

OFFICE OF THE CITY MANAGER
DES MOINES, IOWA

ITEM 78

CITY COUNCIL COMMUNICATION 97-099
FEBRUARY 24, 1997 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
28E AGREEMENT FOR PROVISION OF SERVICE RELATED TO REVIEW OF CABLE TV RATES	◆ RESOLUTION ORDINANCE RECEIVE/FILE	ERIC A. ANDERSON CITY MANAGER

SYNOPSIS —

It is anticipated that TCI of Central Iowa will make a rate filing on or about March 1, 1997. TCI will submit the identical filings for Clive, Urbandale, Waukee, West Des Moines, Windsor Heights and Des Moines. Each jurisdiction will have an opportunity to analyze that filing in order to determine the appropriateness of TCI's proposed rates and what action, if any, should be taken.

To accomplish this, the attached Chapter 28E agreement was drafted to allow these jurisdictions to jointly share in the analysis of TCI's rate filings by Dennis Creveling, CPA, of Kiesling Associates LLP.

FISCAL IMPACT —

Each jurisdiction will pay Kiesling Associates LLP its share, based on the number of subscribers in each community. The total cost to the City of Des Moines will depend on the number and complexity of filings and whether the other cities agree to participate in analyzing the rate filing. Past cost analysis of complex rate filings have cost approximately \$3,200. Des Moines' cost will reduce as the number of participants increases. All fees will be funded from cable franchise fees.

RECOMMENDATION —

Approval of the agreement.

BACKGROUND —

On July 18, 1994, by Roll Call No. 94-2854, the City Council originally approved the procurement of service from the firm of Kiesling Associates LLP for the purpose of a rate filing analysis.

On August 29, 1996, representatives of the City of Des Moines, the City of Urbandale, and the City of West Des Moines met to discuss the possibility of an intergovernmental agreement for cooperatively analyzing the rate proposals from TCI. Also interested in the agreement were the Cities of Clive, Waukee, and Windsor Heights.

The City of Des Moines, as a Franchising Authority, has the power to regulate basic cable and equipment rates, pursuant to the Federal Communications Commission (FCC) Rules and Regulations.

Dennis Creveling, CPA, of Kiesling Associates LLP has agreed to prepare a financial analysis of TCI's rate filings at a rate of \$95 per hour, distributed to each community based on their number of subscribers. Upon the receipt of a rate filing, Mr. Creveling will submit an estimate of the total cost of

preparation of a report to each jurisdiction. Each city will be responsible for their proportion of the fees and any additional time they require of Mr. Creveling.

**AGREEMENT FOR THE PROVISION OF SERVICES RELATED
TO THE REVIEW OF CABLE TV RATES**

This Agreement is by and between the Cities of Des Moines, Clive, Urbandale, Waukee, West Des Moines, and Windsor Heights, Iowa, (collectively referred to as the "Cities"; individually, as the "City") entered into pursuant to Chapter 28E, Code of Iowa, and is for the purpose of sharing the cost related to the review of the cable TV rate filings by which coordinated review may be mutually beneficial to municipalities served by the same cable TV headend.

1. Each of the Cities has filed with the Federal Communication Commission (FCC) and is the certified Franchising Authority with regulatory authority over cable basic tier and equipment rates pursuant to the FCC Rules and Regulations for its jurisdiction; and
2. Heritage Cablevision, Inc. d/b/a TCI of Central Iowa (TCI) serves the Cities to this Agreement from the same "Headend"; and TCI prepares and submits the identical rate filings to each of the Cities served by the same headend on FCC forms so that any financial analysis of the rate filing would be applicable equally to all of the jurisdictions served by the same headend.
3. It is anticipated that TCI will make a rate filing on or about March 1, 1997, and thereafter, and that each of the Cities will need to analyze TCI's rate filing in order to determine the appropriateness of TCI's proposed rates and what, if any, action each of the Cities would take.
4. It would be in the public interest for the Cities served by this headend to share the cost of analysis of rate filings by TCI in order to avoid duplicative analysis.
5. Dennis Creveling, CPA, of Kiesling Associates LLP, has agreed to prepare a financial analysis of TCI's rate filings at the rate of \$95.00 per hour to be distributed to each of the Cities agreeing to share in the cost of the preparation of that report on a "basis proportionate to each of the Cities' number of subscribers".
6. Each City shall separately fund its participation. To the extent that the bill from Kiesling Associates is for preparation of the report and shall be shared on a "basis proportionate to each of the Cities' number of subscribers", the numbers of subscribers used shall be the most recent number of subscribers available as of the filing date of the rate filing to be analyzed. Additionally, each of the Cities will be separately responsible to Kiesling Associates, LLP for any additional time after preparation of the report required of Mr. Creveling at the rate of \$95 per hour for that jurisdiction.
7. Upon receipt of a rate filing, Kiesling Associates LLP,

will submit an estimate of the total cost of preparation of a report which will be submitted to each of the Cities and within 10 days after that estimate has been furnished, each of the Cities agrees that it will participate and share in the cost of preparation of Kiesling Associates LLP's financial analysis of TCI's rate filing on a basis set forth in paragraph 6 unless it has notified Kiesling Associates LLP of its intent not to participate.

8. Neither Mr. Creveling, Kiesling Associates LLP nor any of the Cities shall be required to provide any legal advise to any other participating jurisdiction nor shall any City's participation in joint effort to obtain the financial analysis bind it to take any action based upon the findings of the financial report obtained.

9. This Agreement does not establish a separate legal entity, is self-administering and will not hold any separate property.

After approval by the **Des Moines City Council**, the **Clive City Council**, the **Urbandale City Council**, the **Waukee City Council**, the **West Des Moines City Council**, and the **Windsor Heights City Council**, this Agreement shall become effective upon filing with the Secretary of State and recording with the necessary county recorders. Any City may terminate its participation in this 28E Agreement upon sixty (60) days written notice to the other Cities; however, exercise of the right of termination shall not operate to relieve that City of any existing liability it may have pursuant to this Agreement to Kiesling Associates.

The above described contract is hereby entered into by the following authorized agents of the Cities.

CITY OF DES MOINES, IOWA

ATTEST:

Mayor

City Clerk

CITY OF CLIVE, IOWA

ATTEST:

Mayor

City Clerk

CITY OF URBANDALE, IOWA

ATTEST:

Mayor

City Clerk

CITY OF WAUKEE, IOWA

ATTEST:

Mayor

City Clerk

CITY OF WEST DES MOINES, IOWA

ATTEST:

Mayor

City Clerk

CITY OF WINDSOR HEIGHTS, IOWA

ATTEST:

Mayor

City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF DES MOINES, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF CLIVE, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF URBANDALE, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF WAUKEE, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF WEST DES MOINES, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

BE IT REMEMBERED, that on this _____ day of _____, 1997, before me, the undersigned, a Notary Public in and for Polk County, personally appeared _____ and _____, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively of the **CITY OF WINDSOR HEIGHTS, IOWA**; that the seal affixed to the above and foregoing instrument is the corporate seal of said municipal corporation; and that said instrument was signed and sealed on behalf of said corporation by the authority of its City Council, as contained in the Resolution Roll Call No. _____ passed on the _____ day of _____, 1997, and the said _____ and _____ acknowledged the execution of said instrument to be their voluntary act and deed of said corporation by it voluntarily executed.

Notary Public
In and For the State of Iowa