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Peter J. Epstein

TO: Longmeadow Select Board
FROM: Peter J. Epstein
DATE: November 20, 2021
RE: Comcast Renewal License

I am responding below to Select Board member Mark Gold's questions regarding the new Comcast Renewal License. I have repeated Mark's questions in highlight with my responses below:

(1) What is the difference between Sections 2.3(b)(i) and 2.3(c)(i)? They appear to be duplicative to me.

PJE: Section 2.3(b) is the same language that was in the 2011 Renewal License. Several months ago, Comcast expressed concern that the Town would, in essence, allow another entity to start operating in the Town without obtaining a license to do so. Comcast provided language captioned "Competitive Equity" to deal with their concerns. The Town has steadfastly opposed that language as overbroad and of dubious legality in that it would require the Select Board, as Issuing Authority, to take action that it lacked the legal authority to do. Instead, the Town has agreed that if another entity is operating in the Town and *should be* licensed as a cable television operator, the Select Board would do so. That language appears as new paragraph (c)(i) & (ii) below:

(c) In the event that the Licensee believes that there is an entity operating in the Town that (i) is providing Video Services to residents of the Town; (ii) is using, crossing and occupying the Town's Public Ways; (iii) has not been issued a Cable Television License; and (iv) such an entity is lawfully required to apply for and obtain a Cable Television License in order to provide Cable Service using, crossing and occupying the Public Ways, then the Licensee may bring such matter to the attention of the Issuing Authority. The Licensee shall provide the Issuing Authority with such legal, financial, technical and/or other relevant information in writing supporting its position in a timely manner.

(i) In the event that a Cable Television License to provide Cable Service can lawfully be required of such entity, a Cable Television License to provide Cable Service is subsequently granted to such entity, and the Licensee believes that such additional Cable Television License

has been granted on terms and conditions more favorable or less burdensome, on the whole, than those contained in this Renewal License, the Licensee may request, in writing, that the Issuing Authority convene a public hearing on that issue. Along with said written request, the Licensee shall provide the Issuing Authority with detailed written reasons for its position, including legal, financial, technical and/or other relevant information. At the public hearing, the Issuing Authority shall afford the Licensee an opportunity to demonstrate that any such additional Cable Television License is on terms more favorable or less burdensome, on the whole, than those contained in this Renewal License.

(ii) Should the Licensee demonstrate that such additional Cable Television License to provide Cable Services, using, crossing and occupying the Public Ways has been granted on terms and conditions more favorable or less burdensome, on the whole, than those contained in this Renewal License, the Issuing Authority shall consider and negotiate, in good faith, equitable amendments to this Renewal License.

(2) Exhibit 2 should add the new DPW location and Adult Center by address. We know about these buildings so should add them, even though it does say "and other public buildings designated by the issuing authority". Also, do we still need to have 31 Pondsides Rd included?

PJE: The current Exhibit 2 contains an updated list of public buildings provided by Comcast. We can certainly add any public buildings designated by the Town. I suggest the Select Board to designate these additional public buildings at your meeting this coming Tuesday.

(3) I'm confused by the Public Access channel designations / allowances in Section 6.3 (a). It lists the number of standard def and Hi def channels but then says the "licensee shall reclaim" some of the channels with a result that's different. I know Attorney Epstein spoke to this at our last SB meeting, but it would be helpful to have this explained again (or in more detail).

PJE: As referenced below, the Town currently programs three (3) Standard Definition ("SD") Channels and one (1) High Definition ("HD") Channel. Comcast agreed to provide one (1) additional HD Channel in exchange for the Town, in effect, returning two SD Channels back to Comcast, resulting in two (2) HD Channels and one (1) SD Channel going forward. It is my understanding that Longmeadow Access produces virtually all of its programming these days in HD format, as do most other access groups so this is a positive development.

(a) The Licensee shall continue to make available the following four (4) PEG Access Channels: three (3) Standard Definition ("SD") channels and one (1) High-Definition ("HD") Channel for PEG Access Programming purposes as described herein. Within twenty-four (24) months of the Effective Date of this Renewal License, the Licensee shall make available to the Town one additional HD PEG Access Channel. At the same time, the Licensee shall reclaim two (2) of the SD PEG Access Channels. The subsequent result shall then be two (2) HD PEG Access Channels and one (1) SD PEG Access Channel, for a total of three (3) Longmeadow PEG Access Channels.

(4) Section 6.5 lists equipment ownership as either the Town or LCTV. Is this standard verbiage? I would think that the equipment should be the Town's and the town would act to "assign" or "donate" it to LCTV.

PJE: This is fairly standard language in cable licenses. The Select Board can have greater specificity in this matter if there is a separate agreement between the Town and the Access Corporation.

(5) This lists the franchise fee as \$0.50 per subscriber per year. Is there some way through this contract we can "compel" Comcast to stop listing other costs on their customer invoice bill as "Franchise Fee". This designation makes it appear that the town gets these fees, but I found out that it's simply a percent surcharge to the other fees. They also list a "Franchise cost" of \$0.56 per customer per month. Again, a deceptive practice in my opinion.

PJE: Comcast has the legal right to line-item any costs and/or fees contained in the Renewal License. The \$.50 per subscriber per year goes to the Town, can be deposited in the general funds, is mandated by State law and can be line-itemed. The Renewal License requires Comcast to pay to the Town five percent (5%) of its Gross Annual Revenues, less applicable fees, to be used for PEG Access/Cable-Related purposes. Comcast has the legal right to line-item this fee. There are other line-items on subscriber bills as well, including, but not limited to, the PEG Access capital funding, at \$40,000.00 per year in the new Renewal License. The Town does receive these monies but the 5% and \$40,000.00 per year must only be used for those purposes. The Town has no legal authority to prevent Comcast from line-iteming these costs.

(6) It would be helpful to me if Attorney Epstein could list all the transfers of fees and funds from Comcast to the Town and designate what goes to the town and what goes to LCTV. There's a 5% of revenue fee in there, as well as a \$40,000 payment. I'd like to know what Comcast is paying us for this franchise, and what LCTV gets out of it (what the town subsidy is to LCTV).

PJE: As referenced above, the Town receives (i) the \$.50 per subscriber per year License Fee per Section 7.1 that can be deposited in the General Funds; (ii) Section 7.2 requires the 5% of Gross Annual Revenues for "PEG Access/Cable-Related Funding" purposes; and (iii) Section 6.4 requires the \$40,000.00 per year for "PEG Access Equipment/Facilities Funding". All of this funding will now go directly to the Town. It is up to Select Board to decide how much annual funding and equipment funding will be provided to the Access Corporation for PEG Access purposes.

Please let me know if you have any questions about these matters.