) Comcast is passing
593 through the franchise fees to the subscriber.

594
595 This is not to be confused with the collection of state/local sales taxes, FCC Regulatory Fee and
596 Broadcast TV Fee, which are collected and tendered to third parties not a party to the franchise
597 agreement. Franchise fees should be considered part of the general cost of doing business along
598 with any other expensibile items like **pole rental from telcos/power, rent/lease paid for**
599 **business offices** etc, the increase of which would not be passed-through on the customer bill
600 dollar-for-dollar—in this case **rent paid for the use of public land as right-of-way by the**
601 **company for its cables. Why should Comcast be allowed the use of public-right of way**
602 **rent-free by passing it through to the landlord?** However, the Communications Act provides
603 the transparency of the franchise fee by listing it(only) so that customers of the cable company
604 understand the fee imposed by the government upon the cable company for things like
605 *Regulatory* - compensation to the government for the cost of regulating cable television:
606 consultants, auditors, administrators, and inspectors.

608 **5. Cablenomics 101 or Corporate Welfare:**

609 The term fee in this instance is somewhat of a misnomer: it is not the same as a tax, for lack of a
610 better term, fee merely defines the methodology—a statutorily uniform and consistent means of
611 calculating the **rent/lease** for use of public right of way by applying a percentage to the
612 applicable revenues. Since a franchise fee should not be considered a tax, in a so-called
613 "competitive" bidding process in Request for Proposals or Renewal Request, it should be part of
614 the competitive beneficial offerings (financially absorbed as operating overhead by the
615 franchisee) in the negotiation process, and any explicit, or implicit pass-through provisions
616 should be specifically negated contractually. Only utilities like electric and natural gas are
617 allowed to pass-through expenses like franchise fees dollar-for-dollar because of the fact they
618 enjoy a legal/actual monopoly mandated by the state, their rate of return is highly regulated by
619 the state, including executive compensation. Kimberly J. Harris Chief Executive Officer,
620 President and Director of Puget Sound Electric(WA) makes an \$898K annual salary.

621
622 From my experience as cable tv executive, I can tell you that the pre-tax cashflow for all the
623 systems under my budgetary control was in excess of 45% and in some areas considerably
624 higher. Net profits are only regulated by market forces, such as efficient competitive alternatives
625 or in the case of Comcast, the lack thereof. (in most markets Comcast operates as a relatively
626 unregulated natural/functional monopoly). Brian L. Roberts CEO of Comcast Inc. Net worth is
627 \$1.47 Billion(December 2015) Receives an annual compensation of \$26.4 million (2014).

628 CEO compensation of an UN-regulated monopoly Comcast versus a regulated monopoly utility
629 PSE is almost thirty(30) times greater. Who do you think pays for that?

630
631 In 2014 Comcast reorganized as a state of Delaware Corporation, (even though its corporate
632 headquarters is in Philadelphia PA), including giants like the usual suspects American Airlines,

633 Apple, Bank of America, Berkshire Hathaway, Cargill, Coca-Cola, Ford, General Electric,
634 Google, JPMorgan Chase, and Wal-Mart. These companies do business across the nation and
635 around the world, their Delaware corporate addresses, are essentially tax haven drop boxes.
636 (Source The New York Times 2012 - How Delaware Thrives as a Corporate Tax Haven:
637 [http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-](http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html?_r=0)
638 [haven.html?_r=0](http://www.nytimes.com/2012/07/01/business/how-delaware-thrives-as-a-corporate-tax-haven.html?_r=0))

640 **6. To Pass-through or not to Pass-through:**

641 Since the fee is paid to the local government, when it is broken down on a per-customer basis
642 on the bill it appears to be a tax to the customer, possibly igniting antipathy against government
643 officials. If it just appeared on accounting statements as a lump sum payment by the cable
644 provider, it would be perceived by the public more as a fee-for-service(or rent), which is how
645 local governments regard it—general operating overhead included with the cost of doing
646 business. As such, in the absence of a direct pass-through provision, the increase should not be
647 passed through dollar-for-dollar. However, the Communications Act does provide(heavily
648 lobbied for by the Cable TV Industry) for transparency of the franchise fee so that customers
649 of the cable company understand the fee imposed by the local government upon the cable
650 company. Also, since customers will immediately notice any increase in the (listing of the) fee,
651 and may interpret it as a "tax increase", listing it on the bill may discourage local governments
652 from pushing for an increase in the fee when the franchise agreement is renewed.
653 (Source: https://en.wikipedia.org/wiki/Cable_television_franchise_fee)
654

655 Further, whether the subscriber realizes it or not, for political reasons because there is an
656 obvious desire to have perceived rate parity between the City of Bellingham and Whatcom
657 County subscribers, all the services offered to subscribers of both franchise areas are most
658 likely billed(highest common denominator) at the same higher franchise rate of the City. The
659 only noticeable difference is the innocuous line item on the subscriber bill indicating the dollar
660 amount of franchise fees paid, which is somewhat misleading because the difference between
661 that number for the same level of service for both City and County subscriber is 1% less for the
662 County, which may be retained by Comcast. Even if, in fact Comcast is passing the franchise
663 fees through, (I believe invalidly so, which should be researched) the net impact on an average
664 expanded basic monthly(about \$40/mo) cable tv only (excluding exempt internet/telephony
665 services) including HD upgrade etc. of \$44 would be only about \$0.44/mo.

667 **7. A Tale of Lost Revenue or Who's Minding the Store?:**

668 I submit that since the City of Bellingham is charging a 5% franchise fee, the rates that are
669 charged by Comcast for both the City and the County are theoretically predicated on that basis.
670 This means that an increase in franchise fees to 5% by the County should have had a neutral
671 impact on cable tv/internet rates charged by Comcast. The difference would be of course, that
672 Comcast would get to keep approximately an additional \$150,000 a year based on a franchise
673 fee rate of only 4%, which goes right to the corporate bottom line. Not a bad deal for Comcast,
674 for providing essentially NO added value to subscribers of the County.

675 In any case, I believe that Whatcom County for the past five(5) years at least, has been deprived
676 of franchise fee payments of 5% from Comcast, irretrievably lost revenue in the amount of
677 approximately \$700,000, and most probably (extrapolated) eight(8) years, the total by the time

678 the renewal is ratified, will have been deprived of, conceivably as much as \$1,000,000 –
 679 \$1,200,000. Unless/until The County is willing to proactively demand "claw-back" revenues
 680 retroactively, and/or immediately address this issue re current revenues, which from the above
 681 reticent posture stated by County, would tend to make this issue moot. Certainly, at the very
 682 least, this issue can be raised as "bargaining chip" in future negotiations for a renewal.

February 6, 2016 rev.

Comcast Franchise Fee Accountings as tendered to Whatcom County for Y/E 2014

	2014	Gross	Fran. Fee 4.00%	Fran. Fee 5.00%	Difference
Jan – Mar		3,610,649	144,426	180,532	36,106
Apr – Jun		3,668,522	146,741	183,426	36,685
Jul – Sep		3,689,713	147,589	184,486	36,897
Oct – Dec		3,750,366	150,015	187,518	37,504
Annual Rev.		\$14,719,250	\$588,770	\$735,963	\$147,193
5 yr AVG (Estimated)					
Approx. Annual Gross Rev. cable tv only		\$14,000,000			
2011 – 2015 (5 yrs Projected)		\$70,000,000	\$2,800,000	\$3,500,000	\$700,000
2011 – 2018 (8 yrs Projected)*		\$112,000,000	\$4,480,000	\$5,600,000	\$1,120,000

*This projection is based upon a projected completion of a franchise renewal date of 2018 with Comcast.

683 *Prepared by Michael Kominsky based on information from Whatcom County records.*
 684 *The gross revenues do not include exempt internet and telephony(VOIP) revenues as per*
 685 *Federal statute. As such, the actual gross is probably considerably higher than an average of*
 686 *\$14 million annually.*

687 **8. Performance Bond and Liability Insurance:**

688 Here is just one example of an important difference, among many, between the City of
 689 Bellingham and Whatcom County Franchise agreements which I believe could possibly
 690 unnecessarily expose Whatcom County to a potential excess liability judgment, (with Comcast
 691 enjoying/benefiting a lower insurance premium which again goes right to the bottom line).

692 Question:

693 In an increasingly litigious environment against local/state governments most especially,
 694 personal injury and privacy infringement, has Whatcom County amended the requirements for
 695 Performance Bond and Liability Insurance of the Franchisee, or is it still at the limits of 1996 as
 696 originally negotiated?
 697

698 Note, the 2011 City of Bellingham performance bond is ten times(\$250,000 vs \$25,000) that of
 699 the 1996 agreement with the County, and the liability limits for PI & PD per occurrence almost
 700 double (\$5,000,000 vs \$3,000,000) as well as double for *including claims for damages*
 701 *invasion of the right of privacy; for defamation of any person, firm, or corporation* (\$2,000,000
 702 vs \$1,000,000) to wit:
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PERFORMANCE BOND:

City of Bellingham 2011:

11.5 Performance Bond

*Within 30 days after the Grantee's acceptance of this Franchise, **Grantee shall post a performance bond, in the amount of two hundred fifty thousand dollars (\$250,000.00),** to ensure Grantee's faithful performance of the terms of this Franchise.*

Neither the provisions of this section, any bond accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the Franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

Whatcom County 1996:

11.3 Performance Bond. *Within 30 days after the award of this Franchise, but in no event sooner than the final reading of the Franchise ordinance, TCI shall submit to the Chief Civil Deputy Prosecuting Attorney, which shall be filed with the County, a performance bond running to the County, with good and sufficient surety licensed to do business in the State of Washington and approved by the County in **the amount of \$25,000.00,** conditioned that TCI shall well and truly observe, fulfill, and perform each term and condition of the Franchise. This bond shall be conditioned that in the event TCI shall fail to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of such bond, any damages suffered by the County as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property as prescribed; said condition to be a continuing obligation for the duration of the Franchise and thereafter until TCI has liquidated all of its obligations with the County that may have arisen from the acceptance of the Franchise by TCI or from its exercise of any privilege herein granted...*

LIABILITY INSURANCE:

City of Bellingham 2011:

11.8 Grantee Insurance

Grantee shall maintain, throughout the term of the Franchise, liability insurance in the minimum amounts of:

(a) \$2,000,000 for personal injury or death to any one person and \$5,000,000 aggregate for personal injury or death per single accident or occurrence.

(b) \$2,000,000 for property damage to any one person and \$5,000,000 aggregate for property damage per single accident or occurrence.

(c) \$2,000,000 for all other types of liability, including claims for damages invasion of the right of privacy; for defamation of any person, firm, or corporation; for the violation or infringement of any copyright, trademark, trade name, service mark or patent; or, for damage to any other person, firm, or corporation arising out of or alleged to arise out of failure to comply with the provisions of any statute, regulation or resolution of the United States, State of Washington, or any local agency with jurisdiction...

Whatcom County 1996:

751 *11.7 TCI Insurance. TCI shall maintain, throughout the term of the Franchise, liability*
752 *insurance insuring the County and TCI, their respective officers, employees and agents, with*
753 *regard to all claims and damages specified in Section 11.5 herein, in the minimum amounts of:*
754 *(a) \$3,000,000 for personal injury or death to any one person;*
755 *b) \$3,000,000 for personal injury or death resulting from any one accident \$3,000,000 for*
756 *property damage resulting from any one accident; and*
757 *c) \$1,000,000 for all other types of liability...*

759 **9. PEG and Public Access Channels:**

760 BTV10 on cable channel 10 is the local PEG channel which now offers Public Access on a
761 limited basis. It is viewable by virtually every subscriber on Comcast cable tv including the City
762 of Bellingham and all of Whatcom County. It is totally subsidized by the franchise fees
763 revenues from City of Bellingham subscribers, who pay an additional surcharge on their
764 monthly bill of .50/mo. which is allocated for capital expenditures/improvement of equipment
765 and resource. It serves a vital purpose to the community by being a vehicle for providing open
766 and transparent governance, along with a great deal of locally produced public service
767 programming.

768
769 A recent and very important, and I believe vital example is the BTV10 production of
770 *Earthquake planners are getting ready, are you? VMC Disaster Event on Saturday Jan 23.*
771 *Building Community Resilience in the Face of the Really Big One.* I attended personally,
772 although it was well attended frankly the audio amplification was distorted and the very
773 informative graphic slides projected were not readable from many places in the Whatcom
774 Middle School Auditorium.

775
776 Fortunately, about one week later the entire almost two(2) hours of the program which was
777 recorded and post-produced by the staff at BTV10 was available on the COB You Tube Channel
778 *Volunteer Mobilization Orientation on Disasters*
779 <https://www.youtube.com/watch?v=5j1Wc0CUDaE>

780 The video was professionally shot and edited, viewable in excellent HD quality. But the
781 important distinction from being there in person is that the video and audio quality was
782 excellent, clean and crisp, and the critical support material like the slides was done with close-
783 up and very readable. And of course the video could be paused and portions replayed to allow
784 for a more comprehensive understanding of the material. The presentation by Dr Rebeka Paci-
785 Green, a professor at WWU, was very professional and informative, with some very useful
786 recommendations for preparedness that everyone should become cognizant of for when, not if,
787 the Big One Comes, a potentially catastrophic 9.0 Cascadia subduction fault earthquake. It was
788 followed by a very informative panel discussion with questions taken from the audience.

789
790 I believe this dramatically demonstrates the increased reach and promise...and the true
791 community value of locally produced and originated programming for the public good.

792 County subscribers were able to view this program, and many other important public service
793 programs despite the fact that Whatcom County does not contribute to the underwriting of
794 BTV10. Why doesn't the County recognize the importance of this important public resource and
795 pay their fair share of subsidy?

796 Why is it that the County Council airs its meetings by special arrangement with the City, with a
797 fixed insertion rate of \$95 per meeting of the regular/general meetings held at least twice per
798 month, plus any other special meetings aired on BTV10? Additionally Whatcom County
799 contracts with an independent outsourced production entity to produce the programs for airing.
800 So despite the fact that the County collects no franchise fees allocated to the PEG channel, they
801 incur the expense of production and insertion, which is paid out of the general fund revenues.
802 My estimate is that this is costing the County perhaps a \$1,000 per month, which begs the
803 following questions:

804
805 Why would the County not want to collect an additional amount of franchise fees (up to 5%) to
806 help offset this expenditure?

807
808 Why would the County, as a matter of equitability, not want to participate in a partnership with
809 the COB and help fund PEG and Public Access, to pay their fair share, as a good community
810 citizen and help dilute some of the overhead etc., currently being underwritten 100% by the
811 COB, levied completely to the City subscribers?

812 Finally, as a resident of the County because the County does not contribute to the maintenance
813 of BTV10 I and others, as producers of useful and entertaining video content, including PBS
814 documentaries and PBS How-to programming on teaching oil painting, all the content that I
815 could make available to the Public Access Channel, is not eligible for viewing, because, and
816 rightly so as a matter of equity, the County contributes nothing to this effort.(Source:
817 MetaMEDIA Communications <http://metamediacom.tv>)
818

819 My recommendation is that during the franchise negotiations for renewal with Comcast, that
820 the County and the City of Bellingham enter into discussions to formalize a collaborative effort
821 of providing and nurturing a robust PEG channel and a locally originated programming
822 venue(s) as equal partners— as contributors of content and in the subsidy and administration.

823 **V. - SOME GENERAL RECOMMENDATIONS:**

824 1. A comprehensive review the negotiated final franchise agreement between the City of
825 Bellingham and Comcast. I have reviewed the agreement and I believe that it could serve as a
826 workable template for a County agreement, as all the legal "heavy lifting" has already been
827 done. With some minor modifications, I believe a final draft of an agreement with ratification,
828 could be accomplished in six(6) to twelve(12) months. Otherwise I think it could take up to
829 twenty(24) months for complete novation. Comcast should have no objection to this agreement
830 as it has essentially already been ratified with the COB and Comcast.

832 2. Appoint and cost-share, a staff person as a designated/dedicated Ombudsman to handle all
833 customer complaints from both County and COB with one contact point via a web portal(a
834 trackable web based complaint form with email status updates to the subscriber) along with a
835 single phone number to avoid confusion and to streamline and expedite the dispute resolution
836 process. The complaints can then be forwarded directly to Comcast via the web interface, with
837 the disposition stored in a COB/County database as a means of tracking Comcast's compliance
838 (customer satisfaction) with the franchise agreement, giving the County greater enforcement.

840 3. Make the expiration date of the agreement concurrent with the COB agreement, in 2021(and
841 reporting requirements and payment of franchise fees concurrent for comparison purposes etc.).

842 So that the renewal period would have only the number years remaining to 2021, if the
843 agreement is ratified by 2018, three(3) years before further renewal for both the COB and the
844 County concurrently. This will insure consistency, and continuity and avoid the political
845 confusion of two different agreements, with different terms and requirements, and would put the
846 COB and Whatcom County back on the same renewal cycle.

848 4. At the very least, adopt the strong provisions of the customer service Section 8 Reporting
849 Requirements of the COB franchise agreement. Also pursuant to the existing (expired franchise
850 agreement of 2010) *7.5.1 Remedies. d) Requiring TCI(Comcast) to correct or otherwise remedy*
851 *the violation prior to considering the approval of any proposed rate increase if rate regulation*
852 *is authorized by law and is in effect.*

853
854 In other words, require Comcast to meet the current reporting requirements of customer
855 complaints forthwith under Section 9 Customer Service Policies with 30 days notice to cure the
856 material breach of contract, or face regulatory action from the County to the fullest extent
857 allowable under the franchise agreement (before granting any regulated rate adjustments).

858
859 To wit: **9.4 Reporting Complaints:**

860 *TCI shall maintain a log of all subscriber complaints and make this log available for County*
861 *inspection. The log shall include the date, name, address, telephone number of complainant.*
862 *The log shall also contain the subject of the complaint, date and type of action taken to resolve*
863 *the complaint, any additional action taken by TCI or the complainant and record whether or*
864 *not the complainant was satisfied with the resolution or action taken. The log shall be*
865 *maintained in a way that allows for sorting, deletion of fields, and manipulation of data per*
866 *County specifications.*

868 5. In the section of the agreement regarding franchise fees, stipulate to 5%(from the current 4%)
869 on all applicable revenues without justification, or earmarking/allocating any portion of the
870 franchise to a specific category such as PEG etc.

871
872 Because the funding/underwriting requirements for PEG etc. will be fluid and subject to change
873 from year to year, I would suggest incorporating a reference to a specific interlocal agreement
874 available for public inspection, and online, which would address the issue of allocation of
875 franchise fees internally, with regard to the subsidy/administration of PEG and Public Access
876 etc. which can be addressed at an administrative staff level with ratification if necessary by the
877 both the County and COB councils. This approach would allow both the COB and County more
878 flexibility to make changes, without having to amend or revise the franchise agreement which
879 would of course require ratification by Comcast Inc.

881 6. As a condition precedent to ratifying a Renewal agreement with Comcast, pursuant to Section
882 **11.2 Auditing and Financial Records**, demand a full compliance audit for franchise fees paid
883 (at Comcast's expense) to include whether Comcast is passing-through franchise fees, if so, that
884 those fees are also not being expensed on the Profit/Loss from 2011 through 2015.

885
886 **Publication of this Document in its entirety:** <http://howardbeale.org> by February 17, 2016

887 End of document: approximately 9K words.