



Committee Members

John Keough, Chair
Sergio Bacelis
Phillip Lwasa
Stephen Quist
William Nay

Contacting the Committee

Cable Services
Address: 455 Main Street, Room B-1,
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Email: CableServices@worcesterma.gov
Website:
WWW.WorcesterMA.gov/cable-services

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Translations:

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CITY OF WORCESTER

Cable Television Advisory Committee

Meeting Minutes

Approved February 7, 2024

Wednesday, January 10, 2024 @6:00PM

Location: Esther Howland Room,
3rd Floor Worcester City Hall

*This meeting will be held in-person
with an option to also join remotely (see the **bottom** of the agenda for details)*

Call To Order

1. Roll Call

Present: William Nay, Stephen Quist, Phillip Lwasa, Sergio Bacelis, John Keough; Judith Warren (Director, Cable Services)

2. Approval of Minutes – November 8, 2023

Moved Keough; Seconded: [unknown]; Roll Call: 4 Yes, 0 No, 1 Abstention

3. Ascertainment Consultant Update (Buske)

Buske: Reported that she has been working with Attorney Lederer to prepare documents for negotiations and coordinating with Warren.

4. Renewal Attorney Gerard Lederer – introduction, process

Lederer: Expressed support for the CTAC's process thus far and introduced himself, providing information on his history of renewal negotiation work. Gave brief history on franchise agreements, particularly information on holdovers (honoring terms of an expired franchise agreement). Informed CTAC that initial negotiation information has been prepared and is ready to be sent to Charter-Spectrum.

Keough: Requested access to current documents prior to forwarding to Charter-Spectrum.

Quist: Welcomed Lederer, and reiterated CTAC expectation of receiving documents prior to finalization. Summarized community input from public hearings (overall negative view of Charter-Spectrum), and asked how good-faith negotiations can be achieved given the circumstances.

Lederer: Responded that because there are specific areas in the existing franchise agreement that could be improved upon, entering negotiations will be valuable. Also discussed section 47USC546, which stipulates that if providers give timely notice of interest in renewal, they are protected, and the municipality must demonstrate that provider is in some way incapable of meeting community needs, or that past conduct was so poor that they have failed to comply with the existing franchise, or that proposal for renewal fails to meet community needs. Clarified that general customer dissatisfaction is not grounds for non-renewal based on the law.

Quist: Brought up existing documentation of contract violation by Charter-Spectrum

Lederer: Clarified that violations must have been reported by City, and provider must have failed to remediate. Explained that Non-

Compliance report assembled by Buske is not grounds for denial, but can be used for leverage in negotiations.

Lwasa: Asked Lederer's opinion on how Massachusetts legal and regulatory framework will influence Worcester's negotiations.

Lederer: Replied that most Massachusetts communities assign almost the entire franchise fee for PEG, which is uncommon in other states, and that PEG is often supported by capital grants. Acknowledged that Federal law on cable contracts would supersede those of the Commonwealth, in extenuating circumstances. Explained that in Massachusetts, DTC had to be informed when municipality went into holdover status, and that DTC is often very pro-consumer.

Bacelis: Asked if Biden administration had any plans to change elements of FCC decisions made during Trump administration that could be damaging to PEG.

Lederer: Explained impacts of Trump-era FCC orders, which impact available funding for PEG as well as limitations on municipal powers over cable providers. Stated that so far, no franchise has used cost of in-kind services to reduce funding provided to PEG. Also stated that Biden administration FCC has yet to make changes regarding limitation of powers over non-cable activities. Expressed optimism that conditions will not deteriorate under Biden administration FCC.

Nay: Asked if Lederer has seen cable companies trying to lessen capital support for equipment

Lederer: Replied that this has been occurring, and that cable companies tend to provide support to communities that they are historically supportive of, but that getting this support in communities without this history is often difficult.

Keough: Provided history of how Charter-Spectrum has used 2015 FCC decision to justify failure to meet requirements of previous contract in Worcester. Requested clarification on what legal basis gives Charter-Spectrum the right to alter contract terms retroactively.

Lederer: Explained that previously, rate regulation was permitted in cases where cable providers did not have effective competition, and that currently cable providers are almost always considered to have this. Examined current contract, and expressed that changes made by Charter-Spectrum to item 8.5 do not appear to be in compliance with contract terminology. Recommended that CTAC send a letter to Charter-Spectrum requesting that they explain the legal basis for removal of Senior Discount.

Keough: Explained that per the contract, certain connections within the city were expected to be upgraded to fiber-optic connections, but this work has not been completed yet. This results in downgrading of signal quality, which appears to violate current contract terms.

Acknowledged that the City has limited legal resources to address concerns with Charter-Spectrum.

Lederer: Examined 6.1.b in current contract, and stated that there is room for varied interpretations of this. Suggested that CTAC inquire with Charter-Spectrum regarding their current inconsistency with regard to fiber-optic support.

Quist: Asked Lederer if he was previously aware of issues discussed at present meeting.

Lederer: Explained that his work is meant to not overlap with that of Buske, and that his role is to come in once report is fully ready to be incorporated into the negotiation process.

Public Comment

Mauro DePasquale (Worcester resident, WCCA-TV): Asked Lederer how he intends to balance negotiations with regard to risking current contract agreements by asking too much of the cable provider.

Lederer: Responded that his only criticism of the previous franchise agreement was the inclusion time-limited language regarding capital grant distribution. Suggested that in future, this be handled in such a way that capital grants become ongoing in the event of contracts going into holdover.

Christine Wilson (Worcester resident, WEA-TV): Reiterated that it is “ridiculous” that signal is downgraded to standard definition

Lederer: Responded that currently proposed terms of negotiation will hopefully address this concern, at least to the level of HD transmission – 4k may be unlikely.

Keough: Encouraged board members to send questions directly to Warren, to be provided to attorneys.

5. Discuss Draft of CTAC Ascertainment Recommendations

Keough: Stated that Ascertainment Recommendation draft will be provided to members individually, for them to provide individual feedback.

6. Discuss 2024 Schedule

Keough: Stated that Charter-Spectrum recently announced another rate increase, and changes to Spectrum Choice, and that he is uncertain if or when the City was notified of this increase. Encouraged CTAC members and the community to pay attention to these changes, to be discussed in future meetings.

7. Next Meeting Date

Keough: Explained that draft of CTAC’s report was originally intended to be completed by the end of 2023. Expressed desire to complete report prior to the summer of 2024, and encouraged board members to provide thoughts on Ascertainment draft as quickly as possible to prepare for negotiations.

Announced that next meeting will be virtual, tentatively on February 7, and that CTAC will attempt to maintain a schedule of meeting on the first Wednesday of the month, monthly.

Mauro DePasquale: Asked if reports will be released to the general public prior to public hearings.

8. Adjournment

Moved: Keough to Adjourn; Seconded: Quist; Roll Call: 5 Yes, 0 No

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Passcode: K2fLJ3

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+1 469-998-7682,,905581966# United States, Dallas

Phone Conference ID: 905 581 966#

Attachment A

From: Warren, Judith A. <WarrenJ@worcesterma.gov>
Sent: Wednesday, August 2, 2023 12:41 PM
To: Gerard Lederer <Gerard.Lederer@bbklaw.com>
Subject: Seeking anticipated fees for cable renewal

Mr. Lederer,

The City of Worcester is seeking an attorney experienced in representing local governments in the negotiation phase of the cable franchise renewal process. Worcester is the second largest City in New England second only to Boston. Charter serves 27,407 subscribers in the City of Worcester.

Charter holds a franchise agreement with the City of Worcester (see attached) which is due to expire in October 2023. A needs assessment process and compliance review have been undertaken by The Buske Group and a statistically-valid survey was undertaken by ETC. The needs assessment (which incorporates the findings of the survey) and the compliance review will be completed in two weeks.

The negotiating team for the renewal process will be led by the selected attorney and Sue Buske in coordination with City Solicitor Michael Traynor. Other members of the negotiating team will include Judy Warren (Director of Cable Services) and Jeff Levering (Chairperson Cable TV Advisory Committee).

The City would like to bring an attorney on board as soon as possible. If you are interested in providing assistance to the City please respond with references which reflect your experience in the cable franchise renewal process, your hourly billing rate, and an estimate of the range of your anticipated fees to assist the City as described above. Please note Ms. Buske will be serving as your primary collaborator in the negotiations and should provide considerable assistance.

For REFERENCE ONLY I have attached a retainer template that the City will be using, along with a copy of the current Franchise License agreement with Charter.

Thank you for your time and attention.

Judy

Judith A. Warren
Director of Cable Services
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Attachment B

From: Gerard Lederer <Gerard.Lederer@bbklaw.com>
Sent: Wednesday, August 2, 2023 3:51 PM
To: Warren, Judith A. <WarrenJ@worcesterma.gov>
Subject: RE: Seeking anticipated fees for cable renewal

Judy:

I would be honored to assist the elected leadership of the City of Worcester, City Solicitor Traynor and Sue Buske in negotiations with Charter to ensure the cable related needs and interests of the residents of Worcester are met.

Per your request:

EXPERIENCE

- My individual experience in the cable franchise (license) renewal process is probably second to none in the Country, and as a Firm, Best, Best & Krieger has done more renewals than any other Firm in the nation.
 - While there may be counsel with more experience in doing cable licenses in Massachusetts, my Commonwealth experience is rather substantial. In fact, I think that I have even overcome the practice of calling the agreement a franchise rather than a license as established in Ch. 166A .
 - I have assisted the City of Boston with 5 license renewal negotiations (2 with Comcast, 2 with RCN and the expansion of the Verizon license) as well as three franchise transfer agreements.
 - I have recently completed negotiations for the City of Cambridge with Comcast that will result in the City obtaining 7 PEG channels with a number converting to HD, a large PEG award and PEG grant.
 - My experience dealing with Charter/Time Warner/Bright House is not as deep as my experience is with Comcast. I think this is primarily because most of the communities that I, or my Firm, served as cable counsel were located in states such as Texas and California that passed State franchise laws.
 - We are currently negotiating three Charter renewals around the country, but none in the Commonwealth. I

anticipate the Charter will seek to make conversion to HD difficult by demanding an annual maintenance fee for management of the HD backhaul lines. This is less of a problem in Massachusetts because franchise fees are used to support PEG and therefore do not have the limitation of capital vs. operating challenges that many other communities must address.

RATES

- My hourly billing rate is set to rise to \$410 an hour in September, but I am permitted to honor my current rate of \$395 per hour through 12/31/24 if we sign an engagement letter before September 1, 2023. I would also have associates available to assist with this project at \$280 per hour.

BUDGET

- As for an estimate of the range of anticipated fees, I cannot provide such an estimate as the City and Charter control the work flow. I would hope that the City and Charter would agree to meet by zoom on an every other week basis for 60 to 90 minutes until the negotiations are resolved. We would need to budget sometime in the intervening weeks for the City to fashion responses to the issues raised in the previous Charter-City call. I would think that no less than \$10,000 should be budgeted.

I apologize for the informality of this response, but it was my understanding that time was of the essence.



BBK
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