

Selectmen's Meeting – June 12, 2006

Mr. Eckenreiter, Mr. Manzone and Mr. Silvia were present.

Also in attendance was Jeffrey Osuch.

Mr. Eckenreiter called the meeting to order at 6:30 p.m.

Mr. Manzone motioned to approve the minutes of May 30, 2006. Mr. Silvia seconded. Vote was unanimous.

Mr. Manzone motioned to approve the minutes of the May 30, 2006 executive session. Mr. Silvia seconded. Vote was unanimous.

PUBLIC HEARING ON RENEWAL OF CABLE TV LICENSE WITH COMCAST

Public hearing on the renewal of cable television license with Comcast was called to order at 7:20 p.m. Attorney William Solomon, representing the Town in the renewal process, John Haaland, Chairman of the Cable Advisory Committee, and numerous residents were in attendance. Mr. Haaland explained that the Comcast renewal proposal is not reasonable to meet future cable related needs of the community. The proposal will not support public, educational and government access. Comcast proposes 3% of gross annual revenues to support PEG Access. (1.75% for public school Educational Telecommunications Program and 1.25% for public and government access.) Surrounding towns are receiving 4.5%. Discussion ensued on the benefits of the Town running Cable Access, the need for new equipment and an increase in PEG Access funding. Jo-Anne Charette, Educational Coordinator for Channel 9, showed a film produced by her students. Those in attendance stated their support of public access. Nancy Richard, public access director in Plymouth/Kingston, summarized the procedure to run public access and the benefits of a town managing their own government access facility. Attorney Solomon stated the current Comcast License expires on Wednesday, June 14, 2006. He read the "Preliminary Assessment of Denial" (See attached.) into the record. Mr. Manzone motioned to issue a Preliminary Assessment of Denial for the reason stated. Mr. Silvia seconded. Vote was unanimous. Mr. Manzone motioned to authorize Attorney Solomon to send a letter to Mary O'Keeffe, Manager of Government and Community Relations for Comcast, instructing Comcast to comply with the terms of the cable television license. Mr. Silvia seconded. Vote was unanimous. The hearing concluded at 10:12 p.m.

EXECUTIVE SECRETARY'S REPORT

Mattapoisett River Valley Water District Committee will meet at 4:30 p.m. on June 13, 2006 at the Board of Public Works.

East Fairhaven School Job Meeting is scheduled for 10:00 a.m. on June 14, 2006 and June 21, 2006 at the site.

Selectmen's Meeting – June 12, 2006

Mr. Manzone motioned to authorize payment in the amount of \$1,114,629.52 to Agostini Construction Company, 243 Narragansett Park Drive, East Providence, RI. Mr. Silvia seconded. Vote was unanimous. (East Fairhaven School Project)

Review of Wind Turbine proposals is scheduled for 9:00 a.m. on June 15, 2006 at the Town Hall.

Buzzards Bay Action Committee will meet in Wareham on June 15, 2006 at 12:00 noon.

Regional meeting on emergency response issues is scheduled for 9:00 a.m. at Fort Taber in New Bedford on June 16, 2006.

East Fairhaven School Project Manager and Contractor will sponsor a luncheon on June 16, 2006 at 12:00 noon at the site.

Board of Selectmen will meet with Mayor Lang at 6:30 p.m. on Monday, June 19, 2006 at New Bedford City Hall.

June 22, 2006 is Council on Aging Volunteer Appreciation Day. A luncheon is scheduled for 12:30 p.m.

Retirement Board meeting will be held on June 23, 2006 at 9:00 a.m. at the Town Hall.

Finance Committee will meet on June 29, 2006 at 7:00 p.m. at the Board of Public Works.

“Miles for Matty” walk will be held on June 25, 2006 beginning at 9:00 a.m.

Mr. Manzone motioned to schedule a Police Union grievance hearing for Monday, June 26, 2006. Mr. Silvia seconded. Vote was unanimous.

Joint meeting with the Fairhaven and Dartmouth Board of Selectmen will be scheduled during the month of July to discuss the Vocational School budget.

Mr. Manzone motioned to sign the Viveiros Dairy Land Preservation Project Agricultural Preservation Restriction. Mr. Silvia seconded. Vote was unanimous.

Planning Board requested authorization for legal services for a review of the new subdivision regulations. Mr. Manzone motioned to approve the request. Mr. Silvia seconded. Vote was unanimous.

BUILDING DEPARTMENT

Construction Report for May 2006 will be placed on file.

Selectmen's Meeting -- June 12, 2006

POLICE DEPARTMENT

The Police Chief submitted a request to designate Union Street from Green Street to William Street as temporary one way westerly from 8:00 a.m. to 4:00 p.m. on Saturday, June 24, 2006 on the date of the Homecoming Day Fair. Mr. Manzone motioned to approve the request. Mr. Silvia seconded. Vote was unanimous.

SOUTH COAST OFFSHORE WIND PROJECT

Copy of the South Coast Offshore Wind Project, Fairhaven, MA ENF filing will be on file in the Selectmen's Office.

MATTAPOISETT RIVER VALLEY DISTRICT

Mr. Osuch explained the new Mattapoisett River Valley District Bonding rates. (See attached.)

FORT PHOENIX ROAD RACE

Kathy Lopes, Race Director, submitted a request to hold the 6th annual road race/walk on Sunday, September 11th beginning at 10:00 a.m. Mr. Manzone motioned to approve the request. Mr. Silvia seconded. Vote was unanimous.

CUB SCOUT PACK 13

A request was received from Bob Brisson, Committee Chairman, to collect used cell phones and empty printer cartridges within the Town Hall to benefit Pack 13. Mr. Manzone motioned to approve the request. Mr. Silvia seconded. Vote was unanimous. An announcement will also be placed on the cable TV bulletin board.

SUMMER MEETING SCHEDULE

Summer meeting schedule of the Board of Selectmen will be placed on the June 26, 2006 agenda.

NSTAR GAS

Mr. Manzone motioned to approve the petition for corrosion repair at 440 Sconticut Neck Road. Mr. Silvia seconded. Vote was unanimous. (Approved by the Board of Public Works.)

Mr. Manzone motioned to approve the petition to install a new gas main at 127 Howland Road. Mr. Silvia seconded. Vote was unanimous. (Approved by the Board of Public Works.)

Selectmen's Meeting -- June 12, 2006

Mr. Manzone motioned to approve the petition to install a new gas service at 11 Roseanne Drive and 2 New Boston Road. Mr. Silvia seconded. Vote was unanimous. (Approved by the Board of Public Works.)

2006 ANNUAL APPOINTMENTS

Annual appointments to Town Boards/Committees were voted. (See attached.)

Mr. Manzone motioned to appoint Andrew L. Jones, John Rogers, Jr. and Marc Jodoin to the Emergency Management Study Committee. Mr. Silvia seconded. Vote was unanimous. Mr. Manzone is also a member of the Study Committee. Terms to expire May 31, 2007. The Committee is still open for additional members.

Mr. Manzone motioned to make Andrew L. Jones a full member of the Hoppy's Landing Committee, David Gonsalves an Associate member and Ronald Manzone to take Winfred Eckenreiter's place on the Committee. Mr. Silvia seconded. Vote was unanimous.

OTHER MATTERS

Mr. Eckenreiter attended the New England Portuguese Day activities in New Bedford. He participated in the road race.

Mr. Silvia was the guest speaker at the Vocational School Graduation. Mayor Lang also attended.

The Sheriff's Department will be asked to assist in the repainting of the West Island Tower and clearing of brush at Hoppy's Landing.

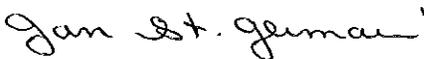
Father's Day Road Race is scheduled for Sunday, June 18, 2006.

Annual Homecoming Day Fair will be held on Saturday, June 24, 2006 beginning at 10:00 a.m.

Mr. Manzone and Mr. Silvia attended the Democratic Convention.

EXECUTIVE SESSION

At 10:14 p.m., Mr. Manzone motioned to go into executive session to discuss Worker's Compensation Insurance, Police Union Grievances and not to reconvene in open session. Mr. Silvia seconded. Vote was unanimous. Roll call vote 3-0.


Jan St. Germain
Secretary

**TOWN OF FAIRHAVEN
BOARD OF SELECTMEN
AS ISSUING (FRANCHISING) AUTHORITY
Preliminary Assessment of Denial
of Cable Franchise of Comcast of Massachusetts/New Hampshire/Ohio, Inc.
In Accordance With Section 626(c) of the Cable Act**

The Board of Selectmen of the Town of Fairhaven, as Issuing Authority, hereby moves to issue a Preliminary Assessment of Denial that the cable franchise of Comcast of Massachusetts/New Hampshire/Ohio, Inc. (also referred to as "Comcast") should not be renewed. This "Preliminary Denial" is issued on the basis on two separate and distinct criteria:

i. Comcast of Massachusetts/ New Hampshire/Ohio, Inc. has failed to demonstrate, as requested by the Town, that it has "the financial ... ability to provide the services, facilities, and equipment as set forth in the operator's proposal "; and

ii. Comcast of Massachusetts/ New Hampshire/Ohio, Inc.'s proposal is not "reason able to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests."

I. Comcast of Massachusetts/New Hampshire/Ohio, Inc. Has Failed To Demonstrate That It Has "The Financial Ability To Provide The Services, Facilities, and Equipmant As Set Forth In The Operator's Proposal.

Comcast of Massachusetts/New Hampshire/Ohio has submitted no evidence in its Massachusetts Application Form 100 or in its Renewal Proposal as to the financial status of Comcast of Massachusetts/New Hampshire/Ohio, Inc., much less as to the financial ability of Massachusetts/New Hampshire/Ohio, Inc. to provide the services, facilities, and equipment as set forth in the operator's proposal. The financial information provided by Comcast of Massachusett/New Hampshire/Ohio in its Form 100 (including Appendix F) is only for "Comcast Corporation".

Additionally, in response to the statement in the Town's Request For Proposal, that "[t]he Licensee's obligations under the Renewal License should and must be guaranteed by the Licensee's ultimate parent corporation", neither the applicant nor Comcast's ultimate parent corporation agreed that the Licensee's obligations would be so guaranteed. (The Applicant's reference to "Section 10.6 (Warranties) of Comcast's Renewal Proposal" submitted with this

response”, is non-responsive to the question of ultimate parent corporation guaranteeing the obligations of the Licensee.

The failure of Comcast of Massachusetts/New Hampshire/Ohio to provide any information regarding its financial status, together with the failure to provide the requested guarantee by the ultimate parent corporation, causes and requires this Issuing Authority to issue a preliminary assessment of denial pursuant to Section 626(c)(1)(C) of the Cable Act. Comcast of Massachusetts/New Hampshire/Ohio has failed to provide any information or evidence, much less demonstrate, that it has the financial ability to provide the services, facilities, and equipment as set forth in its proposal.

II. Comcast of Massachusetts/ New Hampshire/Ohio, Inc.’s Proposal Is Not “Reasonable To Meet Future Cable-Related Community Needs And Interests, Taking Into Account The Cost of Meeting Such Needs And Interests

Comcast of Massachusetts/ New Hampshire/Ohio, Inc.’s proposal is not “reasonable to meet future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.” (Hereinafter also referred to as “not reasonable”). More specifically, Comcast’s proposal is not reasonable, in the following respects:

A. PEG Access

1. PEG Access annual funding – 3% of gross annual revenues is inadequate to support Public, Educational and Government Access in the Town of Fairhaven. (The current Renewal License provides 1.75% of gross annual revenues to support the Fairhaven Public School’s Educational Telecommunications Program. One and one quarter percent (1¼ %) of gross annual revenues to support Public and Government Access is grossly inadequate.

2. PEG Access Support is paid annually, rather than quarterly. This is unworkable and unacceptable.

3. Truncated definition of “Gross Annual Revenues”, excluding advertising, revenues, home-shopping revenues, other non-subscriber revenues, late fees, and “fee-on-fee”. This truncated definition of Gross Annual Revenues will further decrease PEG Access annual funding.

4. Deduction of “applicable license fees” from PEG Access annual funding (support) further decreases already diminished PEG Access funding.

5. No (Zero) PEG Access capital funding is provided.

6. Two (2) PEG Access channels, rather than Three (3) PEG Access Channels – one each for Public, Educational and Government Access Programming. Additionally, Comcast’s limiting the number of PEG Access channels to two (2) channels unreasonably impairs and restricts, and unnecessarily complicates the cablecasting of PEG Access programming.

7. Failure to provide any provision for the financial impact from the Licensee’s potential multiple changing of the channel location(s) of PEG Access channels;

8. No Internet Access for PEG Access purposes;

9. No PEG Video-On-Demand;

10. No Provision For digital transition with respect to PEG Channels;

11. No Additional PEG Cable System Capacity For PEG Access (if agreed to by the parties or determined to be appropriate by a mutually agreed upon third-party); and

12. Unreasonable and overly broad restriction on PEG Access channels, equipment and facilities with respect to potential competitors.

B. Institutional Network

1. Failure to provide any solution to correct and improve the functionally inadequate and inadequately maintained Institutional Network (“I-Net”) either directly or through a grant to the Town;

2. Failure to include a standard and process for maintaining and repairing the existing I-Net; and

3. Inadequate origination sites.

C. Emergency Alert System

Failure to provide a local Emergency Alert Override Capability.

D. Cable Service To Public Buildings

Failure to provide Expanded Basic Service (in addition to Basic Service) to Public and School Buildings. There is a community need and interest that all existing and new Town and school buildings receive cable service, regardless of their location, as required by Section 12 of the Final License. More significantly, there is a community need and interest that the cable service provided to public buildings include expanded basic service. In addition to the valuable information and viewing experience provided on expanded basic channels, many of the channels provided on that service tier are extremely important to police and fire departments and the Highway Department in emergency situations, including weather disasters and matters which may involve homeland security (i.e. the Weather Channel, CNN, etc. It is equally important that the public schools, and their administrators, teachers and students have access to such expanded basic channels.

E. Service To Residents

Comcast refuses to extent the cable system to all residents of the Town of ^{Fairhaven} Saugus as require by the current Renewal License. Instead Comcast insists upon an unreasonable density requirement of 30 homes per mile for aerial installations and 60 homes per mile for underground installations (density requirements not seen even in rural Massachusetts towns.)

F. Customer Service Office and Protections

1. Failure to provide a full-time area wide customer service office; and
2. Inadequate protection of subscriber rights and interests.

G. Failure To Adequately Protect The Town's Public Ways, Public Property and Infrastructure, and the Town's Planning Values

1. Comcast proposes that it comply only with "lawful" Town Bylaws and Regulations;
2. Failure to commit to full undergrounding of the cable system at the operator's cost;
3. Failure to apply construction standards to sub-contractors;
4. Failure to provide for adequate inspection provisions;

5. Failure to provide for adequate remedial measures in a reasonable time period;
6. Failure to provide electronic stand maps;
7. Failure to provide up-dated cable system maps in a timely manner; and
8. Failure to provide status reports for construction projects that last longer than thirty (30) days.

H. **Comcast's Proposal Seeks To Avoid and Prevent Fair Evaluation Of Its Compliance With Its Renewal License And Seeks To Avoid Accountability and Responsibility For Its Acts and Omissions**

Comcast's proposal seeks to avoid and prevent fair evaluation of its compliance with the Renewal License, and seeks to avoid accountability and responsibility for its acts and omissions, and failure to comply with the Renewal License. More specifically:

1. Comcast proposes to comply only with "lawful" Town bylaws and regulations; (See above.)
2. No recomputation (audit) provision;
3. Inadequate performance bond;
4. No liquidated damages;
5. No letter of credit. (A letter of credit is particularly important because no evidence was presented by Comcast in response to the RFP that "Comcast of Massachusetts I, Inc." has any financial records or resources, and because Comcast has not proposed that Comcast of Massachusetts I, Inc.'s corporate parent(s) are not legally responsible for the obligations of the Licensee;
6. Inadequate indemnification provision, including, but not limited to ten (10) day notice period;
7. Inadequate insurance protection;
8. Failure to provide for outside testing of the cable system;
9. Inadequate force majeure provision (refusing to "take immediate and diligent steps to comply as soon as possible under the circumstances without endangering the health or safety of the Licensee's employees or property" and "to perform to the maximum extent it is able to do so in as expeditious a

manner as possible”. Additionally, Comcast refuses to provide reasonable notice of a force majeure occurrence;

10. Inadequate and one-side severability provision, which fails to provide a mechanism for the parties to restore the intent of the unenforceable provision(s) or to restore the relative burdens and benefits of the Renewal License;
11. Refusal to provide information and records going forward based on an inappropriate and overly broad provision regarding “proprietary information”;
12. Comcast’s proposed avoidance of accountability and responsibility for its acts and omissions, stands in contrast to its more specific and detailed proposal (as contrasted to the Town’s draft License provision) regarding the Board of Selectmen’s responsibility to provide Comcast with annual written reports of actual disbursements of PEG Access funds provided pursuant to the Renewal License. (Section 6.4 of the Proposed Draft License.);
13. Inadequate revocation of License provision;
14. Inadequate notice and opportunity to cure provision;
15. Inadequate transfer or assignment provision;
16. Inadequate and unfair provision for change of law (Section 9.11); and
17. Inadequate reporting requirements.

I. Level-Playing-Field Provision

As proposed by Comcast, the Level-Playing-Field provision is overly restrictive and anti-competitive for reasons to be delineated in the Statement of Reasons.

The Board of Selectmen will issue a “written statement detailing the reasons for its denial” within fourteen (14) days of this Preliminary Denial, in accordance with 207 CMR 3.06(3).

7.

Jan St. Germain

From: Patrick O'Neale [PONEale@tataandhoward.com]
Sent: Friday, June 02, 2006 3:03 PM
To: rbosworth@gnbvt.edu; denhamconstinc@aol.com; rochesterhwy@gis.net; lfarinon@townofrochester.com; karl@kistcon.com; wnicholson@mattapoissett.net; selectmen@fairhaven-ma.gov; dpierce@taboracademy.org; moose9941@aol.com; Paul.Silva3@comcast.net; donandoramae@comcast.net; funderhill@hotmail.com; bbabcock@tibbetsengineering.com
Cc: Jon Gregory; Ray Willis
Subject: MRV District Bonding

Board Members

As requested we are providing the following summary of the new bonding amount.

	<u>SRF Bond</u>	<u>Fairhaven(55%)</u>	<u>Mattapoissett(30%)</u>	<u>Marion(15%)</u>
Original Bond vote 5/10/05	\$13,300,000	\$7,315,000	\$3,990,000	\$1,995,000
Additional Bond 6/13/06	\$ 1,900,000	\$1,045,000	\$ 570,000	\$ 285,000
	\$15,200,000	\$8,360,000	\$4,560,000	\$2,280,000

Milestones

Week of 6/5 - informal pole of Selectman from each Town regarding support for additional bonding
6/13 - Board meeting to vote additional bond amount \$1,900,000
6/14 - deliver bond notice to the Board of Selectman of each Town, start 45 day appeal period
7/13 - advertise water main contract(s)
7/29 - 45 day own bond appeal period ends
8/3 - bid opening water main(s)
8/8 - Board meeting, award water main bid(s)

Our thought now is to bid the RR bed water main separately, after the well transmission mains. This will allow an interim check on the budget and would make the book keeping easier in separating the District/Marion cost for the RR bed. This area should be dry and the NHESP probably will want it constructed 11/15 to 3/15 since it is in habitat buffer zone. Please let me know if you have any questions or need additional information.

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6/2/2006