

City of Nashua Cable Television Advisory Board
Comcast Franchise Renewal Subcommittee
July 13, 2021

Call to order:

Chairman Andrew Cernota

Alright, welcome everyone to the Cable Television Advisory Board – Comcast Franchise Renewal Subcommittee Meeting for July 13, 2021. We will start with a roll call. Andrew Cernota is here.

Cheryl Lindner, Vice Chair

Here.

Steve Bolton, Corporation Counsel

Here.

Kim Kleiner, Director of Administrative Services

Here.

Jeff Poehnert, PEG Program Manager

Here.

Pete Johnson, EChannel Access Administrator

Present.

Nick Miseirvitch, Deputy Director IT

Here.

Chairman Cernota

And Cole Morgan just came in, so good timing. We don't have anyone joining us by Zoom that we are aware of right now. So moving on – the first item on our Agenda is a discussion with Brian Christianson who is the Senior Manager of Government and Regulatory Affairs for Comcast. Welcome Mr. Christianson.

DISCUSSION WITH BRIAN CHRISTIANSON, SENIOR MANAGER OF GOVERNMENT & REGULATORY AFFAIRS – COMCAST

Brian Christianson, Senior Manager of Government & Regulatory Affairs for Comcast

Thank you Mr. Chairman. It is a pleasure to be back in person as I was telling people before the meeting got started, this is only my second in-person meeting since COVID started so it feels a little new to me.

Chairman Cernota

I don't know if you'd like to start off with giving us some updates from Comcast's perspective as far as what or how execution under the contract has gone so far. And giving us some updates as far as Comcast's plans for the future. And then we can transition to some questions from members of the Board.

Mr. Christianson

Sure. As members of the Committee know we are about six years into a seven year contract with the City of Nashua. When you are renewing a Cable Contract there are two paths to go down on a Cable Renewal. I think some of the members of the Committee are aware that you can do it formally or informally. We will discuss the formal process first. The formal process is kind of exactly what it describes, it is based on community ascertainment needs and wants and ability to pay for that sort of stuff from the subscribers. There's no negotiation it is based on a RFP and a response to an RFP. The City can either ask for the RFP or the Cable Provider can submit it unsolicited before expiration. That is the formal process. I've been doing this for 17 years; I have never reviewed a contract under the formal process. It is something that is afforded to both the community and the Cable Provider under Federal Law.

And the other way to renew a Cable Contract is the informal way which is exactly what it is described. You have a conversation with the community, you do some give and takes. It is still based on the community's needs and wants and the ability to pay for those things. But it is literally a back and forth versus a paper exchange. One thing that I think the Committee is aware of is there are certain parameters that are outside – regulatory control from the local franchising authority which the City is. This a Cable Television Franchise Agreement so the things that are outside of the local control are internet, telephone, home security, pricing, programming, technology, mobile; so sort of we have got to keep our eye on the ball that this is a license to use the Rights of Way in the community.

And that's kind of "Renewal 101". I've had some initial informal conversations with Ms. Kleiner, kind of we've had the thing recapped and as we all know she invited me here today to kind of have the same conversation with the rest of the Committee. As far as Comcast goes, as in general, we are still in COVID. We have worked hard to provide connectivity to the country specifically our footprint. We are participating in lots of the Federal Programs – the Emergency Broadband Fund, the Emergency Connectivity Fund. And then, you know, I know I've spoken to this Committee before or the larger CTAB Committee about our internet essentials program which has been around since 2011 which provides 995 internet access to low income members of the community. We offer speeds by 50 megabits by 5 and we have worked with the Nashua School District and the United Way of Nashua to really promote that during COVID as we had for the past 10 years but the spotlight was really on it during COVID and we were proud that we already had the framework in place.

By and large the Cable Industries performance far exceeded what I think a lot of people expected during COVID. You saw the press coming out of Europe where they asked Hulu and Netflix and Amazon Prime to stop sending HD and 4K content over their downstreams and that never happened in America because it was a pretty robust network. 93% of the traffic is downstream traffic in America. The other 7% is upstream traffic. So there is plenty of bandwidth to provide all those things. With that, I am going to take a breath, I see a lot of faces and I am wondering if I am over talking or if people have questions, comments, concerns. I like to say I am a generalist, I know a little bit about everything but I will do my best to answer whatever questions that come up.

Chairman Cernota

Are there any questions from members of the Committee? I guess one question I would have, one of the things we have to look at is service coverage for the City. And past times we have looked at it, there was a small exception that wasn't covered but it was covered by a different system from what I understand in the Farley Road area. Other than that, there has been some development in the City since the last time we looked at it. Can you give us some information as far as how Comcast has been about filling in and providing service to the newer developments in the City?

Mr. Christianson

Yeah I don't have a specific stat on what we built in the past 6 years, I can certainly pull that up, but I base a lot of this on anecdotal information. I think we would all know if parts of the City that didn't have service. I'd be getting a call from the Mayor's Office or from Jeff or Pete or Kim about a resident that doesn't have service. And you are correct, the Farley Road area is serviced by Spectrum out of Hollis. I think if you are familiar with that area it is a lot closer to Hollis – their infrastructure – than the infrastructure off of Pine Hill and Indian Rock Road and that area. So I don't even know when they were hooked up; I think it was 20 or 30 years ago, long before my time. But that's where they are getting service.

I can certainly take as a feedback what we have built in the City in the past couple years for developments and stuff. It is no secret that we want to serve as many people as possible. So we have a construction coordinator whose job it is to work with developers and real estate folks to get service into those developments as they come on-line. But I can take that as a takeaway to kind of get a fresh number of what or how many X number of units we built in the past X number of years or so.

Chairman Cernota

OK thank you. Mr. Poehnert.

Mr. Poehnert

I mean from a broadcast standpoint, I know we would like to see our 3 channels in high definition. Do you see that, would that be a problem?

Mr. Christianson

Mr. Poehnert that is something we can certainly discuss as we get into the nitty gritty of our renewal discussion. As you probably know, we are starting to launch limited HD Channels in the State but that is something we can certainly discuss as I think I discussed with Kim during one of our early conversations. I know you and Pete and the rest of the folks are involved with the NHCCM so yeah we are starting launch HD PEG Channels.

Mr. Poehnert

OK good.

Chairman Cernota

Attorney Bolton?

Attorney Bolton

Brian we are 6 years from the last time there was a renewal. During those 6 years what, if any, changes in the law are significant? What, if any, improvements to the cable television service in Nashua can you point to. And going forward, what can you offer us in terms of things that would be desirable to the City in regard to Cable Television Service?

Mr. Christianson

I will start with the law question. I am not an attorney so don't take this as Bible but I kind of practice what I do here. So there was a major change, it's called the 621 Order in September of 2019 where the FCC – I am paraphrasing – but basically said that the cable providers can charge the communities for their courtesy services; meaning the television that nothing is on in here but the televisions that the communities are receiving from the cable provider. There was a recent Sixth Circuit Court of Appeal decision that said that those charges must be fair market value. With my excellent legal brief there, with all that being said, we have not implemented that. If you kind of think of your calendar September 2019 was when the FCC handed down their order and then in March of 2020 COVID hit and that was just not the right time to implement something like that.

And as I said earlier, we are still in COVID. I can honestly tell you there are no active plans that I am aware of at Comcast to implement it. I can't say we are never going to implement it but I can tell you nobody is doing an exercise right now to get their ducks in a row for it. So from a legal perspective two things we are doing in our renewals is we are either putting our courtesy services in a side letter to the community or kind of restating the Sixth Circuit's opinion, well not opinion, but Sixth Circuit's I guess decision that says you can charge, if we so choose we can charge fair market value. So that is a section in franchise agreements where you have been starting to put in really in calendar year 2021 here. So that's kind of the biggest change in law that I can think of since this was signed 6 years ago.

As far as improvements to the infrastructure and so forth in the City, we are always making improvements. We have increased our broadband speeds from – I'd hazard to guess – but we have increased them, again I would hazard to guess. But you can now get 1.2 gigabit service from us that you couldn't get six years ago. You can get symmetrical 2 gigabit service. In cable labs right now and we expect to start commercially rolling it out this year on a limited basis, so I would hazard to guess during the term of this contract there will be 10 gigabit by 10 gigabit symmetrical service available over our infrastructure. We have increased our channel capacity, we have increased our streaming capacity on our X1 Box you can now get all your favorite apps on our X1 Box which is the main interface to your TV whether it is Amazon Prime or Netflix or what else in on there – YouTube, Peacock, I'd have to take a look but there's hundreds of apps now on this X1 Platform. Discovery Plus is coming soon, ESPN Plus is there, HBO Max, etc., so we are always innovating and adding to our suite of products.

Did I answer all your questions, Attorney Bolton? I think I did but maybe I missed one.

Attorney Bolton

Well I was talking about going forward, is there anything that you can offer as an inducement for us to renew the franchise agreement.

Mr. Christianson

As I was saying, I know we are getting ready to commercially launch the – it is in trial right now –but the 10 gigabit by 10 gigabit internet service.

Attorney Bolton

We don't deal with internet though.

Mr. Christianson

I know that is why I chuckle when I say it. I know that's why everybody, I think everybody is interested in that though. As far as the TV we will continue to offer all the latest products and services. The Cloud DVR services, the remote watch options from your smart devices when you subscribe to the television stuff. So we will continue to make it kind of a seamless entertainment experience. As far as enticements, you know, it is a license to use the Rights of Way in the community. And as a franchising authority you have the right to ask for certain things, PEG Channels, Capital, and so forth. But I don't have like a carrot over here to say, come get this. It is a television franchise agreement.

Chairman Cernota

Ms. Kleiner? I'm sorry...

Attorney Bolton

I was just saying thank you.

Mr. Christianson

You're welcome.

Director Kleiner

Thank you. So I know that we have discussed it Brian but not all the members here may be aware and although this doesn't generally cover internet, we have had some discussions about the new Comcast program to offer internet through community centers of which Nashua has one. The Community Center has had remote only access due to COVID but it is due to open up fully in September. So I was wondering if you could tell us a little bit about the program that we spoke about to offer service.

Mr. Christianson

Thank you Ms. Kleiner. So what you are describing is our Comcast Lift Zone and it is an internet product but it is one of our response to COVID. It is designed to provide free internet access to a Community Center, Boys & Girls Club or any – basically the main caveat is it needs to be proctored space, meaning somebody has to be at the space. It can't be in open air market or something like that. It is free internet for 3 years, gigabit service to however many of participants you may have in that facility, whether it is 20 or 200 we would build a network capable of delivering that service. And as Ms. Kleiner said, we did have a conversation, I spoke to the Community Center Director and at the time they were closed and as Kim was just saying they are projecting a September opening and we will certainly explore that as it comes available. We are in the process of just starting to launch them here in New Hampshire. We have got 47 of them launched in Massachusetts and it's

not a New Hampshire second thing it is just we are a more rural State and Community Centers are not as prevalent or they are closed than they would be in Massachusetts. But it something we are committed to. We are going to get about 100 of them launched kind of in the Greater Boston area this year, where New Hampshire is in for management area for Comcast, New Hampshire is in the Greater Boston area. So it is something we would love to partner with the City on for sure.

Chairman Cernota

Mr. Miseirvitch.

Mr. Miseirvitch

You indicated that is for a 3 year period. What happens after the 3 year period is over?

Mr. Christianson

I don't know Nick. As I said it was a commitment coming out of COVID or one of our responses. Our CEO and the founding family of Comcast, the Roberts family, are pretty gung-ho on this. If you kind of remember the internet essentials program was supposed to be a 7 year commitment and we are now on year 10. So if the track record proves accurately I think it will probably be around for a while but I know the commitment right now is for 3 years from start date. So we launched them, we starting launching them last year but the clock only starts when you get activated if you will.

Mr. Miseirvitch

Alright.

Mr. Christianson

And 3 years of activation.

Mr. Miseirvitch

And then I got a follow up question about Attorney Bolton's question to you and your response. You indicated that Comcast is currently not in a position to implement against that new ruling.

Mr. Christianson

We don't have any active plans.

Mr. Miseirvitch

Ok now if we proceed with this franchise agreement and Comcast determines to pursue that, would you have to wait until the next renewal or are you able to make that change whenever you want?

Mr. Christianson

The way the ruling was the cable provider can make that change whenever they want.

Mr. Miseirvitch

OK.

Chairman Cernota

Alderman Jette.

Alderman Jette

Thank you. So when I came on to this Committee I learned that this franchise agreement provides for or up to – the City can charge up to 5%, it is currently 4% of what you charge the Cable TV subscriber and that is passed on to the subscriber. And that is the money that we use to finance the City's providing television access to residents for our meetings and government, you know, the public educational and government channels. And I learned that it doesn't apply to the internet service. And obviously the internet service is carried on the same cable, same wires that you have for the TV service and the same Rights of Way that the City provides to you. So, my first question is would your company have any objection if there was a move to change the federal law to expand that franchise fee to include the internet as opposed to just being limited to the Cable TV Service?

Mr. Christianson

I can't comment on our in favor or objection to a policy shift like that, but I can tell you we would abide by obviously federal law, whatever it would be.

Alderman Jette

And could I follow up?

Chairman Cernota

Please.

Alderman Jette

And so the other thing that we've discussed in the Committee is the fact that I read that a lot of people are cutting the cable sort to speak, they are abandoning the TV part of the service and opting to get whatever access to television programs via the internet as opposed to Cable TV. So I am wondering how you see that, are you seeing that to be the case and what do you see for the future about the Cable TV part of your business?

Mr. Christianson

Yeah, so I have been hearing that since I left the employment here at the City of Nashua for 17 years that subscribers are cutting. And they are cutting a little bit but I think what you are going to see in the evening out of the kind of the boat if you will, I look at my own kind of personal finances. I subscribe to Amazon Prime which kind of I get with my Prime membership Netflix, Apple TV, Disney Plus. I don't subscribe to ESPN Plus or Hulu or anything like that. But if you stop and you think about it, you are looking at \$70.00 / \$80.00 in external TV, external video bills that I just rambled off here. I think when you look at the Cable bundle when you look at what you get from your broadcast networks which charge now, they didn't charge the cable operator even 10 years ago, they charge us to carry them on our network. You see your cable news networks, you see

your sports networks, you see your Discovery Channels, they are all in the cable bundle and they are all again digital starters are about \$70.00 or \$80.00 right there.

So yeah there is a down take but it is not as drastic as you would think. I didn't bring subscriber number down with me, but I'd be happy to share it. But I would be willing to bet you are probably at about the same number you were at 6 years ago in the City give or take a couple hundred. And I think again anecdotally your finance folks can probably tell you that you are pretty steady on your franchise fee which that 4% is coming from as it has been over the year. So it's been pretty steady and that is based on subscriber numbers as well. So that is kind of my guess at a crystal ball is yes I think there is going to be a base video subscriber for a long time coming forward.

Alderman Jette

OK thank you.

Mr. Christianson

OK thank you.

Chairman Cernota

Mr. Johnson?

Mr. Johnson

There seems to be a lot of questions that we get as people in the know in the City and it is tough to answer but I will say many folks believe that you have an exclusive contract with the City. Could you explain how that is not even possible?

Mr. Christianson

Yeah so under New Hampshire State Law and in our Franchise Agreement it does say "nonexclusive franchise agreement". We own the cable wires – i.e. the infrastructure out on the telephone poles. If another provider were to come in they would have to build their own infrastructure, in fact, we are doing that in some communities outside of the area. We are overbuilding other providers ourselves. So it is possible, you know, another provider would have to make the economic decision whether or not they want to string wire in the City and it is tens and tens of millions of dollars to do so. So to your direct question and the direction answer is they are non-exclusive, anybody can come in today, tomorrow or yesterday to build a cable infrastructure. With that being said, the City again under law, when they do grant franchises they need to be no less favorable or more burdensome than what is currently in existence if I said it right. So the franchise agreements basically have to be apples to apples.

Mr. Johnson

OK can I follow up on that too? Another question I've heard is there seems to be a lot of duplication of services on the TV Channels. You still have ones that are down in the 0 to 200 range and then those are also in the 800 to whatever range. How does it make sense to duplicate that bandwidth to multiple channels sometimes?

Mr. Christianson

Yeah so the channels are digital now so they are not necessarily taking the bandwidth right now. Some of those overlaps are the standard definition channel and the high definition channel. And then some of it just pure channel mapping too and just carrying it on two different channels. You are starting to see, we are launching 4 digit channels right now. But the channels are digital so the spectrum to carry the video in itself is there so it is what you are packing into that one piece of spectrum. So you are not necessarily taking more space out of that spectrum.

Mr. Johnson

Ok.

Chairman Cernota

Mr. Miseirvitch?

Mr. Miseirvitch

So I want to make a point more for the Committee than anything else that the infrastructure that Mr. Christianson explained that is on the poles is separate from any City-owned fiber that is on the poles. They don't overlap they don't use each other's resources, they have theirs, we have ours.

Chairman Cernota

Thank you. Alderman?

Alderman Jette

Mr. Christianson, I am having a little trouble hearing you. That's probably my problem not yours. But did you say in answer to one of the previous questions, did you say that other companies, your competitors, I know you said that they could come in and subscribe or make the same contract that you have and lay their own wires. Is it possible for them to rent space on your wires?

Mr. Christianson

We would not, again I am not the policy decision person for the company, but I am not familiar with us ever doing that.

Alderman Jette

It is physically possible, technically possible?

Mr. Christianson

I suspect it is physically and technically possible sure. I often joke we extend cable service to the moon is just who is going to pay for something like that. Yeah it is an internet connect world through fiber and stuff, everything is possible, I would imagine so.

Alderman Jette

OK thank you.

Mr. Poehnert

I was just saying that's basically what AT&T did on the telephone side. They were capable of bundling services for MCI at that point and when Sprint came out. I mean it is technically possible it is just whether you would want to do it or not.

Mr. Christianson

Yeah I think by law in certain industries like the electric industry they have to be able to provide power over their lines for other companies. So I would imagine legally there could be a change in the law affecting the cable industry but I believe telephone and electricity offer competitive services over the same lines. Yeah I guess again my deference to Attorney and I guess Attorney Cernota, I am not a lawyer but let me kind of make a couple of legal clarifications. The electric is a regulated utility, the cable industry was all built on private equity dollars, it was paid for by the companies. And then I probably should have talked about this a little bit during my introductory remarks where you gave me the opening floor. In order not to renew a cable franchise the community would have to prove that we were in gross negligence of our current agreement which we are not aware of being in. And that we cannot meet the future technical, the technical, legal and financial obligations we are proposing in the new franchise agreement. So there's a whole process to do that under federal law. A community cannot just wake up one day and say, see you later for lack of better words. You would have to prove that we weren't able to perform in the past and that we are not able to perform in the future.

Chairman Cernota

Do you have any idea of how pricing is done? I know we don't have any authority over pricing but I am just curious you know in New Hampshire, I believe rates are set by community as opposed to general area or are we paying the same rates that Manchester and Bedford, do you have any information on that.

Mr. Christianson

The digital starter rate throughout New Hampshire is the same price. What differs is your franchise fees. You mentioned Bedford; Bedford is 5%, Manchester's are 5%, you are 4%. And the other line item franchise related costs, those are obviously different in each community as well. And then what people subscribe to, you know? It's whether you have 1 HD box or 4 HD boxes or if you have basic cable or whether you have the most robust cable package we offer. But the digital starter price is the same price throughout the State of New Hampshire and largely in Massachusetts too.

Chairman Cernota

You mentioned that Bedford and Manchester take 5% franchise fees, do most of the communities in New Hampshire take the 5%.

Mr. Christianson

So we serve about 115 communities in New Hampshire. I would say, again anecdotal, I'd say 20 of them take 5%, 50 of them take anywhere from 1% to 5% and the other whatever my math works out don't even take a franchise fee. So not every community has a franchise fee. I'd say about 20 of them take the full 5%.

Chairman Cernota

Alright thank you. Any other questions. If not, we can move on to the next Agenda Item – Additional Franchise Renewal Items.

ADDITIONAL FRANCHISE RENEWAL ITEMS

Chairman Cernota

Ms. Kleiner?

Director Kleiner

Yes. I didn't know if Attorney Bolton wanted to speak at all to the communication that we received. That is the only additional item that we had unless other Committee members have items to discuss?

Attorney Bolton

We did receive a proposal from the firm of Donahue, Tucker and Ciandella which discusses what they would do should we want to engage them to represent us in this renewal process. I like these people, I know them. On the other hand, the proposal doesn't change my general opinion that there's not a lot of give and take involved in this process anyway so I'm not sure how much we would – what value we would receive. I am sure they would work hard for us but there is only so much that can be achieved.

Mr. Christianson

You probably don't want my input, but just for the record, I literally completed a franchise renewal with Donahue, Tucker and Ciandella last night in a community. They have a template which might be beneficial to the community so you don't spend a lot of money on discussing X's and O's and I's and T's and the's and they's, so it might be a good starting point. But that's my 2 cents if you were to go with an established cable attorney that is kind of the benefit of it.

Chairman Cernota

Thank you. Does anyone else have any comments? I have to say I am generally speaking strongly encouraging people to hire expert outside counsel. But I think I am inclined to agree with Attorney Bolton as far as just what we would be getting from this representation. Alderman Jette.

Alderman Jette

Could I ask Mr. Christianson since you are here and since you volunteered what you did, what town or City did that involve?

Mr. Christianson

So I do a lot with Donahue, Tucker and Ciandella; specifically Kate Miller and they have a new Attorney Brendon ...

Attorney Bolton

O'Donnell.

Mr. Christianson

Yes, thank you, who used to be in the AG's office and he is – but he is working under the partner of Kate Miller, under Kate Miller who is a partner at Donahue, Tucker and Ciandella. So we just did Allentown last night, we are working on Peterborough with them, Jaffrey, Bow, Epping. We did Derry last year with them. I think they are representing Portsmouth. So they represent a lot of New Hampshire communities and Cable Television Renewal. Kate and Brendon know what they are doing.

Alderman Jette

So could I follow up? I am assuming that whatever franchise agreements they've reached, you say they have developed a template. I am assuming that that's now publicly available?

Mr. Christianson

Yes. Absolutely.

Alderman Jette

So we can look at that.

Mr. Christianson

I would encourage you to do so.

Alderman Jette

I hate to say it but get the benefit of the template without incurring the expense of hiring them.

Chairman Cernota

And my recollection is that our current agreement is a modification of a previous template from the firm that we contacted in Boston.

Mr. Christianson

It's a template of Epstein and August. And I think Peter is kind of winding down.

Chairman Cernota

Alright, any other discussion? If not is there a motion?

ADJOURNMENT

**MOTION BY MR. POEHNERT THAT THE COMCAST FRANCHISE RENEWAL SUBCOMMITTEE
BE ADJOURNED**

MOTION CARRIED

The meeting was declared adjourned at 8:40 a.m.

Jeff Poehnert, Clerk