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# MEMO

## Legal Department

**To:** Mayor Haila and Ames City Council  
**From:** Mark O. Lambert, City Attorney  
**Date:** February 21, 2020  
**Subject:** Broadband performance-reports motion.

On October 22, 2019, the Council passed the following motion (from the minutes):  
“Moved by Martin, seconded by Betcher, to direct staff to investigate current agreements with internet providers and indicate if use conditions can be imposed to require internet performance data reports. Mr. Gartin said he agrees with the value of having this data and the goal is reasonable, but he is having trouble with the legal justification to obtain the data. Ms. Betcher said the purpose of the motion is to determine if it is legal. Vote on Motion: 3-3. Voting aye: Betcher, Martin, and Beatty-Hansen. Voting nay: Gartin, Nelson, and Corrieri. Mayor Haila voted aye to break the tie. Motion declared carried.”

**The bottom-line answer is that the City is prohibited from requiring internet-service providers to provide performance data reports.**

Typically, the City would not have general authority to order a business to turn over internal business information, unless there was a regulatory need for such. As an example, we would not have the authority simply to require a major retail business in Ames to turn over profit and loss statements to us, absent a good public-policy regulatory reason, or some sort of “hook” for requiring such. (If the retailer were applying for a city grant for something, it might be reasonable to require that, depending on the circumstances).

The only real “hook” we have over broadband providers are the City’s franchise agreements. In theory, we could require, in return for the city granting a cable franchise, that a broadband provider turn over performance reports.

However, on August 1, 2019, the Federal Communications Commission (FCC) issued an order that, among other things, preempts local governments from regulating internet/broadband service by cable providers. “Regulating” would include requiring broadband performance reports. “The order ensures that state and local governments are unable to regulate these broadband services and infrastructure and may not create franchise agreements for those services in the future.” <https://citiesspeak.org/2019/08/08/what-do-local-leaders-need-to-know-about-the-fcc-cable-order/>

<https://docs.fcc.gov/public/attachments/FCC-19-80A1.pdf>

Because of this FCC order, the City is prohibited from requiring cable broadband providers to provide their internet performance data.

I do note that the FCC has such authority. The FCC requires broadband providers to publish information (either on a website, or by submitting it to the FCC) on 1) network practices, 2) performance characteristics, and 3) commercial terms. However, it is unclear from my research on this what time frame is to be covered in this reports, and how often the reports are to be published. For your information, here is Medicacom’s report:

<https://mediacomcable.com/assets/pdf/legal/open-internet-disclosure.pdf>

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