

Good morning and welcome to the Cable Television Advisory Board, Comcast Franchise Renewal Subcommittee Meeting on Tuesday, June 1, 2021 at 8:00 AM via Zoom teleconference.

As Chair of the Cable Television Advisory Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom, through the City's IT Department for this electronic meeting. All members of the Cable Advisory Board and the public has access to contemporaneously listen in to this meeting through dialing the following number:

1-929-205-6099 - Meeting ID: 849 5727 8864 Passcode: 022855

The Public may also view this meeting on Comcast Channel 16.

We previously gave notice to the public of the necessary information for accessing the meeting, through public postings. Instructions have also been provided on the City of Nashua's website at www.nashuanh.gov and publicly noticed at Nashua City Hall and the Nashua Public Library.

If anybody has a problem accessing the meeting via phone or Channel 16, please call 603-821-2049 and they will help you connect. In the event the public is unable to access the meeting via the methods mentioned above, the meeting will be adjourned and rescheduled. Please note that all the votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member please state your presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-To-Know Law.

Also, we ask that everyone when they are speaking during the meeting, that they please identify themselves to help the transcriptionist.

Call to order:

The roll call was taken with 8 members of the Cable Television Advisory Board Subcommittee present: Chairman Andrew Cernota, Alderman Ernest Jette, Kimberly Kleiner, Director of Administrative Services; Jeff Poehnert, PEG Program Manager; Cheryl Lindner, Chief of Staff, Mayor's Office; Nick Miseirvitch, Deputy Director IT; Pete Johnson, EChannel Access Administrator; and Corporation Counsel, Steve Bolton.

ROLL CALL

Chairman Andrew Cernota

Andrew Cernota is here and I am social distancing and I am alone in my office. Cheryl Linder called me earlier, she's going to be a few minutes late; she's on another call right now.

Steve Bolton, Corporation Counsel

I am present, social distancing, alone in my office and I can hear the proceedings.

Alderman Ernest Jette

I am here, I am home alone because of the pandemic and I can hear the proceedings.

Kim Kleiner, Director of Administrative Services

I am here, I am socially distancing in my office and I can hear the proceedings.

Jeff Poehnert, PEG Program Manager

Jeff Poehnert, I am here, I am social distancing and I am alone and in my office at my home.

Pete Johnson, EChannel Access Administrator

Pete Johnson, I am alone, I am at home social distancing,

Nick Miseirvitch, Deputy Director IT

Nick Miseirvitch, I am present, I can hear the proceedings, I am alone and I am social distancing.

Chairman Cernota

And I don't believe we have Mr. Morgan with us. Alright, Ms. Kleiner, would you like to give us an update on your communications with Mr. Christianson.

Director Kleiner

Good Morning. I forwarded an email that I received late, I believe it was received late on Friday, that the email did contain the Nashua locations that have access to Comcast, i.e. the little black boxes that we commonly refer to. When I spoke with Mr. Christianson, he indicated that is the list to the best of their knowledge. If the City had moved them, they may not be aware of that and that many locations have multiple boxes so they are not exactly where in each location those boxes would be. For example, what offices. The other was the map, the coverage map, which the Committee had requested. He also indicated when I spoke to him that the entire City has access except for one small area, Farley Road, out by Hollis which is covered by a Charter.

He did indicate that they have not done their Franchise Survey yet, but when they do they are happy to share the results. He said they are behind on their Franchise work and they are still dealing with Franchise Agreements that expire in 2021. So they are focusing on those but he is happy to join the Committee at any meeting that we would like him to. He did indicate that they have not done an audit of the franchise fees. When the City receives those franchise fees, we get a statement, although that statement is marked "confidential" due to trade secrets. So I have asked for more information that can be shared with the public.

We asked about a list of Channels added and deleted. They don't keep a comprehensive list, but as we all know, the City receives notice, both to the Mayor and to IT when subscribers are notified that a Channel has been added, dropped or moved and that is in accordance with law. Their list of subscribers cannot be shared

with any governmental agency; this is proprietary. A list of City properties using Comcast, that is included in the document that he sent of Nashua locations. I do think that it would be, after speaking with Mr. Christianson, I think it would be worthy to have Mr. Christianson join a Committee meeting, so members may ask him directly. They are working remotely but he is certainly willing to come forward and we are happy to arrange that for you if you wish for conversation.

Chairman Cernota

Does anyone have any questions regarding the conversation ? Alderman Jette?

Alderman Jette

Yeah I have a couple of questions, I don't know how appropriate these questions are but I think you said that regarding the franchise fees, the money that we get, that there has been no audit and I think you said that, you may have said this about some other part of it, but you said something about the information being – they weren't going to tell us because it is protected by trade secrets. And then you mentioned the subscriber list was protected or that is was proprietary. So my question is, how do we know how much money they are getting from the subscribers and how do we know we are getting our 4%?

Director Kleiner

Excellent questions. The City receives statements when we receive a payment. So the City can verify that. The information, those statements are marked "confidential trade secrets". That is information that I have asked Mr. Christianson if it can be shared since it is well-marked. So I am waiting for that response. But we can, the City, Financial Services, can verify that amount. I am not surprised about the list of subscribers and that being proprietary. I expected that response. The fact that there's no audit of the franchise fee on their end, does not surprise me either, although I would assume that their financials are audited and he didn't indicate if the franchise fees are included in that. But that is certainly a question that he could check with Comcast, I mean I would believe that their financials are audited regularly.

Alderman Jette

So does everyone feel or do you feel that we are getting our fair share, that we are getting our 4% and you feel confident that that's accurate? There's no reason to suspect that they are withholding anything?

Director Kleiner

From the revenues that they have shared with us, I believe that is correct.

Alderman Jette

OK, thank you

Chairman Cernota

Any other questions with regard to the Comcast information? Mr. Poehnert?

Mr. Poehnert

I know one thing, I will go through this list of the drops, because now that we have what they believe to be the list, then I can find out if this is true, if everything that they think is there, is there. I mean I've got our original list so I'll just go down the list and contact them and make sure that that is the reality.

Chairman Cernota

OK. Ms. Kleiner?

Director Kleiner

Interestingly enough, Mr. Christianson indicated that he would start redlining the Franchise Agreement. Although he is working on their 2021 franchises, he hoped to have that available to us this month, June. He also indicated that one of his recommendations would be that we request an HD Channel for our PEG Channels. That was one of the requests or one of the suggestions that he would make. And we hadn't had any of that conversation so I wanted to put that out there.

Chairman Cernota

I think a few of us had discussed it as a possibility in the background, but until we've done the factfinding I don't know that progressed to that, but interesting that he is making the suggestions.

Attorney Bolton

We could agree to accept it.

Chairman Cernota

Unless they decide to charge us for the channels.

Alderman Jette

That would be my comment, if we have to pay anything I am not sure that our citizens would be willing to pay in order to see our faces in greater detail.

Chairman Cernota

I am thinking there might even be a revenue stream for the City for Members of the Board of Aldermen and for other Boards, maybe even this one, if we could have lower definition for some meetings. Ms. Kleiner?

Director Kleiner

So I agree with that but I think that when you are looking at Channel 99 and Mr. Johnson and I had spoken and he had an excellent point that the games, like the football games and things like that, those would definitely be better in high def. And there are some parents and grandparents, families that may enjoy that.

Chairman Cernota

Alright. Not necessarily related to the Mr. Christianson discussion but do we have a sense as far as many responses we have received to the survey? Ms. Kleiner?

Director Kleiner

So we do not. I will definitely have an update for our next meeting. I will say that there seems like there was some hiccup and the link that was published in the Telegraph was incorrect. So I think figuring out how we can push it more and understanding the Chairman was on several of the Mayor's meetings. But looking at how we can push that out more may be helpful.

Chairman Cernota

I am sure that any of us that are on social media probably will be pushing that out through that mechanism. I see that Ms. Lindner has joined us.

Cheryl Lindner, Chief of Staff

Good Morning everyone, sorry for being late. I had another call.

Chairman Cernota

Alright. Any other issues that folks would like to address while we are meeting? Alderman Jette?

Alderman Jette

So where do we stand with Attorney Bolton's exploration of the law firms? There were two law firms that he was investigating as to whether they would, whether it would be worthwhile for us to look at, whether they could provide any assistance and whether that would be worth any expense that that might be?

Chairman Cernota

Attorney Bolton, would you like to address that?

Attorney Bolton

Yeah, I think I sent you all the proposal we got from the Massachusetts firm. I expected to get a proposal from Donahue, Tucker and Ciandella. I have not received that. So I don't know whether they have lost interest, are too busy or still intend to send that along. I can give Attorney O'Donnell another call and see if I can get an answer to that.

Chairman Cernota

Ms. Kleiner?

Director Kleiner

So I will say there's been a lot of discussion around franchise agreements with the Municipal Managers Association of New Hampshire. Many of the smaller towns, for obvious reasons, suggest using a lawyer or an

outside firm even for renewals. And certainly the names that Corporation Counsel has given us, those names are very familiar and they have come up over and over with very high recommendations including Derry. So I think as far as some of the smaller municipalities and towns, they feel that it does provide some service and expertise in an area where they may not have it on staff. And that seems to be the general consensus that we are seeing through that Association.

Chairman Cernota

Alderman Jette?

Alderman Jette

Yes, the other thought that crossed my mind is when Ms. Kleiner talked about Comcast being preoccupied, for lack of a better word with franchise agreements elsewhere coming up before ours. So I am wondering if there are a bunch of other communities in New Hampshire and Massachusetts that are going through this that we could talk to and find out from them whether they have been able to get concessions from Comcast and what they might have been. Mr. Christianson suggested HD, have they done that, did it cost anything and are there any other things that they were able to get. I don't know how you would find out who they are how you'd get that information, but that thought crossed my mind, a source of free information.

Chairman Cernota

Ms. Kleiner?

Director Kleiner

It is often that the various municipalities do speak. So shortly before Manchester was going through their renewal, they reached out to us and to the Mayor's Office and we discussed things that we had received and how our process had gone. I did reach out to them because they successfully negotiated a renewal and we have their document and I can send that out to the Committee. We will, both Ms. Lindner and I, are members of the Municipal Association, I mean we will watch as this topic develops and as there's more conversation around it. But people are giving us their basics, what their franchise rates are and what they have requested. So that information will be generally shared.

Chairman Cernota

Thank you, Alderman Jette?

Alderman Jette

The other thought is I think I am correct in this, I think that whatever money we spend on our local access TV that all comes from a fund that is generated or funded by the money that we get from Comcast. Is there, I can't remember, I know we get monthly reports from Mr. Poehnert. Is there enough money there that would, if we did hire a law firm, would we be able to pay for that out of that fund? Is there enough money there for that purpose. That's my question.

Chairman Cernota

Mr. Poehnert?

Mr. Poehnert

Well I am not sure that it would be coming out of our capital improvements because that would be where it – you know – I can't see it coming out of there, I mean I don't know. We've got a lot of stuff to do. That's just my feeling. Pete, anything?

Mr. Johnson

As far as our budget is concerned, there's no real line item in the budget for legal fees. I have been the one sort of promoting that we utilize a lawyer and believed that it could be beneficial for us and making sure that the financial audit that they provide looks accurate. I don't know that we have anybody on staff that can look at that and determine that, yes you are getting the franchise fees on Pay Per Views and all of the other things that are cable-related that may not be the exact Cable Television Fees or what they are providing for in terms of the Triple Play that they sell with cable, internet and telephone. How much of that is broken out to be part of that franchise fee. I think that's where you can get some beneficial time from lawyers that are set up to do this on a regular basis and sort of know what they are looking for and what the City may be able to ask for in franchise renegotiations.

Attorney Bolton

I think if we are worried about making sure that the franchise fee payments are correct, we'd be better off hiring a CPA firm to do an audit. I do not think that's the expertise of lawyers.

Mr. Johnson

I would agree. And as far as the CPA's are concerned, you are correct. But they do know what they looking for and what questions to ask. That's where I was coming from, not specifically looking at the numbers but making sure that we are getting revenue from certain areas that are cable related. Ms. Kleiner talked about, we have been getting this form, I've never seen one in 10 years that I've been with the City. The check just sort of comes in as far as I knew it. It's the first I have heard that there is information that came with it.

Chairman Cernota

I think probably the nature of it is that it is closely held. Ms. Kleiner?

Director Kleiner

That's correct. So certainly if you are looking at revenue streams, you can somewhat determine from the statements the revenue streams that are included. Again, this is revenue provided by Comcast so these numbers are provided from them. To do an audit, you would really need to prove those numbers and I do not believe that is available to us through Comcast. And I totally agree with Corporation Counsel that would take a CPA, that would take a firm to do that.

As far as the PEG Access Channel Budget, there is no real line item for legal services. We did just give our update to the Budget Committee last week. The only real area that you have to spend any other funds that aren't already committed would be capital improvements which is for equipment and things of that sort governed by CTAB. So I don't think that this budget would be one that could pay for such legal fees unfortunately; not to say that we couldn't go back and speak with the administration and see where those funds would be available.

Alderman Jette

So hearing all of that, I guess if we are going to decide to hire a law firm then I guess we ought to decide that pretty quickly so we can get the money to pay for it.

Chairman Cernota

I see we are all eager to jump into the conversation.

Mr. Johnson

We could ask Attorney Bolton, do you think any of these law firms would be willing to work on an hourly basis to answer some of the questions that we may have and not necessarily take over the whole process, but when we had a question that might require somebody else's expertise if we could do that with them on an hourly basis as opposed to saying we are going to pay \$15,000.00 or whatever it would happen to be for them to come on board with us?

Attorney Bolton

I think either of these two firms that we have been discussing would do that. I think the – I was going to say danger – but I don't think that is the right word. I think it is easy to get into a situation where you are running up charges more than you think. What may seem like a simple question to us when you find out it has engendered 5 or 6 hours of research and some correspondence back and forth, with us, perhaps with Comcast and you find out that \$250.00 an hour, 8 hours and now it's \$2,000.00 and that is this month. I mean a year goes by and you'd find out you'd spent real money. So if we do that we may want to have some control over what is asked, who gets to ask and exactly what we expect the law firm to do. It is often the resulting expenditure is higher than you are thinking it would be.

Mr. Johnson

Thank you for the answer, appreciate it.

Chairman Cernota

For that matter, even participating in meetings, even if they are sitting there, not saying anything, they are charging. So, Alderman Jette?

Alderman Jette

I guess even though I'm on the Budget Committee, I am not the budget expert in this group. So Ms. Kleiner do we need to identify where we would get the money to pay for these lawyers before we talk about engaging them? When you said that there is nothing in our budget to pay for lawyers, then my question is don't we have to find a source of money before we do so. And if that is the case, would you be the one to talk to the Administration about where that money might come from. Or, I suppose, we could go back to the – on the Budget Committee we are just starting the review. We have reviewed the Cable TV Advisory Board's Budget but nothing has been decided. We could always go back and amend that request but I guess we'd have to do that in conjunction with the Mayor; I am not sure. So can you enlighten us on that topic?

Director Kleiner

So I think the subcommittee could make a request and certainly yes we would speak to the Mayor and the Administration regarding the use of funds. Then there would have to be more conversation by Corporation Counsel with these firms and then if there was a contract that needed to be negotiated, that would have to follow the City Ordinance normal process. But I don't think that the subcommittee here needs to have a source of funds or is making any motion about any funds being expended. I think we would make the request for the funds from the Administration. Since we are not dealing with CTAB funds, I don't even think it would be a vote of the CTAB Committee to do such. So I think the request could be made if the Committee feels strongly enough and then we would certainly have the conversation with the Administration about where funds could be found. Having said that, my own personal opinion is that I think we have staff in the Office of the Corporation Counsel which does have certainly a lot of expertise in contracts, both with Attorney Bolton but also with Attorney Leonard who I understand worked on the last agreement. So I just have some pause on where we think we might be getting enough value to really justify hiring an outside legal firm. Just my two cents.

Chairman Cernota

The sentiment is the same general thought that I've been having as well. Alderman Jette?

Alderman Jette

Yes, so I guess I am a little biased but I guess I would be one of the last people to say that we shouldn't take advantage of the expertise of lawyers to help us in this regard. Maybe Attorney Bolton or maybe we could have one of these law firms, maybe they'd be willing to talk to us and explain to us why they think their expertise would be of value and what kinds of things they think that their services would be advantageous to us and then we could at least hear what they have to say before we decide. And I guess we are waiting for more information from the New Hampshire firm anyway. So obviously we need more information before we make a decision, I think.

Chairman Cernota

Nice. Anything else as far as general discussion of the franchise renewal? Anyone? Alright, if not is there a final motion?

MOTION BY MR. POEHNERT THAT THE TELEVISION ADVISORY BOARD, COMCAST FRANCHISE RENEWAL SUBCOMMITTEE BE ADJOURNED, BY ROLL CALL

A viva voce roll call was taken to adjourn the Cable Television Advisory Committee meeting which resulted as follows:

Yea: Chairman Cernota, Ms. Lindner, Attorney Bolton, Alderman Jette,
Director Kleiner, Mr. Poehnert, Mr. Johnson, Mr. Miseirvitch

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Nay:

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MOTION CARRIED

The meeting was declared adjourned at 9:00 a.m.

Jeff Poehnert, Clerk