



# CITY OF TITUSVILLE

BIRTHPLACE OF THE OIL INDUSTRY

COUNCIL PROCEEDINGS

April 22, 2008



The regular meeting of Titusville City Council was called to order by Mayor Peden in the Conference Room at the Titusville Redevelopment Authority at 7:00 p.m. Invocation was given by Father D G Davis, III, St. Titus Church. The Pledge of Allegiance was led by Mayor Peden. Present at the meeting were Mayor Dennis Peden, Councilmen James Nystrom, John Frye, Councilwomen Bonnie Hull and Esther Smith, Mary Ann Nau, City Manager. Stella Ruggiero represented The Titusville Herald.

It was moved by Mr. Frye, seconded by Mrs. Hull, and carried unanimously to accept the minutes of the regular meeting of April 8, 2008 as submitted and place on file.

**PUBLIC HEARING - RE: Council Bill No. 3 - Cable Franchise Agreement**

Mayor Peden opened the testimony part of the Public Hearing regarding the Cable Franchise Agreement. Mrs. Nau stated she would like to offer as part of the record for this evening the Executive Summary of Cable Franchise Agreement with Armstrong Utilities, Inc. that was prepared by the Cohen Law Group, in particular by Phillip M. Fraga. While there are many other important provisions contained in the Agreement, this summary is limited to the major items as follows:

1. **Free Services to Community Facilities (Section 6.1)** - The Agreement requires Armstrong to provide Basic and Expanded Basic television services (or equivalent) to various present and future facilities including, but not limited to, the City Municipal Building, police stations, fire companies, ambulance services, public works buildings, recreational facilities, public and private school buildings, and public libraries. In addition, Armstrong agreed to provide free of charge throughout the term of the Agreement high speed internet service via a cable modem to the aforementioned facilities. The specific facilities that will receive this complimentary service within three (3) months of the effective date of the Agreement are listed in Exhibit A to the Agreement noting that all requested facilities were approved by Armstrong with the exception of the Wastewater Treatment Plant.
2. **Reporting Requirements (Sections 2.3, 4.2 and 8)** - It can be helpful to the City to obtain relevant information from their cable operator on a periodic basis. The Agreement contains four (4) reporting requirements to be met by Armstrong. The first, which is automatic, is a quarterly franchise fee report. Armstrong must provide a detailed report that includes a line item for every revenue source subject to the franchise fee and the amount of revenue received from each source.

**PUBLIC HEARING** - (Continued)

The second report, which is upon request on no more than an annual basis, is a report describing any new services introduced by Armstrong within the prior year that are not yet in the City pursuant to Armstrong's obligation to make any such services available in the City once such services are being provided to at least twenty-five percent (25%) of all Armstrong subscribers nationwide. The third report, which is upon request, is a customer complaint report indicating, for the reporting period, the number of complaints originating from customers in the City, the dates they were received, summary descriptions of the complaints, the dates the complaints were resolved, and summary descriptions of the resolutions. The fourth report, which is upon request, includes any documents submitted by Armstrong to any federal or state regulatory agencies or courts directly relating to the City. Armstrong is also required to provide service area maps of its system to the City.

3. **System Specifications and State of the Art (Sections 4.1 and 4.2)** - The system specifications section is important, because it defines the level of service that the cable operator must provide to the City. The Agreement requires specific technical specifications for the cable system. It states that the cable system must utilize fiber optic wires from the headend to the nodes, and it must maintain a bandwidth capacity of at least 550 MHz noting that as a result of digital compression is consistent with current cable technology even though there are other cable systems with greater capacity when viewed solely from a MHz perspective. The cable system must be built for digital television standards and provide at least 150 video channels received for digital or analog transmission. It must include nodes that serve no more than 500 residential dwellings. In addition, and as previously stated, Armstrong has committed to offer to the residents of the City new cable services within one year of when Armstrong has offered such services to at least twenty-five percent (25%) of all of its subscribers nationwide. This provision will help ensure that the City residents do not fall behind any technological advancements in this field.
4. **Enforcement (Section 9)** - Once Armstrong has agreed to the obligations discussed in this executive summary and the other obligations contained in the Agreement, it is important for the City to be able to enforce these obligations. The Agreement contains two (2) strong enforcement tools. First, Section 9.2 of the Agreement contains monetary payments (known as "liquidated damages") for violations of the Agreement. These monetary payments are in the amount of \$100 per day for each day the violation continues. The City may assess such fines after providing Armstrong with written notice and a thirty (30) day period to correct the violation.

**PUBLIC HEARING** - (Continued)

Second, Section 9.3 sets forth revocation procedures in the event of extreme or repeated violations of the Agreement. The City Council may declare the Agreement revoked after providing appropriate notice and a public hearing that ensures that Armstrong's due process rights are protected.

5. **Franchise Fee Revenue (Sections 2 and 14(i))** - Under federal law, the City is entitled to assess a franchise fee of up to five percent (5%) of the cable operator's "gross revenues" for cable services provided within the City. The Agreement imposes a five percent (5%) franchise fee to be applied to a broad definition of "Gross Revenues" that encompasses nineteen (19) enumerated revenue sources. Armstrong is contractually obligated to pay the franchise fees on a quarterly basis noting that all franchise fees are passed through to Armstrong's subscribers as a separate line item on their bills. In addition, the Agreement authorizes the City to conduct an independent audit of Armstrong's records to determine whether the company has paid accurate franchise fee revenues. Should the audit reveal that franchise fees have been underpaid, Armstrong must pay the underpaid amount plus interest of the prime rate plus two percent (2%) of the underpayment. Further, if the audit shows a discrepancy of a ten percent (10%) or more underpayment, then Armstrong is obligated to pay the City's reasonable costs for the franchise fee audit.
6. **Customer Service Standards (Section 5)** - In the Agreement, Armstrong agreed to a comprehensive and enforceable set of customer service standards. These standards include, but are not limited to, the following: telephone answering time limits for customer service representatives; time limits for commencing installation, service interruptions, and repair work; a four (4) hour "appointment window" for service calls; requirements for notices to subscribers and the City; billing requirements; customer complaint procedures; requirements to be met prior to disconnecting service to subscribers; credits for service interruptions of twenty-four (24) or more hours upon request; and standards for protecting privacy. These standards adopt the relevant recommendations of the Federal Communications Commission and add certain additional requirements.
7. **Educational and Governmental Channels (Section 6.2)** - Federal law grants municipalities the right to a dedicated public, educational, and governmental ("PEG") channel. As is the case with most of our clients, we've limited the scope of the community channel to educational and/or governmental purposes. Although the City may not presently be interested in obtaining such an "EG Channel" from Armstrong right now, the Agreement specifically reserves the City's right to demand such an EG channel in the future.

**PUBLIC HEARING** - (Continued)

The City may also delegate the management of the channel to an appropriate designee, such as the School District. In the event that the City decides to activate the EG Channel, Armstrong must grant the City complete editorial control over the content, scheduling, and administration of the channel. Armstrong is also obligated to provide, at Armstrong's sole cost, the "return line" and other equipment that will be necessary to carry the signal from the City's video origination point to Armstrong's cable system and thereby make the channel operational.

8. **Length of Franchise Term (Section 1.2)** - Because cable technology changes so rapidly, the City initially proposed a five (5) year term for the Agreement. Armstrong countered with a fifteen (15) year term. In light of the benefits to the City described herein and the other benefits in the Agreement, however, Armstrong refused to agree to such a short term. In the end, we agreed to a ten (10) year fixed term with no extensions.

At this time Mayor Peden closed the testimony portion of the Public Hearing and asked if there is any public comment.

Mr. Don Frazier stated that they are asking for a lot of free services and so basically the individual citizen is paying for all of that because he knows the cable company will increase all of their rates in order to do that. Mr. Frazier stated he would advise them that may not be the best thing to do.

At this time Mayor Peden entertained a motion to conclude the hearing. It was moved by Mrs. Hull, seconded by Mr. Nystrom and carried unanimously to close the Public Hearing.

**PUBLIC PARTICIPATION** - Pertaining to agenda items - None.

**BID AWARD - SELF CONTAINED BREATHING APPARATUS**

Mayor Peden stated that they have a recommendation of the Chief for award and also have a recommendation from the Chief that the low bid submitted by Fire Force, Butler, PA be rejected and that they move on to a different bid. It was moved by Mr. Frye, seconded by Mayor Peden, to reject the low bid for Self Contained Breathing Apparatus received from Fire Force, Butler, PA in the amount of \$49,638.00 in consideration that they did not meet the bid specifications. Mrs. Hull stated that this equipment is comparable to the other equipment and she doesn't see why they would reject it. Mr. Frye commented that he saw both products and liked Smith Fire Service better and he talked to the firemen and they prefer Smith Fire Service. Mr. Nystrom stated he was not pleased with the way it was bid out. Seeing only the one demonstration and because of the amount of the difference in the bid, if that is the equipment they want, he does not see an issue of money being a major point in this decision. Vote on the motion was: Mr. Nystrom, Mr. Frye, Mayor Peden, Mrs. Smith - yes; Mrs. Hull - no.

**BID AWARD - SELF CONTAINED BREATHING APPARATUS** - (Continued)

It was moved by Mr. Frye, seconded by Mrs. Smith to award the bid for Self Contained Breathing Apparatus to Smith Fire Service, Inc., Eldred, PA in the amount of \$50,447.75. (Funding is through the 2007 Fire Act Grant Award. The City's share is 5% of the total grant award.) Vote on the motion was: Mr. Nystrom, Mr. Frye, Mayor Peden, Mrs. Smith - yes; Mrs. Hull - no.

**BILL LISTING** - It was moved by Mrs. Hull, seconded by Mr. Frye and carried unanimously to ratify the bill listing warrants dated 4/11/08, and 4/18/08. It was moved by Mr. Frye, seconded by Mrs. Hull to approve the bill listing warrant dated 4/23/08. Vote on the motion was Mrs. Hull, Mayor Peden, Mr. Frye, Mrs. Smith - yes; Mr. Nystrom - no.

**OLD BUSINESS**

**COUNCIL BILL NO. 2 OF 2008** - Proposed Ordinance No. 3169 - An Ordinance of the City Council of the City of Titusville, Crawford County, Pennsylvania, amending Article 923 of the Codified Ordinances of the City of Titusville by revising certain definitions, by imposing a new readiness to serve charge and a revised base rate charge and setting an effective date for this Ordinance of August 1, 2008.

It was moved by Mr. Frye, seconded by Mrs. Hull to adopt Council Bill No. 2 on second reading.

Mr. Frye thanked the people on the Task Force for all their work and effort on this. Mr. Nystrom commented that he still thinks there needs to be some work on some of the definitions in exactly how it is going to be enforced. As far as the property owners in the residential it is pretty well defined and he really does not have any issues with that. Mr. Nystrom stated he thinks the Committee has gone through and done a good job in defining that. Mr. Nystrom stated his concern is on the commercial end of it. He still doesn't think it has been defined sufficiently enough to apply it and really his major concern there is how is it going to be enforced.

Vote on the motion to adopt Council Bill No. 2 on second reading was: Mr. Frye, Mrs. Hull, Mrs. Smith - yes; Mayor Peden, Mr. Nystrom - no.

**NEW BUSINESS**

**COUNCIL BILL NO. 3 OF 2008** - An Ordinance of the City of Titusville, Crawford County, Pennsylvania authorizing execution of a Cable Franchise Agreement between the City and Armstrong Utilities, Inc.

It was moved by Mr. Nystrom, seconded by Mrs. Hull, to reject Council Bill No. 3 on first reading.

**COUNCIL BILL NO. 3 OF 2008 - (Continued)**

Mr. Frye asked Mr. Nystrom if he was rejecting it as is written. Mr. Nystrom stated that is correct. Mr. Frye asked if they could amend the motion to accept a lower percentage. Mr. Nystrom stated he thought they spent time here discussing it and thought they were pretty much in agreement that they would set the cable rates along with the budgeting process and to set it at 5%, if they wanted to change it, it would take 60 days in order to do it. Mr. Nystrom stated he doesn't have a problem with the Agreement but he wants the latitude on setting the percentage. Mrs. Hull asked if they have the latitude now. Mrs. Nau stated they need to amend the Agreement as part of this procedure if they want it at 3 or 4%. Later if they want 5% they will have to do a Public Hearing process. It could be in conjunction with the budget if that is what they want to do later this year, but they still have to have a 60 day window to give them notification that they intend to do that.

Vote on the motion to reject Council Bill No. 3 on first reading was: Mr. Frye, Mr. Nystrom, Mayor Peden, Mrs. Smith - yes; Mrs. Hull - no.

It was moved by Mr. Frye, seconded by Mrs. Hull, and carried unanimously to revise the Cable Franchise Agreement to assess a franchise fee of three percent (3%).

It was moved by Mr. Nystrom, seconded by Mrs. Hull, and carried unanimously to introduce Council Bill No. 3 on first reading based on the change to the Cable Franchise Agreement that was just made.

**VOTING DELEGATE AND RESOLUTION COMMITTEE APPOINTMENT** - It was moved by Mr. Frye, seconded by Mrs. Hull, and carried unanimously to appoint Mayor Peden to represent the City of Titusville as Voting Delegate and Member of the Resolutions Committee of the PLC&M at the 109th. Annual Convention to be held in Gettysburg from 6/25 through 6/27/08.

**ALTERNATE VOTING DELEGATE APPOINTMENT** - It was moved by Mayor Peden, seconded by Mr. Nystrom, to appoint Mrs. Hull to represent the City of Titusville as the Alternate Voting Delegate and Alternate Member to the Resolutions Committee at the PLC&M Annual Convention. Vote on the motion was: Mrs. Smith, Mr. Nystrom, Mr. Frye, Mayor Peden - yes; Mrs. Hull - no.

**PUBLIC PARTICIPATION**

Mr. Richard Clickett asked if anyone thought of the idea of each Council member being responsible for the budgets for each City Department. Mayor Peden stated under our form of government they have a City Manager who is in charge of those. The government Mr. Clickett is talking about is the strong Mayor form of government that the City use to be in years ago where each of them would be in charge of a certain department.

**PUBLIC PARTICIPATION** - (Continued)

Mayor Peden stated that every member of Council is watching the budget and they are going to start having financial seminars to watch the budget and start the budget process long before they have ever done it before.

Mr. Tom Schroeder asked why the City contracted street sweeping. Mrs. Nau stated that the City's street sweeper has reached its useful life and the cost for a new street sweeper is probably close to \$250,000 so they elected to try contracting out the services.

**COMMENTS BY MAYOR AND/OR COUNCIL/COMMITTEE REPORTS**

Mrs. Hull reminded everyone that they are celebrating Earth Day on Saturday and they will be cleaning up Burgess Park at 9:00 a.m. if anyone wants to join them.

Mr. Frye commented that the Airport Authority received some grants and they haven't come to Council for approval. Mr. Frye asked that a letter be sent to them regarding. Also, Mr. Frye congratulated DeAnn Pertz for being honored by Bigger Faster Stronger magazine as the 2008 Female Athlete of the Year.

It was moved by Mr. Frye, seconded by Mrs. Hull, and carried unanimously to adjourn the meeting to a personnel session followed by immediate adjournment. Meeting adjourned at 7:43 p.m.

Suzanne Birtciel  
Recording Secretary