

Selectmen's Meeting – March 26, 2007

Mr. Silvia and Mr. Manzone were present.

Also in attendance was Jeffrey Osuch.

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

Mr. Manzone motioned to approve the minutes of March 19, 2007. Mr. Silvia seconded. It was so voted.

Mr. Manzone motioned to approve the minutes of March 19, 2007 executive session. Mr. Silvia seconded. It was so voted.

EMERGENCY MANAGEMENT AGENCY

Marc Jodoin, Director of Emergency Management was in attendance and fiscal year 2008 budget request was discussed. The Board of Public Works will be asked to tow an EMA vehicle to the Board of Public Works, where it will be stored in a secure location.

COMMUNITY POOL REVOLVING ACCOUNT

Members of the Fairhaven Community Pool Committee were in attendance to request an article be placed on the Town Meeting Warrant for a Community Pool Revolving Account. Discussion followed. Mr. Manzone motioned to place the article on the May 5, 2007 Special Town Meeting Warrant. Mr. Silvia seconded. It was so voted.

BOARD OF ASSESSORS

Jeanne Reedy was in attendance and discussed the fiscal year 2008 budget request. She also stated the "re-val should be all set".

The Board recessed from 7:20 p.m. to 7:30 p.m.

EXECUTIVE SESSION

An appointment was scheduled with Robert Grant to discuss a personnel incident that occurred in the Assessors Office on February 23, 2007. Mr. Grant agreed to discuss the matter in executive session. At 7:34 p.m., Mr. Manzone motioned to go into executive session to discuss the personnel issues and to reconvene in open session. Mr. Manzone seconded. It was so voted. Roll call vote 2-0. Open meeting reconvened at 8:00 p.m.

BARRY SHEINGOLD & GEORGE AARONSON

The Board stated that it has never been an intention to place an article on the Special Town Meeting Warrant for the proposed wind turbine project. The Selectmen are still

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gathering information and want to provide every opportunity to educate themselves and the public. They will not force a project on the Town and the project requires a Town Meeting vote. Barry Sheingold and George Aarson, the Town's consultants on the project, were in attendance. Discussion followed. MTC will finance the turbines and the developer will finance other associated costs. Generated electricity will serve the wastewater treatment plant.

EXECUTIVE SECRETARY'S REPORT

Retirement Board will meet on March 29, 2007 at 8:30 a.m. at the Town Hall

East Fairhaven School Job Meeting is scheduled for 1:00 p.m. on March 29, 2007

Finance Committee will meet on March 29, 2007 at 7:00 p.m. at the Board of Public Works

Furniture bids for the new East Fairhaven School will be reviewed at 3:00 p.m. at the school on March 30, 2007

Grand opening of Bank Five is scheduled for April 2, 2007 at 10:00 a.m.

UMASS Dartmouth Center for Marketing Research in Fairhaven opening ceremony is scheduled for 8:00 a.m. on April 2, 2007 at 200 Mill Road

Fire Union Contract negotiations were re-scheduled for next week

Ambulance bids will be opened tomorrow at the Fire Station

Mr. Manzone motioned to award the contract for Fort Phoenix Restoration and Repair to Monaco Restorations, Inc., 60 Mill Street, Southbridge, MA in the amount of \$149,000. Mr. Silvia seconded. It was so voted.

E-mail from Verizon regarding the "Massachusetts Cable Choice and Competition Act Summary" was briefly discussed. (See attached.)

Mr. Manzone motioned to appoint James Holmes, Jeremy Gaudreau and Gregory Harding Harbormaster Assistant/Deputy Shellfish Warden. Mr. Silvia seconded. It was so voted. Terms to expire May 31, 2008. (Using the Rule of Necessity, Mr. Manzone voted on the appointments.)

ANIMAL SHELTER GIFT ACCOUNT

Donations to the Gift Account totaling \$522.00 were accepted.

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BOARD OF APPEALS

Joseph Moura submitted a request for appointment as an associate member of the Board of Appeals. Mr. Manzone motioned to forward the request to the Board of Appeals. Mr. Silvia seconded. It was so voted.

BRAHMIN TIF AGREEMENT

Mr. Manzone motioned to sign the "Tax Increment Financing Agreement By and Between the Town of Fairhaven and Brahmin Leather Works, Inc. and Martin Family Realty Trust" Mr. Silvia seconded. It was so voted.

FAIRHAVEN/NEW BEDFORD SISTER CITY COMMITTEE

Mr. Silvia summarized the letter from the Sister City Committee requesting \$5,000.00 to assist with expenses for the John Manjiro Festival and permission to use the Town Hall for festival activities. (See attached.) Mr. Manzone motioned to place an article on the May 5, 2007 Special Town Meeting Warrant to request \$5,000.00 and allow use of the Town Hall. Mr. Silvia seconded. It was so voted.

HOPPY'S LANDING LICENSE AGREEMENT

Mr. Manzone motioned to sign the "License Agreement by and between Town of Fairhaven and Thomas Allaire" for Hoppy's Landing. Mr. Silvia seconded. It was so voted. License expires September 1, 2007. Fee will be prorated.

EAST FAIRHAVEN SCHOOL SUBSTANTIAL COMPLETION FORM

Mr. Manzone motioned to sign the East Fairhaven School Substantial Completion Form. Mr. Silvia seconded. It was so voted.

POLICE UNION DISPATCHER UNIT

The Board of Selectmen will not contest the Police Dispatchers being officially represented by New England Police Benevolent Association.

COMCAST CABLE TELEVISION

Mr. Manzone motioned to forward the March 19, 2007 letter from Attorney Solomon to Attorney Caldwell and the March 26, 2007 letter from Attorney Caldwell to the Town to Town Counsel for review/comment. Mr. Silvia seconded. It was so voted. (See attached.)

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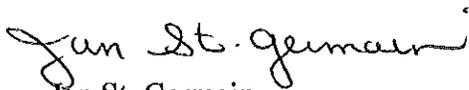
OTHER MATTERS

Mr. Silvia read Robert Duarte's letter of resignation from the Conservation Commission. (See attached.) The Board thanked Mr. Duarte for his time of the Commission.

Mr. Manzone motioned to appoint Jay Simmons a full member of the Conservation Commission. Mr. Silvia seconded. It was so voted. Term to expire May 31, 2009.

Annual Town Election is Monday, April 2, 2007. Residents were reminded to vote.

At 9:30 p.m., Mr. Manzone motioned to adjourn. Mr. Silvia seconded. It was so voted.


Jan St. Germain
Secretary

Jan St. Germain

From: richard.b.colon@verizon.com
Sent: Monday, March 26, 2007 10:02 AM
To: selectmen@fairhaven-ma.gov
Subject: Verizon - Tech Choice Bill
Attachments: Massachusetts Cable Choice and Competition Act summary.pdf; Consumers for Tech Choice org.pdf; Massachusetts Cable Choice and Competition Act - final nl.pdf

Jeff -

It was good speaking with you this morning. Per our discussion I am forwarding the full bill and a one page overview. In addition, should the Town wish to help attract more Verizon investment capital to MA, I am sending a pdf overview of the Consumers for Tech Choice Coalition. Please consider joining.

Rick Colon
Verizon External Affairs
(781) 849-2046 voice
(781) 848-6105 fax
richard.b.colon@verizon.com

3/26/2007

Massachusetts Cable Choice and Competition Act Bill Summary

More Choices for Consumers, Increased Competition, Broadband Investment

The bill fosters cable TV choice and competition for consumers, along with broadband investment in Massachusetts by streamlining the existing cable TV franchising process:

- Cable providers apply to the Massachusetts Department of Telecommunications and Energy (DTE) for a state-issued cable franchise for a specific geographic area
- Applicants must agree to terms outlined in the Act, including strong anti-redlining provisions
- The franchise application must be updated whenever additional areas are served.
- The DTE's Cable Division must approve a completed application within 15 days
- Incumbent cable providers (like Comcast, Charter, Time Warner or others) can use the new law to compete with each other, or to bring cable TV to Massachusetts towns without cable service

Clear Municipal Role, Including Setting Franchise Fees Paid by Consumers:

- Municipalities set franchise fees paid by consumers up to the federally imposed cap of 5 percent of gross revenues on cable TV and video-on-demand services
- Municipalities may address customer service complaints
- Communities govern public, educational, and government access channel content
- Municipal control of public rights-of-way is unchanged:
 - Companies holding franchise indemnify municipalities against claims caused by negligent acts, errors, or omissions while building or operating cable networks.
- Communities will continue to receive free TV service at all municipal buildings

Existing local franchise agreements are honored until they expire or unless both sides agree to terminate.

Continued Support for Public Educational & Governmental (PEG) Access Channels:

- New competitors are required to provide a comparable number of PEG channels offered by incumbent cable operator in each town
- New competitor and incumbent operators must interconnect their systems in order to carry the same local PEG content
- Municipalities can set an additional consumer-paid fee to support PEG capital costs like equipment for local access studios. This fee must match what incumbent cable provider charges each subscriber until the incumbent's agreement expires. When the incumbent provider's franchise agreement expires, the municipality then sets the fee at no more than 1 percent of gross revenues

Nondiscrimination:

Cable TV providers may not deny service to residents based on income.

Enforcement:

If a provider does not comply with the requirements of the Act, court action may be brought by the municipality or the Attorney General.



CONSUMERS FOR TECH CHOICE

Massachusetts Consumers for Technology and Cable Choice is committed to:

1. Ensuring Massachusetts consumers have access to the best, highest quality, and most competitive communications services offered on the market.
2. Promoting consumer choice and creating an environment that fosters economic growth throughout Massachusetts.

If you care about:

- Immediate Economic Growth for MA Consumers
- Better Access and Options for All Consumers
- Long Term Competitive Advantage for the Bay State
- Improved Quality of Life

Sign Up Now!

There are three ways to join and become an associate member of Consumers for Tech Choice Coalition:

- Email join@ConsumersForTechChoice.org
- Visit www.ConsumersForTechChoice.org/Join
- Or complete the information below and fax to: 617-695-0144

Organization name: _____

Organization contact: _____

Contact's title: _____

Contact's email address: _____

Contact's phone #

() _____ - _____

For more information go to: www.ConsumersForTechChoice.org

or call: 1-888-257-0350

AN ACT promoting consumer choice and competition for cable service.

New Chapter 166B; State-issued Cable Franchising.

State-issued Cable Franchising and Regulation

1. Findings.

Whereas Massachusetts' consumers benefit from expanded choice and competition for cable television services, and

Whereas, competition in the provisioning of cable service is emerging with the convergence of preexisting and new technologies for providing voice, video and data services, which results in increased investment in the state, lower prices, increased consumer choice and improved service offerings for consumers, and

Whereas, increased investment and the potential for competition in the cable service market through the provisioning of new communications services and deployment of advanced communications infrastructure, including fiber optic technologies, further enhances economic opportunities, smart growth, the delivery of health care services, improved public safety, education and human services and the overall health and well being of the residents of the Commonwealth, and

Whereas, state-issued franchises for the provision of cable service will promote and facilitate the deployment of advanced technologies and new services to all classes of communities and protect Massachusetts' ability to compete in the national and international marketplace for industry and jobs, and

Whereas, modifying existing cable service regulation through the enactment of new standards and procedures that provide consumers with expedited access to a competitive facilities-based cable market is warranted in this state, and

Whereas, current cable franchise requirements in the Commonwealth have acted as a barrier to entry to new facilities-based cable operators and have delayed the development of viable competition in the cable market,

The General Court finds that a standardized franchising process that speeds innovation, technology deployment, and competition while sustaining local programming via public, education and government channels through a single, predictable set of consumer-supported fees is in the public interest.

2. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Cable operator.” Any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system, as set forth in 47 U.S.C. §522(5).

“Cable service.” The one-way transmission to subscribers of video programming; or other programming service, and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, as set forth in 47 U.S.C. Section 522(6). This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C. §332(d).

“Cable system.” Any facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, as set forth in 47 U.S.C. §522(7), but such term does not include:

(1) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, 47 U.S.C. §201 et seq., except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. §541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with 47 U.S.C. §573; or

(5) Any facilities of any electric utility used solely for operating its electric utility system.

“Division.” The Division of Community Antenna Television, established in the Department of Telecommunications and Energy or any successor agency.

“Franchise.” An initial authorization, or renewal of an authorization, issued by a franchising authority, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system in the public rights-of-way.

“Franchise holder” or “holder.” A person who has received a state-issued franchise, but has not transferred or terminated such franchise authorization, in accordance with the provisions of this chapter.

“Franchising authority.” The Division and municipalities which are entitled to require franchises and impose fees in accordance with 47 U.S.C. §§522(10) and 542, respectively.

“Gross revenues.” (1) All revenue actually received by the franchise holder, as determined in accordance with generally accepted accounting principles, which is derived from the operation of the franchise holder’s cable system to provide cable service within the jurisdictional boundaries of the municipality, including:

(a) all charges billed to subscribers for any and all cable services provided by the franchise holder;

(b) compensation received by the franchise holder that is derived from the operation of the holder’s cable system to provide cable service with respect to commissions that are paid to the holder as compensation for promotion or exhibition of any products or services on the holder’s cable system, subject to subsection (2)(d) of this definition.

(c) a pro rata portion of all revenue derived by the franchise holder or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder’s cable system to provide cable service within the jurisdictional boundaries of the municipality, subject to subsection (2)(a) of this definition. The allocation shall be based on the number of subscribers in the municipality divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement. Advertising commissions paid to third parties shall not be netted against advertising revenue included in gross revenue.

(2) For purposes of this section, “gross revenues” does not include:

(a) amounts not actually received, even if billed, such as bad debt; refunds, rebates or promotional discounts to subscribers or other third parties;

(b) revenues received by any affiliate of a franchise holder or any other person in exchange for supplying goods or services used by the franchise holder to provide cable service;

(c) revenues derived from services classified as non-cable service under federal law including without limitation revenue received from telecommunications services and information services; and any other revenues attributed by the franchise holder to non-cable service in accordance with Federal Communications Commission or Division rules, regulations, standards or orders;

(d) revenues paid by subscribers to home shopping programmers directly from the sale of merchandise through any home shopping channel offered as part of the cable service, but not excluding any commissions that are paid to the franchise holder as compensation for promotion or exhibition of any products or services on the holder's cable system, such as a home shopping or a similar channel;

(e) revenues from the sale of cable service for resale in which the reseller is required to collect a fee similar to the franchise fee from the reseller's customer;

(f) amounts billed to and collected from subscribers to recover any tax, fee, or surcharge imposed by any governmental entity upon the franchise holder or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the holder and remitted to the taxing entity (including, but not limited to, fees payable to the commonwealth or municipalities due under this chapter, sales and use tax, gross receipts tax, excise tax, utility users tax, public utilities service or assessment fee, communications tax, and any other fee not imposed by this chapter);

(g) revenues from the sale of capital assets or surplus equipment that is not used by the purchaser to receive cable service from the seller of such assets or surplus equipment;

(h) revenues from directory or Internet advertising revenue including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing;

(i) revenues received as reimbursement by programmers of marketing costs incurred by the franchise holder for the introduction of new programming; and

(j) security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber's account and thereby taken into revenue.

"Incumbent cable operator." The cable operator serving the largest number of cable subscribers in a particular municipal franchise area on the effective date of this chapter.

"Municipality." A city or town within the Commonwealth.

"Person." An individual, partnership, association, joint stock company, trust, corporation, government entity, limited liability company or any other entity.

"Public right-of-way." The area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway, or utility easement in which a municipality has an interest.

"Video programming." Programming provided by, or generally considered comparable to, programming provided by a television broadcast station, as set forth in 47 U.S.C. Section 522(20).

2. Authorization to provide cable service.

A. General rule. Notwithstanding any other law to the contrary and subject to subsection B of this section, a person seeking to provide cable service in the Commonwealth of Massachusetts after the effective date of this chapter shall file an application for a state-issued franchise with the Division as required by this section.

B. Grandfather provision. A person, including an incumbent cable operator, providing cable service under a franchise agreement with a franchising authority which existed prior to the effective date of this chapter is not subject to this section until the franchise agreement expires at the end of its original or any mutually agreeable renewal term, or unless and until the franchising authority and entity providing cable service mutually agree to terminate the existing franchise agreement.

C. Restrictions. Nothing in this section shall restrict a cable operator from applying to the Division for a state-issued franchise to provision cable services in territories of the state for which it does not have an existing franchise agreement with a franchising authority. For purposes of this section, a cable operator will be deemed to have a franchise to provide cable service in the jurisdiction of a specific franchising authority if any affiliate, predecessor or successor entity of the cable operator maintains a franchise granted by that franchising authority. The terms "affiliate, predecessor or successor entity" in this section shall include but not be limited to any entity receiving, obtaining or operating under a franchise from a franchising entity for cable service through the grant of a franchise, merger, sale, assignment, restructuring, or any other type of transaction.

3. Division responsibilities.

A. Franchising authority. The Division shall have the sole franchising authority for the provisioning of cable service under this chapter. Neither the Division nor any municipality in the state may require the franchise holder to obtain any separate or additional franchise or otherwise impose any fee or other requirement, including but not limited to the regulation of cable service rates, on any franchise holder as a condition of providing cable service, except as provided in this chapter. The Division may delegate its authority to issue a state-issued franchise to its staff or a member thereof.

B. General rule. The Division shall assign existing permanent staff of such legal, technical and other employees of the Division as may be required for the proper conduct of its cable franchising responsibilities under this chapter. The powers and duties of the Division with respect to state-issued franchise shall not exceed those prescribed in subsection C of this section.

C. Powers and duties. The Division's administrative powers and duties shall be limited to the:

- (1) Review of the initial submission and any updates for completeness;
- (2) Determination and notice of incomplete applications;
- (3) Approval of applications and amended applications and issuance of state-issued franchises, or denial of such applications, within the periods designated under the provisions of this chapter;
- (4) Issuance to applicants whose applications are approved of state-issued franchises to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a network capable of providing such service, and to use and occupy the public rights-of-way in the delivery of that service;

4. Application for state-issued franchise.

A. General rule. Any person desiring to provide cable service in the Commonwealth after the effective date of this chapter shall file an application for a franchise with the Division as required by this section. The applicant for a state-issued franchise shall provide notice of the filing and of any subsequent amendments to all municipalities in which it will provide cable service.

B. Contents of application. Applications for a state-issued franchise shall contain and be limited to:

- (1) A statement that the applicant has filed or will timely file with the Federal Communications Commission all forms required by that agency in advance of offering cable service in this state;
- (2) A statement that the applicant agrees to comply with all other applicable federal, state statutes and regulations and all generally applicable municipal ordinances and regulations, including without limitation municipal ordinances and regulations regarding the time, place and manner of using and occupying public rights-of-way adopted in accordance with state and federal law;

(3) A general identification of the service area for which authority is sought, such as a statement that service will be provided within the whole or portion one or more specified municipalities. The service area identification shall be updated by the applicant prior to the expansion of cable service to a previously undesignated service area and, upon such expansion, written notice shall be given to the Division of the new service area to be served by the applicant. The state-issued franchise area and any service area within the franchise area may extend beyond the area or areas where the applicant has pre-existing authority to occupy the public rights-of-way;

(4) The location of the applicant's principal place of business, the names of the applicant's principal executive officers, and the name, address and telephone number of an officer, general partner or other employee of the applicant who will be responsible for ongoing communications with the Division;

(5) The name and location of the principal place of business of the applicant's parent company, if any; and

(6) The signature of an officer or general partner of the applicant verifying the information set forth in the application.

C. Notification. Within 10 business days after it receives the application, the Division shall (1) determine whether an application submitted pursuant to subsection B of this section is incomplete, and (2) if so, the Division shall notify the applicant that the application is incomplete and identify the information that the Division must receive from the applicant to make the application complete.

D. Application decision. Within 15 business days after it receives the completed application, the Division shall approve the application and issue a franchise to the applicant, or deny the application. The Division may deny the application only if the applicant has failed to state in the application the information and representations required by subsection B of this section. If the Division denies the application, it must specify with particularity the reason or reasons for the denial, and the applicant may amend its application to cure any deficiency. The Division shall decide such amended application within 5 business days of its submission to the Division by the applicant. An applicant may challenge a denial of its application or amended application in any court of competent jurisdiction. If the Division fails to approve or deny an application or amended within the applicable time period set forth in this subsection, then the application or amended application shall be deemed approved by the Division and the franchise shall be deemed to have been issued to the applicant.

E. Contents of state-issued franchise. A franchise authorization shall contain:

(1) A grant of a franchise to provide cable service in the service area footprint described in the application; to construct, upgrade, operate or maintain a

network capable of providing such service, except where this grant is not required under subsection F of this section; and to use and occupy the public rights-of-way in the delivery of that service; and

(2) A statement that the franchise grant in subsection (1) is subject to lawful operation of the cable service by the applicant or its successor in interest.

F. Pre-existing authority. An applicant having pre-existing authority to utilize the public rights-of-way is required to obtain a state-issued franchise prior to the actual provision of cable service on a commercial basis directly to subscribers. However, such an applicant is not required to obtain a state-issued franchise or any municipality authorization, except for being subject to generally applicable municipality right-of-way requirements governing street openings, traffic control and the like, in order to construct, upgrade, operate or maintain a network that is capable of providing cable service.

G. Transferability. The franchise authorization issued by the Division is fully transferable to any successor in interest to the applicant to which it is initially granted without the approval or consent of the Division or any municipality. The applicant or its successor in interest shall file a written notice of such transfer with the Division and the relevant municipality or entities within 14 business days after the completion of the transfer. This notice shall include a certification that the successor in interest agrees to be bound by the terms of the franchise authorization and is legally, technically and financially qualified to operate the cable system.

H. Termination. The franchise authorization issued by the Division may be terminated by the cable operator by submitting written notice of such termination to the Division and any affected municipality.

I. Fees. The Division may charge a fee for filing an application under this section. Any fee charged by the Division under this subsection shall not exceed the actual costs to process and review the application.

5. Access to public rights-of-way.

A. General rule. Municipalities shall allow the franchise holder under this chapter to install, construct, upgrade, operate and maintain a cable system within public rights-of-way within the jurisdiction of the municipality under the same terms and conditions as applicable to public utility corporations under applicable state and federal law.

B. Nondiscrimination. No municipality shall discriminate against the franchise holder regarding the authorization or placement of a communications network in public rights-of-way, access to a building or a utility pole attachment term. All municipality right-of-way requirements applicable to cable operators must be competitively neutral, reasonable and nondiscriminatory.

C. Construction permits and licenses. In the exercise of its lawful regulatory authority, municipalities shall promptly process all valid and administratively complete applications of the franchise holder for a permit or license, to excavate, set poles, locate lines, construct facilities, make repairs, affect traffic flow, or other similar approvals. The municipality shall make every reasonable effort not to delay or unduly burden the holder in the timely conduct of the holder's business.

D. Expedited response or repair. In the event of fire, flooding, accident or other exigent circumstances necessitating immediate response work or repair by the franchise holder, the holder may begin the response work or repair or take any action required under the circumstances without prior approval from the affected municipality, provided, however, that the holder notifies the municipality as promptly as reasonably possible after beginning the work and subsequently obtains any approval required by a municipal ordinance applicable to expedited response or repair work.

E. Indemnity in connection with public rights-of-way. The franchise holder shall indemnify and hold a municipality and its officers and employees harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees and costs of defense), proceedings, actions, demands, causes of action, liability, and suits of any kind and nature, including personal or bodily injury (including death), property damage, or other harm for which recovery of damages is sought, that is found by a court of competent jurisdiction to be caused solely by the negligent act, error, or omission of the holder or any agent, officer, director, representative, employee, affiliate, or subcontractor of the holder or their respective officers, agents, employees, directors, or representatives, while installing, repairing, or maintaining facilities in a municipality public right-of-way. The indemnity provided by this subsection does not apply to any liability resulting from the negligence of the municipality or its officers, employees, contractors, or subcontractors. If the franchise holder and the municipality are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of this state without, however, waiving any governmental immunity available to the municipality under state law and without waiving any defenses of the parties under state law. This subsection is solely for the benefit of the municipality and the franchise holder and does not create or grant any rights, contractual or otherwise, for or to any other person or entity.

F. Written notice. The franchise holder and a municipality shall promptly advise the other in writing of any known claim or demand against the holder or the municipality related to or arising out of the holder's activities in a public right-of-way.

G. The Division shall have no jurisdiction to review regulations and ordinances adopted by a municipality to manage public rights-of-way.

6. Municipal regulation of franchise holders.

A. Municipal powers regarding franchise holders. A municipality may:

(1) Exercise its nondiscriminatory police power with respect to its public rights-of-way and a franchise holder's use thereof;

(2) Receive and address cable service quality complaints from a franchise holder's customers within the municipality;

(3) Require a franchise holder who is providing cable service within the municipality to register with the municipality, maintain a point of contact, and provide notice of any franchise authorization transfer to the municipality within 14 business days after the completion of the transfer;

(4) Establish reasonable guidelines regarding the use of public, educational, and governmental access channels within the municipality.

B. Limitation of municipal authority over franchise holders. No municipality shall impose on activities of the franchise holder any requirement:

(1) That particular business offices of the holder be located within the territory of the municipality;

(2) That reports or other documents which are not required by federal or state law and which are not related to the holder's use of the public rights-of-way be filed by the holder with the municipality;

(3) That the holder provide information to the municipality concerning the capacity or other operational characteristics of the holder's cable system or communications network facilities;

(4) That the holder's business records be subject to inspection by the municipality, except to extent permitted under section 7 of this chapter;

(5) That transfers of ownership or control of the holder's business be approved by the municipality, except that a municipality may require that the holder maintain a current point of contact with the municipality and that the holder or its successor-in-interest to provide notice of a transfer to the municipality within 14 business days after the completion of the transfer;

(6) That the holder which is self-insured under the applicable provisions of state law obtain insurance or bonding for any activities within the territory of the municipality, except that a self-insured holder shall provide substantially the same claims processing as an insured provider. A bond shall not be required from a holder for any work consisting of aerial construction except that a reasonable bond may be required of a holder that cannot demonstrate a record of at least four years' performance of work in any municipality's public rights-of-way free of

currently unsatisfied claims by the municipality for damage to the public rights-of-way;

(7) That the holder provide the municipality with an indemnification in connection with public rights-of-way that is broader than the indemnification required in section 5 of this chapter; or

(8) That the holder build out its cable system to areas of the municipality not included in the holder's service area footprint designated pursuant to Section 4(B) of this chapter or comply with any other mandatory build-out provisions.

7. Payment and remittance of franchise fee.

A. General rule. The franchise holder who offers cable service within the jurisdiction of a municipality shall calculate and remit to the commonwealth and municipality at the end of each calendar year quarter a franchise fee, as provided in this section. The obligation to calculate and remit the franchise fee to the commonwealth and a municipality begins immediately upon provision of cable service within that municipality's jurisdiction, but the first remittance shall not be due until the end of the first calendar year quarter that is later than 180 days after the provision of cable service began.

B. Calculation of franchise fee. The franchise holder shall pay a franchise fee not to exceed in total 5% percent of the holder's gross revenues, as defined in Section 1 of this chapter, as follows: (i) eighty cents per subscriber served payable to the commonwealth; (ii) fifty cents per subscriber served payable to a municipality in which the holder provides cable service; and (iii) a percentage of the franchise holder's gross revenues payable to a municipality in which the holder provides cable service which the municipality establishes by ordinance.

C. Documentation. No fee under this section will become due until the municipality certifies and provides documentation to the franchise holder supporting the percentage paid by any incumbent cable operator serving the area within the municipality's jurisdiction.

D. Restrictions. No municipality or any other political subdivision of this state may assess any additional fees or charges or require other remuneration of any kind from the franchise holder other than as set forth in this section.

E. Application to bundled services. For purposes of this section, in the case of a cable service that may be bundled or integrated functionally with other services, capabilities or applications, the franchise fee shall be applied only to the gross revenues, as defined in this chapter, attributable to cable service, as reflected on the books and records of the holder in accordance with generally accepted accounting principles and

Federal Communications Commission rules, regulations, standards or orders, as applicable.

F. Remittance and review of franchise fee. The franchise fee shall be remitted to the commonwealth and applicable municipality quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. Not more than once annually, the commonwealth and a municipality may examine the franchise holder's business records to the extent reasonably necessary to ensure compensation in accordance with this section. Each party shall bear the party's own costs of the examination. Any claims by the commonwealth or a municipality that compensation is not in accordance with this section, and any claims for refunds or other corrections to the remittance of the franchise holder, must be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of remittance, whichever is later. Either the commonwealth, a municipality or the franchise holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

G. The franchise holder may identify the municipality and bill and collect the amount of the franchise fee and any PEG access support under section 8 as separate prorated line items on the regular bill of each subscriber.

8. Public, educational and government access channels.

A. General rule. The franchise holder shall provide the municipality with capacity in its cable system to allow public, educational, and governmental (PEG) access channels for noncommercial programming.

B. Provisioning of access channels. The franchise holder shall designate a sufficient amount of capacity on its cable system to allow the provision of a comparable number of PEG access channels or hours of programming that the incumbent cable operator has activated and provided within the municipality under the terms of its franchise agreement as of the effective date of this chapter. If a municipality did not have PEG access channels as of that date, the franchise holder shall furnish to the municipality upon request up to three PEG access channels for a municipality with a population of at least 50,000 and up to two PEG access channels for a municipality with a population of less than 50,000. For the purposes of this section, a PEG access channel is deemed to be and remain activated if it is being utilized for PEG programming within the municipality for at least 8 hours per day and if such programming is not broadcast more than once in every 8 hours. The franchise holder shall have 12 months from the date the municipality requests such PEG access channels to designate the PEG access channel capacity; provided, however, that the 12-month period shall be tolled by any period during which the designation or provision of PEG access channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to make adequate interconnection available, as required by this section.

C. PEG support. The franchise holder shall provide funding to a municipality in which it provides cable service to be used to support the operations of PEG access programming. If PEG access support is provided to a municipality by an incumbent cable provider under a franchise agreement, the state-issued franchise holder shall pay, while the incumbent agreement is in effect, the same amount on a per subscriber basis as the incumbent cable provider pays on a per-subscriber basis to the municipality for on-going PEG support. When the incumbent cable provider's franchise agreement expires or if there is no incumbent cable provider in a municipality, PEG support by a franchise holder shall be set by ordinance but shall not exceed one (1) percent of a franchise holder's gross revenues for cable service provided within the municipality.

D. Remittance of PEG support. The PEG support shall be remitted to the applicable municipality quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. Not more than once annually, a municipality may examine the franchise holder's business records to the extent reasonably necessary to ensure compensation in accordance with this section. Each party shall bear the party's own costs of the examination. Any claims by a municipality that compensation is not in accordance with this section, and any claims for refunds or other corrections to the remittance of the franchise holder, must be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of remittance, whichever is later. Either a municipality or the franchise holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

C. Termination. The franchise holder may cease providing any PEG access channel provided pursuant to this section that is not utilized by the municipality for at least 8 hours per day, and except as provided herein, the access channel may thereafter be programmed at the franchise holder's discretion. If the municipality subsequently certifies to the holder a schedule for at least 8 hours of daily non-repeat PEG access channel programming per channel, the holder shall restore the PEG access channel(s) for the use of the municipality for as long as the municipality uses the channel(s) for at least 8 hours a day.

D. Channel responsibility. The content and operation of any PEG access channel provided pursuant to this section shall be the responsibility of the municipality, receiving the benefit of such channel, and the franchise holder bears only the responsibility for the transmission of such channel, subject to technological constraints. The franchise holder shall be responsible for providing the connectivity to each PEG access channel programming distribution location and for doing so without charge for up to the first 200 feet of the holder's connecting facilities.

E. Transmission of programming. The municipality must ensure that all transmissions, content, or programming to be transmitted over a PEG access channel or facility by a franchise holder are provided or submitted to the franchise holder in a manner or form that is capable of being accepted and transmitted by the franchise holder, without requirement for additional alteration or change in the content by the franchise holder, over the franchise holder's cable system. The municipality's provision of PEG

content to the holder shall constitute authorization for the holder to carry such content including, at the holder's option, beyond the jurisdictional boundaries of the municipality.

F. Municipal Service. A franchise holder shall provide and maintain, without charge, one service outlet activated for basic service to any and all fire stations, public schools, police stations, public libraries, and other such buildings used for municipal purposes located in its service area.

G. Emergency Alert System: A franchise holder shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the Cable System.

H. Interconnection. Each franchise holder and incumbent cable operator shall use reasonable efforts to interconnect their cable systems for the purpose of providing PEG access channel programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. Franchise holders and incumbent cable operators shall negotiate in good faith and incumbent cable operators may not withhold interconnection of PEG channels. In the event a franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, then the duty of the holder shall be discharged if the holder makes interconnection available to the channel originator at a point on the holder's network, as determined by the holder, which is within the relevant municipality.

I. Identifying brands. A franchise holder shall not be required to interconnect for, or otherwise to transmit, PEG content that is branded with the logo, name or other identifying marks of another cable operator. The municipality may require a cable operator to remove its logo, name, or other identifying marks from PEG content that is to be made available through interconnection to another provider of PEG access channel capacity.

J. Enforcement. A court of competent jurisdiction shall have jurisdiction to enforce any requirement under this section or resolve any dispute regarding the requirements set forth in this section, and no cable operator may be barred from the provision of cable service or be required to terminate cable service as a result of such dispute or enforcement action.

9. Discrimination in the provisioning of service prohibited.

A. General rule. A cable operator that has been granted a state-issued franchise under this chapter shall not deny access to cable service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

B. Determination of violations.--For purposes of determining whether a franchise holder has violated subsection (A), cost, low household density, distance and

technological, network architecture, or commercial impracticability limitations must be taken into account and the franchise holder shall have a reasonable time to deploy its service. Use of alternative technologies that provide comparable content, service and functionality shall not be considered a violation of this section. The inability to serve a potential residential subscriber because a franchise holder is prohibited from placing its own facilities in a building or property shall not be found to be a violation of this section. This section may not be construed as authorizing any build-out requirements on a franchise holder.

C. Customer service requirements. Notwithstanding any other provision of law, the franchise holder shall comply with customer service requirements set forth at 47 C.F.R. §76.309(c) until there are two or more providers, including the holder but excluding direct-to-home satellite service, offering cable service within the jurisdiction of the relevant municipality where the holder has been authorized to serve.

10. Enforcement.

The exclusive remedy for enforcing the provisions of this chapter shall be an action in a court of competent jurisdiction brought by either the municipality or the Massachusetts Attorney General on behalf of the Division. At least 60 days before bringing such an action, the municipality or Attorney General shall serve the franchise holder with a notice setting out the alleged violation and stating that an action may be brought unless the holder corrects the alleged violation or enters into a binding agreement to correct the violation within the 60-day notice period. The notice shall contain a sufficiently detailed description of the alleged violation to enable the franchise holder make a specific response.

11. Applicability of other laws.

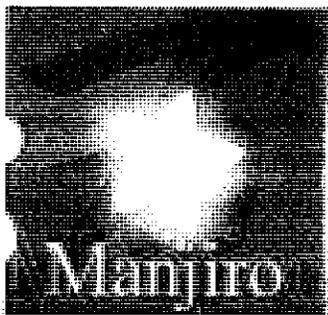
The provisions of this chapter are intended to be consistent with the Federal Cable Act, 47 U.S.C. §521, *et. seq.*, and nothing in this chapter shall be interpreted to prevent a voice provider, cable operator or municipality from seeking clarification of its rights and obligations under federal law. In the event that any cable operator obtains relief through judicial, administrative, or executive action from any obligation imposed under this chapter, or from any obligation in a franchise agreement that gives rise to an obligation of another cable operator under this chapter, all other cable operators shall be deemed to be relieved of their obligations under this chapter within the same geographic area and to the same extent.

12. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, this invalidity does not affect other provisions or applications of this chapter that

can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

13. Effective Date. This act shall take effect immediately upon passage.



FAIRHAVEN/NEW BEDFORD-TOSASHIMIZU
SISTER CITY COMMITTEE, INC

c/o Millicent Library,
45 Center Street
Fairhaven, MA 02719

<http://manjiro1.tripod.com/>

Mr. Michael Silvia
Chairman
Fairhaven Selectmen
Town Hall
Fairhaven, MA 02719

Article 17

RECEIVED
2007 MAR 19 P 12:01
BOARD OF SELECTMAN
FAIRHAVEN MASS
March 16, 2007

Dear Mr. Silvia:

On Saturday, October 6th of this year, our committee will sponsor the 11th John Manjiro Festival in the Center of Fairhaven. Given that we will be observing the 20th anniversary of the signing of the Sister City Agreement, we look forward to sponsoring a very special event with expanded activities. At this early planning stage we are also considering to sponsor a few limited events on Sunday, Oct7. Aside from the usual Mayoral delegation from Tosashimizu, we are expecting a sizeable group from California.

We are thankful for all the assistance given us in the past festivals and would like to call upon the Town again for assistance in carrying out this sizable undertaking. In keeping with the past, we would make the following requests as they pertain to that day:

- Permission to use the main center of town for the event with whatever input is required by the DPW, Police/Fire Departments and Board of Health
- Permission to use the Town Hall as a minor source of power for booth needs
- Permission to use the Town Hall ballroom as a location for special events including the possibility of some taking place on Oct. 7 as well as Oct.6
- Permission to use the meeting room on the first floor as a quiet room for music and the tea ceremony
- Permission to have the Japanese flag flying under the US flag on the main flagpole.
- Permission to display the Manjiro Festival Banner on the front of Town Hall prior to the event
- Permission to make the rest rooms of the Town Hall available to the public

In the last festival the Town generously assisted the Committee with a grant of \$5,000 to assist us in covering the expenses of the several days our guests were with us. Although we hope to expand the events of this special festival we are aware of the strict budgetary constraints of the Town and the change in resources available for this event. Thus, we would respectfully request a level-funded grant of \$5,000. We will be making a similar funding request of the City of New Bedford, the other local signatory to this agreement.

We look forward to sponsoring a festival of which we will all be proud. As you know it is difficult for us to duplicate the degree of hospitality received when we visit Tosashimizu. However, we will do our best to make the visitors feel truly welcome. If you wish, we would be pleased to include your designee in our planning sessions in order to insure the highest degree of coordination with the Town.

We thank the Selectmen and the Town for your kind consideration of this request. If there are any questions regarding it, please feel free to contact me at your convenience at my home (508) 995-1219.

APPROVED

- 3/26/07

Sincerely,

Gerald P. Rooney
Gerald P. Rooney, Chairman

Michael Silvia

Robert J. Manjiro

WILLIAM H. SOLOMON
ATTORNEY AT LAW
819 MAIN STREET
STONEHAM, MASSACHUSETTS 02180

TELEPHONE (781) 438-4543
TELECOPIER (781) 438-4999

March 19, 2007

Adam S. Caldwell, Esq.
Davis Wright Tremaine L.L.P.
1919 Pennsylvania Avenue, N.W., Suite 200
Washington D.C. 20006-3458
BY MAIL AND TELECOPIER: (202) 452-0067

Re: Motion of Town of Fairhaven to Extend the Time For Follow-Up Discovery
Requests To Comcast of Massachusetts/New Hampshire, LLC.

Dear Mr. Caldwell:

I am forwarding herewith the Town of Fairhaven's "Motion of Town of Fairhaven to
Extend the Time For Follow-Up Discovery Requests To Comcast of Massachusetts/New
Hampshire, LLC."

The Board of Selectmen's next scheduled meeting, after this evening, is scheduled for next
Monday, March 26, 2007. I would anticipate that the Board would act on this Motion at that time.

Finally, although I do not anticipate that it will affect the Board's schedule, I regret to inform
you that the Board's Chairman, Winfred Eckenreiter, passed away late last week.

Sincerely,



William H. Solomon
Special Cable Counsel

Enclosure

cc: Board of Selectmen
Executive Secretary
Cable Advisory Committee, Chairman

TOWN OF FAIRHAVEN
BOARD OF SELECTMEN

Re: Preliminary Denial of the Cable Television)
Renewal License held by Comcast of)
Massachusetts/New Hampshire/Ohio, Inc.)
By The Board of Selectmen (Acting as "Issuing)
Authority") of the Town of Fairhaven)

**MOTION OF TOWN OF FAIRHAVEN TO EXTEND THE TIME FOR FOLLOW-
UP DISCOVERY REQUESTS TO COMCAST OF MASSACHUSETTS/NEW
HAMPSHIRE, LLC.**

The Town of Fairhaven, through its Special Cable Council, hereby requests that the time for the Town of Fairhaven to submit follow-up discovery requests to Comcast of Massachusetts/New Hampshire, L.L.C. (hereinafter referred to as "Comcast") be extended as described below. Comcast's objections and responses to the Town of Fairhaven's First Set of Discovery Requests, dated February 28, 2007, were faxed and mailed by U.S Mail to this office on that date. Documents were forwarded by mail to this office on March 1st and March 5th. (There is no objection to the timeliness of Comcast's responses.) Unfortunately, Comcast, through unwarranted objections, refusals and/or non-responsive responses, has systematically failed to properly, adequately and fully respond to the Town's initial discovery requests (Interrogatories and Requests For Documents).

The Administrative Hearing Process - Rules of Procedure and Schedule, issued by the Board of Selectmen, provides, in relevant part, that "[f]ollow-up discovery may be submitted for good cause provided to the Board of Selectmen. The Board of Selectmen shall not unreasonably deny such request for follow-up discovery. Said request for further discovery must be submitted to the Board of Selectmen for its review within twenty-one (21) days of receipt of the service of the final initial discovery response(s) by the parties. If said follow-up discovery is approved, the other party

must answer and/or object to said follow-up discovery within thirty (30) days of service of said request." Additionally, as the Board is aware, the Rules provide that "[t]he Board of Selectmen may waive any discovery rule or requirement for good cause shown, regardless of whether such waiver provision is specifically referenced or described"

The Town respectfully requests that the time for the Town to submit follow-up discovery be extended as follows:

1. The time for the Town's initial follow-up discovery be extended until March 30, 2007, at which time the Town will also submit a motion to compel further answers and documents with respect to the Town's First Set of Discovery Requests and Comcast's responses thereto.

2. That the Town be allowed to submit subsequent follow-up discovery to Comcast (after the initial follow-up discovery), after the Board of Selectmen has acted upon the Town's motion to compel and Comcast has (assuming *arguendo* the Board grants said motion to compel) provided the answers and documents required by an Order of the Board pursuant to said motion to compel.

In support of this Motion, the Town, through Special Cable Counsel, states that the interest and the integrity of the administrative hearing process, justice and fairness, require the Town to file the above referenced motion to compel and for the Board to provide the requested relief. The Town refers the Board to Comcast's Responses To The Town's First Set of Interrogatories and Documents Requests to provide the ample evidence of its failure to adequately and properly respond to the Town's discovery requests. (If requested by the Board, the Town will provide a more detailed description of this failure.)

TOWN OF FAIRHAVEN
By its Special Cable Council



William H. Solomon
319 Main Street
Stoneham, Massachusetts 02180
(781) 438-4543

Dated: March 19, 2007

CERTIFICATE OF SERVICE

I, William H. Solomon, hereby certify that on this 19th day of March, 2007, I caused a copy of the foregoing "Motion of Town of Fairhaven to Extend the Time For Follow-Up Discovery Requests To Comcast of Massachusetts/New Hampshire, LLC." to be served by telecopier (202-452-0067) and first-class mail on counsel for Comcast of Massachusetts/New Hampshire, L.L.C., Adam S. Caldwell, Esq., Davis Wright Tremaine LLP (formerly Cole, Raywid & Braverman, L.L.P.), 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006-3458.



William H. Solomon