

**Ascertainment Report**  
**of**  
**The Five Town Cable TV Advisory Committee**  
**As Required for the**  
**Charter Communications, Inc. Renewal License**  
**Expiring on February 23, 2023**



**Prepared by:**  
**The Five Town Cable Advisory Committee**  
**Representing the**  
**Towns of**  
**Great Barrington, Lee, Lenox, Sheffield, and Stockbridge**  
**Issued: September 1, 2022**

*The views expressed in this document are the opinions of volunteer town committee members based on hundreds of hours of ascertainment research and are not to be construed as the views and opinions of any of the Issuing Authorities or Towns for which this Ascertainment process and resulting documentation were done. All information, content, and materials provided in this Ascertainment document are for general information purposes only. Information in this document cites third-party sources and such citation are for the convenience of the reader and does not convey any endorsement or recommendation.*

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## Executive Summary

This Ascertainment Report was developed by the Five Town Cable Advisory Committee, (hereafter referred to as “CAC”), which represent the residents of the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge. This Ascertainment Report is a federal and state requirement for the Renewal of Charter Communications, Inc. Cable TV License Agreement, which expires on February 23, 2023.<sup>1</sup>

Considerable work, including, but not limited to, data collection and analysis; content and wording review of other signed Massachusetts cable TV licenses; Cable TV industry trends and forecasts; multi-media survey on all aspects of Charter Communications’ Spectrum performance, offerings, pricing, etc. in each of the 5 Towns; analysis of survey results; line by line review of the current Charter Communications, Inc. Cable TV License Agreement; and step by step completion of all Phase One activities. Hundreds of volunteer CAC member’s time have been invested to clearly document our residents needs and wants and being in the best possible position to constructively negotiate the upcoming Cable TV Renewal License Agreement, beginning on or about October 1, 2022 or upon response from Charter Communications. It is the goal of the CAC to complete all renewal activities and have the five Issuing Authorities sign a Renewal License by February 23, 2023.

While Phase One activities are detailed in this Ascertainment Report, several activity results are included in this Executive Summary, due to their importance. The first, the results of the survey, in addition to yielding statistically significant results on the questions asked, are best expressed in the 286 independent responses provided when survey takers were asked “Is there any additional information about your overall experience with Spectrum services you would like to share?”

The following themes from the survey clearly identify community needs, as well as dissatisfactions, in no order:

- 95% of respondents would prefer “a la carte” customizable programming
- Many wrote that Cable TV is too expensive with too many rate increases
- Need for timelier and complete complaint resolutions
- Would appreciate special senior pricing
- Want Massachusetts, not New York, news stations (reference DMA language)
- Felt there were too many of the same channels, just numbered differently
- Expressed unfavorable grades on billing, channel selection, resolution of issues, and cable boxes
- Many residents expressed interest in an alternative to Spectrum Cable TV
- Awareness of CTSB channels and programming schedules

The Access Corporation, Community Television for the Southern Berkshires (CTSB), has reviewed its prioritized Capital needs over the next 5 years of the Renewal License and their requests are included. The current Annual Report from CTSB has also been included as it provides a concise review of the Access Corporation’s operations and delivery of programming on Public, Educational, and Governmental Access channels. We believe the reader will find it informative.

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<sup>1</sup> Each of the five Town’s Cable TV Licenses were assigned from Time Warner Cable to Charter Communications, Inc. in July 2015, with the consent of each Issuing Authority per the terms of the Licenses.

The CAC, in reviewing the current Cable Television License, identified sections of the License where specific language additions will provide improved readability and transparency, while other additions will add and strengthen protections for all non-provider parties, such as the Issuing Authority, the Town, the Access Corporation, and most importantly Subscribers and Users, including liquidated damages and clearer, stronger, and faster avenues for resolution of complaints and disputes.

The CAC, with an awareness of the timely, as well as basic, compliance with the current Cable Television License, as well being those who frequently help residents resolve their complaints when such residents have been unable to resolve their complaints on their own, has experienced a lack of cooperation and timely, direct, and content-specific communications with Charter Communications' personnel, including its governmental liaison. Such has been the working relationship with Charter Communication since shortly after their assumption of the Time Warner Cable Television license. The relationship is markedly different and a disappointment given the cooperative and cordial business relationship the CAC, and Issuing Authorities, enjoyed with Time Warner Cable.

Charter Communications ongoing failure to provide requested information as well as incorrectly implementing the License, particularly in the areas of tracking complaints and their resolution; repetitive billing issues, including the inability to have the correct zip code on the bills for residents whose mail is delivered to 01230 and service bills arriving after their payment due date; and an increasing tone of hostility and belligerence at regularly scheduled CAC quarterly meetings by Charter's government liaison is of concern. All of this has the CAC concerned about upcoming negotiations on the Renewal License and whether a good faith and timely effort will be made by Charter Communications' negotiating personnel.

The committee fully recognizes the difficulty in conducting negotiations with Charter / Spectrum as cable tv is in decline across the US....

- Five Town cable TV viewership (with corresponding funding for community TV) has been declining by 3% per year over the past 5 years. This industry trend will likely continue and may accelerate.
- According to a 2021 survey of consumers, more than seven in ten respondents reported **not subscribing to cable or satellite TV** because they had the possibility to access the content they wanted to watch online.
- Video streaming by demand is now the dominate home entertainment in the U.S.
- Comcast and Charter now offer lower cost internet TV (similar to Hulu) that can be customized competing by price and features with licensed cable TV without supporting the Five Town's community TV.
- Major wireless telecom companies are in the process of rolling out home 5G, which will likely cut into Charter / Spectrum's near monopoly on Five Town cable TV / broadband subscriber market in the next few years
- Until the Massachusetts Senate passes H.4045 (or similar), which would regulate and impose a fee on the commercial sale of streaming entertainment services to individuals and businesses in Massachusetts and level the playing field, PEG stations (and cities and towns) will struggle to maintain adequate funding.

The Five Town CAC is committed to work to the best of our abilities to negotiate the best possible renewal license I agreement for the residents of Southern Berkshire County under these difficult market dynamics.

## Ascertainment Introduction

*as·cer·tain·ment* [ˌasərˈtānmənt] NOUN - the process of finding something out for certain

Select Boards in the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge are responsible for granting and signing a cable TV license and, hence, are designated as the Issuing Authority. Since Massachusetts law limits the term of a license, each Issuing Authority must periodically review and renew (or not renew) licenses. Each of the five (5) Town licenses, which will be collectively negotiated as part of the upcoming Cable TV Renewal License negotiations, are identical except for certain Appendices containing information specific to each Town.

The Massachusetts Department of Telecommunications and Cable (DTC) oversees the Renewal License renewal process, as established under federal law and supplemented by DTC regulations.

Information regarding Massachusetts DTC and FCC cable TV regulations may be found at:

- Mass Department of Telecommunications and Cable: <https://www.mass.gov/orgs/departments-of-telecommunications-and-cable>
- Cable Television | Federal Communications Commission: <https://www.fcc.gov/>

By establishing a formal renewal process, Congress sought to protect a municipality's right to a cable TV system that is responsive to the needs and interests of the local community, while also seeking to protect cable TV operators, which have invested in infrastructure in a community, from an unfair denial of a Renewal License.

Based on FCC and Mass DTC regulations, the Five Town CAC is limited in what may be negotiated with Charter Communications for a Town cable TV license renewal.

### **What's Negotiable within a Cable TV Renewal License:**

- Town and community needs
- Town residents' input, service suggestions, consumer complaints, etc.
- Spectrum performance (or non-performance), unserved parts of the community, ideas to improve service, etc.
- License comparison with other MA Cable TV Licenses
- CTSB Capital and operational needs over next 10 years

### **What's Non-Negotiable within a Cable TV Renewal License:**

- Price of cable service and any added fees
- Programming

## **Trends in Domestic Cable TV and 5 Town Subscriber Base**

Cable TV reached its peak in the early 2010's and since then has been subject to changing consumers' personal tastes and major disruptions in the Cable TV market. Changing personal tastes include the continued development and demand by consumers – especially those under age 50 – for hand-held, portable, electronic devices that deliver every increasing access to information and provide increasing sophisticated optics and streaming options. Younger adults, ages 18-29 in particular, are

likely to avoid receiving cable or satellite cable, during the six years from 2015 – 2021, dropped by 31 percentage points to 34% in viewership. Similar although not as steep percentage declines are also found in other age groups studies, with a 27 percentage decline for ages 30-49, 14 percentage decline for ages 50-64 but only a 4 percentage point decline in the 65+ age group.<sup>2</sup> These statistics highlight the trend of U.S. adults watching cable or satellite TV in the future.

In addition to declines in the percentage of U.S. households receiving TV via cable or satellite, it is important to remember that the U.S. population increased during this same time. However, the industry itself has not remained stable during this time and Cable TV is being buffeted by changes that are requiring the industry to change to maintain its income streams, both subscriber and advertising revenues.

During this same timeframe, major Cable TV disruptors have included continued industry consolidation; newcomers, such as Disney and other media conglomerates; growth in app-based streaming, such on social media and other provider apps, and on demand services; increased attention to non-traditional audiences; the perceived requirement for increased production of home-grown, rather than provided, content; and shifting investments from traditional Cable TV plant to streaming content.

While it is far too early to sound the death keel for Cable TV, the industry faces many challenges including ways to reach and grow younger adult audiences. Providing streaming and on demand services is one way to do this, and for companies perceived to be traditional Cable TV providers this not only requires new content and marketing, but also new branding demands. They must also keep existing Cable TV customers as they continue to age and find themselves dismayed with more channels than they wish to deal with – many of which provide the same programming under 2 or more channel numbers, the inability to customize their Cable TV service (tier) to watch what they want to watch, and the ever increasing expense of maintaining Cable TV service.<sup>3</sup>

Translating these above trends to the Five Town Cable TV subscriber base, the number of subscribers each year as reported by Spectrum, has shown a noticeable decline. This information, combined with the results of the 5 Town Cable TV Satisfaction Survey and comments from Question 16, indicate “cord cutting” as a probable explanation for the erosion of the Cable TV subscriber base. “Cord cutters” are not ditching TV altogether, but shifting to lower cost on-line streaming options, such as Netflix and YouTube TV, or newer networks, such as Peacock, for live streaming access to Cable TV, broadcast networks, and new access options.

IBISWorld in a Market Research Article dated November 15, 2021<sup>4</sup> predicted U.S. Cable Networks for 2016 – 2021 would be challenged by changes in the viewing habits of consumers as well as the resulting advertisers demands to such changes.

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<sup>2</sup> Pew Research: <https://www.pewresearch.org/fact-tank/2021/03/17/cable-and-satellite-tv-use-has-dropped-dramatically-in-the-u-s-since-2015/#:~:text=The%20trends%20among%20different%20age%20groups%20are%20particularly,currentl%20get%20TV%20that%20way%2C%20down%2027%20points.>

<sup>3</sup> 5 Town Cable Survey p. 6; *ibid*; Cable TV Statistics for 2022: Stability and Change: <https://www.infinitydish.com/blog/latest-cable-tv-data-statistics/>

<sup>4</sup> [www.ibisworld.com/united-states/market-research-reports/cable-networks-industry/](https://www.ibisworld.com/united-states/market-research-reports/cable-networks-industry/)

The Five Town Cable TV subscriber base is in line with the Cable TV trends discussed above. The chart below details a decline of 3% per year for a cumulative five-year decrease ranging from 11.82% - 18.30% per Town for an average -decrease of 15.01%.

**The Five Town Cable Subscriber Base Erosion Since 2016**

	2016	2017	2018	2019	2020	2021	2022	2016-2020 Decrease	5 Yr. % Decrease
Lenox	1,690	2,055	2,063	1,666	1,559	1432	NA	258	15.27%
Great Barrington	2,087	2,190	2,191	1,906	1,861	1777	NA	310	14.85%
Lee	1,837	2,088	1,645	1,479	1,622	1563	NA	274	14.92%
Stockbridge	951	1,010	1,019	918	838	777	NA	174	18.30%
Sheffield	956	965	966	832	879	843	NA	113	11.82%
Total	7,521	8,308	6,801	6,801	6,759	6392		1129	15.01%

The Five Towns comprising the Issuing Authorities for the current Cable TV License Agreement are in Southern Berkshire County, Massachusetts, in the far western part of the state bordering CT, NY, and VT. Southern Berkshire County has lower income levels and an older population than the State in general, but higher property values than much of the county due to its proximity to several major metropolitan areas. The population density and the resulting cable density metric of “subscribers per square mile” is significantly less than most other towns in Central and Eastern Massachusetts making it problematic for more than one cable company to compete.

## Designated Market Area (DMA)

The market of a television station is currently established by its **Designated Market Area (DMA)** as defined by Nielsen and/or modified by the Federal Communications Commission (FCC). Berkshire County is assigned to the Albany, Schenectady, Troy, NY market, (#60 of 210 in U.S.) by reference to the Nielsen Station Index Directory (Annual Station Index) in combination with the United States Television Household Estimates (Household Estimates). The standard is archaic and predates cable TV to the time of broadcast TV. The Federal Communications Commission has concluded that Nielsen’s DMAs remain the best way of defining local TV markets, including citing online video as a way to resolve problems in so-called “orphan” counties such as Berkshire country served by a station or stations from another state. In survey comments, residents expressed frustration that the Albany based TV stations are not providing the Massachusetts state specific sports, news, and information about upcoming legislation that is necessary for an informed electorate. While it possible for the FCC to change the DMA of the Berkshires from NY to Massachusetts, the process is made, by design, extremely difficult and no simple task. Existing television broadcast stations in Albany, would not likely give up control within their existing DMA and the revenue stream that comes with it. The FCC has said, *“departing from the existing Nielsen DMA market determination system would create enormous disruptions in the **video programming industry** disproportionate to any benefit gained and would be unlikely to increase the amount of local programming.”*

When Congress passed the STELA (Satellite Television Extension and Localism Act) Reauthorization Act of 2014, it provided a means by which the FCC is able to add or delete communities from a commercial broadcast television station's local DMA. Before submitting a petition for change, the orphan county must be able to:

- 1) Demonstrate that the proposed modifications are both "technically and economically feasible." The petitioners would have to decide what channels they are seeking to add and would be tasked with demonstrating why their choice is the most appropriate.
- 2) Demonstrate support for the petition by satisfying factors outlined in the Reauthorization Act. The petitioners must be able to assemble information that can only be obtained by retaining experts in this field, securing evaluations of DMA areas, making inquiries and assessment of the extent to which the existing channels will resist the petition or that the requested channels support the petition, as well as hiring attorneys who have the expertise and experience practicing before the FCC.

The costs associated with the application process, retention of experts, generation of market data studies and reports to satisfy the conditions and issues that the Act imposes, and the hiring of experienced FCC attorneys to represent the petitioners would be significant.<sup>5</sup>

## **Importance of Public Access (PEG) Channels**

Pursuant to Section 611 of the Communications Act, local franchising, or Issuing Authorities may require cable operators to set aside channels for public, educational, or governmental ("PEG") use. The decision whether to require the cable operator to carry PEG channels is up to the local Issuing Authority. The Issuing Authority may require cable operators to provide services, facilities, or equipment for the use of PEG channels.<sup>6</sup> Each of the Five Towns party to this Renewal License process have Issuing Authorities that will continue to require PEG Access channels and specified funding.

Each of the three PEG Public Access channels has its own focus and purpose:

- The Public Access Channel is available for use by the public and administered by Community Television of the Southern Berkshires (CTSB), a third party designated by the Issuing Authority(s). The Public Access channel is free of editorial control and is a form of non-commercial mass media where people may create television programming content to be transmitted through Cable TV. Content revolves primarily around community interests as expressed and developed by individuals and nonprofit organizations.<sup>7</sup>

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<sup>5</sup> For more information re: media markets - [https://en.wikipedia.org/wiki/Media\\_market](https://en.wikipedia.org/wiki/Media_market) and [https://en.wikipedia.org/wiki/List\\_of\\_television\\_stations\\_in\\_North\\_America\\_by\\_media\\_market](https://en.wikipedia.org/wiki/List_of_television_stations_in_North_America_by_media_market)

<sup>6</sup> <https://www.fcc.gov/media/public-educational-and-governmental-access-channels-peg-channels>

<sup>7</sup> [en.wikipedia.org/wiki/Public-access\\_television#PEG-TV](https://en.wikipedia.org/wiki/Public-access_television#PEG-TV)

- The Educational access channel is used by educational institutions, primarily local schools, or school districts, for educational programming. Time on this channel is typically allocated among education providers by CTSB.
- The Governmental access channel is used for local government programming, such as Select Board meetings, public hearings, Annual or Special Town Meetings, and other meetings by key Town boards, committees, or commissions, or other governmental entities upon request by the Issuing Authority.

CTSB controls the recording and live and/or afterward viewing of these meetings.

## **Importance of CTSB to the Southern Berkshires**

CTSB is a 501(c)(3) membership organization formed to facilitate, encourage, and promote community involvement in the production of locally originated, non-commercial television and other media. The program content may be informative, educational, entertaining, or all three. CTSB serves the Towns of Lee, Lenox, Stockbridge, Great Barrington, and Sheffield. CTSB is responsible for all aspects of the PEG Access channels per the Cable TV License Agreement and will continue in this role in the Renewal License.<sup>8</sup>

CTSB has focused for several years in implementing effective responses to cable TV's ongoing trends and shifts in access by adding new technologies, expanding livestream programs, engaging the public through ongoing efforts, and attracting new members. They meet the goals of the PEG channels as defined by the FCC and have continued their community outreach and engagement as well as the platforms on which the public, within the five served Towns or anywhere, can view content. The three PEG Access channels are streamed in high definition on CTSB's website, but not on the PEG access channels due to Charter Communications transmission in standard definition (SD).

CTSB provides viewers the ability to search their program archives and view programs at their convenience, a service not available on Cable TV. This is particularly important as the PEG Access channel numbers were moved way up the channel lineup – to 1301, 1302, and 1303 – by Charter when they took assignment of the Cable TV License agreement from Time Warner Cable. Cable TV viewers were accustomed to PEG Access channels 16, 17, and 18. The Customer Satisfaction Survey shows much confusion among subscribers as to the location of the PEG Access Channels. In addition, no programming listings are being displayed on the Cable TV channel guide for PEG Access channel programming - such space is always black.

CTSB's on demand and streaming services have been growing. Spectrum currently downgrades the signal that CTSB produces (high definition) to standard definition, something that they no longer use for their commercial stations. The picture quality alone is enough to tip a viewer, if in possession of the required technology and aware of the option, to streaming.

Of concern to any Community TV / PEG provider is funding, a high percentage of which comes from various sections in the License Agreement. However, only those who use Cable TV services pay for the content and its delivery, no matter the way the programming is delivered to the user. Currently, there is no mechanism or regulation in FCC or Massachusetts State law requiring any content payment for on demand, streaming, or other methods of viewing PEG Access channels. In effect, the Cable TV subscribers are subsidizing non-subscribers' use of the programming. As Spectrum Cable TV

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<sup>8</sup> CTSB 2022 Annual Report: [ctsbtv.org/wp-content/uploads/2022/04/CTSBTV\\_Annual-Report\\_2022\\_Final-no-bleed.pdf](https://ctsbtv.org/wp-content/uploads/2022/04/CTSBTV_Annual-Report_2022_Final-no-bleed.pdf)

subscribers decline, funding of PEG Access channels is a serious threat to the survival of community based and delivered content.

Additional concerns related to the survival of community based content are the continued mergers of media companies, including newspaper, radio, and broadcasting companies. Such mergers may produce the same content across all markets -with an absence of local news, except possibly for sports. While Spectrum News has provided some Massachusetts-centric news, it does not meet the local news needs of the Five Towns.

The public sentiment is clear, as stated in two recent letters to The Berkshire Eagle, the major newspaper of Berkshire County. These letters are representative of those appearing on a regular basis in The Berkshire Eagle or The Berkshire Edge, an online publication. The full letters are not included and the letter from Mr. Hart has been edited for brevity:

- From John H. Hart, Stockbridge:  
*"CTSB provides an in-home service to those...unable to attend meetings ...important to our towns and the neighborhoods within them. CTSB attends government meetings with their video equipment, and broadcasts and archives what transpires ...so the viewing public can make informed decisions when they attend town meetings and/or vote on issues at the ballot box....*  
*COVID-19 ushered in the need for government to continue to operate with the need of feedback from the public with concerns about issues.... Enter ZOOM, administered until now by CTSB." 8/2/22 (Note: CTSB has been carrying ZOOM meetings on the appropriate PEG Channel.)*
- From Charles Kenny, Stockbridge, who self-identified as the chair of the Tri-Town Boards of Health:  
*"Seniors, full-time workers, parents of young children, and anyone with medical issues making them vulnerable to COVID have been able to participate in our local government because of the professional, high-quality recordings provided to us all by CTSB-tv. We all owe the station and its directors a great debt for keeping our democracy alive during the pandemic." 8/5/22*

These two letters capture what has been the topic of news articles, broadcasts, and public concerns. How does local news and journalism flourish, even survive, given industry trends and the continued rural nature of so many communities? There is also the need for continued transparency as well as awareness of what is going on locally and nationally. As the Washington Post notes: "Democracy dies in darkness". PEG channels proved their usefulness and possibly a whole new role for them during COVID-19, and, as the State makes funding available to municipalities to implement the technologies required to efficiently conduct meetings on such platforms as ZOOM, traditional Cable TV viewership may increase. It is important to note that CTSB is already video streaming many municipal ZOOM meetings.

CTSB currently circulates important information across many platforms, providing integrated communication services, which prove to be crucial, especially in communities, such as the Five Towns that make up the CAC, as all suffer from some lack of broadband connectivity, cell service, and local journalism. It is essential that baseline essential information be available to all on a non-discriminatory basis.

It is clear that federal and State agencies have not kept pace with PEG Access broadcasting needs, including funding. In addition, regulatory decisions that erode local control have negative consequences. The Cable Communications Policy Act of 1984 needs to be seriously updated to reflect industry trends and the consequences of tying PEG Channels and their funding needs to just the Cable TV subscriber base, which is shrinking each year. The streaming media services and their users are getting a free ride, while such service providers are reaping advertising money.

## Privacy

Spectrum collects an enormous amount of subscriber information from its Cable TV, broadband, voice and other services that they outline in their privacy policy. The information is “anatomized” and used to improve and customize services, compile a profile of users’ location and interests, deliver ads that fit those interests. Spectrum shares and uses third-parties to process your subscriber information data. Until privacy legislation and regulation catch up per

haps thru the FTC, most of us are left in the dark about what personal information is being used, how and by whom. Five Town subscribers are largely unaware or likely do not fully understand or may be confused about privacy because few have carefully read Spectrum’s privacy policy. Even when the policy is read, it can be confusing. For example, Spectrum’s privacy statement states *“your browser or device may include “Do Not Track” functionality. Our information collection and disclosure practices, and the choices that we provide, will continue to operate as described in this Privacy Policy, whether or not a Do Not Track signal is received”*. So much for respecting a subscriber’s “Do Not Track” choice. Spectrum also states *“We do not sell or otherwise share information that “personally identifies” our customers, including their Internet Usage Information, Video Usage Information, or Call Detail Information”*, but unfortunately, the third parties they provide the information such as your IP address, advertiser IDs and other persistent identifiers may have the potential to personally identify you.

Data collection should be on everyone’s radar screen. Recently, the FTC sues Kochava (3<sup>rd</sup> party data broker) for selling data that tracks people at reproductive health clinics, places of worship, and other sensitive locations from hundreds of millions of mobile devices.

<https://www.ftc.gov/news-events/news/press-releases/2022/08/ftc-sues-kochava-selling-data-tracks-people-reproductive-health-clinics-places-worship-other>

Five Town subscribers can better manage how Spectrum sends certain marketing and advertising messages by an on-line “opt out” form if you do not want to be contacted by phone, email, direct mail, or certain marketing messages that may be based on your current Spectrum services. You can also opt out by phone, by calling a Spectrum customer representative at 1-855-75-SPECTRUM.

You can and should learn more about Spectrum’s privacy policy on their website at:

<https://www.spectrum.com/policies/your-privacy-rights>

On August 11, 2022, the Federal Trade Commission (FTC) announced proposed rulemaking pertaining to “commercial surveillance and lax data security.” The focus of the potential rulemaking is consumer privacy and data security. The FTC states in its notice that its “extensive enforcement and policy work over the last couple of decades on consumer data privacy and security have raised important questions about the prevalence of harmful commercial surveillance and lax data security

practices” and that this experience has suggested enforcement alone without rulemaking is not sufficient. A very informative FTC fact sheet of this surveillance can be found at:

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/Commercial%20Surveillance%20and%20Data%20Security%20Rulemaking%20Fact%20Sheet\\_1.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Commercial%20Surveillance%20and%20Data%20Security%20Rulemaking%20Fact%20Sheet_1.pdf)

## **Future Funding for Public Access (PEG) Channels**

The State of Massachusetts General Court has discussed how to address this funding shortfall as it has been playing out in real time for several recent sessions. Most recently in the 192<sup>nd</sup> General Court this matter is the subject of House No. 4045 (H.4045), *An Act relative to digital entertainment on public rights of way* and has advanced the concept of a “Streaming Entertainment Fund”.

As noted in the CTBS Annual Report for 2022:

*“The bill would require streaming services to pay 5% of all revenue generated from sales in Massachusetts for the use of the “public right of way” infrastructure. The idea behind the fee is similar to the current policy requiring cable companies...to pay a “franchise fee” to the cities and towns they operate in for the use of the physical cables. Funds generated from the fee would be collected in a new “Streaming Entertainment Fund”, which would be doled out to cities and towns based on population, with two-fifths earmarked for community media centers.”*

Briefly expanding further, H. 4045 has several key components:

- A 5% Fee On Streaming Providers’ Gross Revenue on any streaming entertainment service operator’s gross revenues derived from the sale, lease, or monetization of streaming entertainment to individuals and businesses in Massachusetts.
- A “streaming entertainment operator” is defined as “any company, entity, or organization that provides streaming entertainment services and delivers such entertainment via digital infrastructure.”
- A “streaming entertainment service” is defined as any paid service with more than \$250,000 in gross revenues from users in Massachusetts that sells access to audio, video, or computer-generated or computer-augmented entertainment and delivers such entertainment via digital infrastructure. Accordingly, streaming services that earn less than \$250,000 in gross revenues in Massachusetts would be exempt from the fee.
- Fees paid by streaming entertainment operators will be held in a Streaming Entertainment Fund, which will distribute money bi-annually according to the following formula: One-fifth of the fund will be distributed to the Commonwealth General Fund; Two-fifths will be distributed to municipalities and local governments and further allocated proportionally based upon population; and (iii) Two-fifths will be distributed to community media centers and further allocated proportionally based upon population.

H.4045 was not passed in the 192<sup>nd</sup> General Court before its July 31, 2022 recess and will have to be refiled in the 193<sup>rd</sup> General Court session begins in 2023, unless passed in informal session. As expected, streaming services have objected to the bill citing that they do not use the same public infrastructure Cable TV does.

Another potential future funding issue for community TV is the FCC’s “Third Order” which expands the class of “in-kind” services the value of which are to be considered “franchise fees” and

which can therefore reduce the level of cash payments to Community TV stations. On May 26, 2021, a Sixth Circuit panel rejected challenges by numerous municipalities to a 2019 order by the Federal Communications Commission (FCC) that most “in kind” (non-cash) contributions required by cable franchisees qualify as franchise fees subject to the federal Cable Act’s 5% cap. The order is under court appeal.

Without securing adequate new funding for all Community Access Television, it is hard to see how PEG Access channels will survive in their current form. The Five Town Cable Advisory Committee will be supporting and lobbying for passage of the bill filed to replace H.4045 in the 193<sup>rd</sup> General Court.

## **The Five Town Cable Advisory Committee (CAC)**

The Five Town Cable Advisory Committee is a public body comprised of up to three (3) representatives appointed by the Select Board in each of the five (5) Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge. The Select Board in each of these Five Towns is also each Town's Issuing Authority. Each Town has a single vote at each CAC meeting, no matter how many representatives are present from a single Town. The CAC is led by a chair (currently Linda Miller), elected by a majority of the CAC, or by a minimum of three (3) of five (5) Towns. CAC meetings are subject the MA Open Meeting Law and held quarterly on a rotating schedule rotated among Five Towns, unless otherwise needed.

The CAC's authority is vested by each Town's Issuing Authority and included in each Town's Cable TV License Agreement as stated below:

*"Section 7.4 ADMINISTRATION OF THE CABLE SYSTEM, CABLE ADVISORY COMMITTEE, AND REGIONAL CABLE ADVISORY COMMITTEE*

- (a) At the discretion of the Issuing Authority, the Cable Advisory Committee may be vested by the Issuing Authority with such power and authority as may lawfully be delegated, including participation in the regional advisory committee of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge ("Five Town Cable Advisory Committee"). However, only the Board of Selectmen may grant a License; agree to amend a License; grant or deny consent to a transfer of a License; find the Licensee in breach of the License; or revoke the License.*
- (b) The Licensee shall meet with the Issuing Authority or the Cable Advisory Committee or the Five Town Cable Advisory Committee to review the Licensee's compliance to the License as well and to review other issues related to this License. Such meetings may be requested by the Issuing Authority, the Cable Advisory Committee, the Five Town Cable Advisory Committee, or the Licensee."*

In performing its responsibilities, the CAC:

- Informs and educates the public of the five Town's it represents about Cable TV services and the contents of the License Agreement, including what is and is not included;
- Assesses the cable TV needs of these communities and recommends License Agreement changes;
- Conducts regularly scheduled quarterly meetings, and others as needed, with Licensee's representative(s) to discuss matters of mutual interest;
- Advocates for Cable TV subscribers, users, and potential subscribers;
- Reports to Issuing Authority on Licensee's compliance with the License Agreement;
- Meets quarterly with the Access Corporation's (CTSB) management to review performance, any community programming issues, and upcoming plans
- Reviews all reports filed by the Licensee;
- Reviews Licensee's response to complaints;

- Responds to residents' questions regarding the Cable TV system and the delivery of all customer services;
- Provides education, training, and guidance to newly licensed Cable TV communities, per their requests; and
- Keeps abreast of cable TV industry trends and actions by other MA municipalities regarding cable TV licensing.

## **Role of the Five Town Cable Advisory Committee (CAC)**

As part of the Renewal License process, the CAC, in its capacity as the Charter Communications Cable Negotiating Committee, is charged with conducting a formal review and ascertainment of the Five Town's municipal and residents' Cable TV needs and services relative to those received under the current Cable TV License. The current Cable TV License Agreements are due to expire on February 28th, 2023.

The CAC has been ascertaining the needs of the five communities through different avenues and processes, including, but not limited to, public hearings; an extensive subscriber and residential survey; meetings with relevant Town department heads and Community Television of the Southern Berkshires (CTSB); review of Spectrum performance and other provided measurements; and other feedback from the community, all of which have allowed the CAC to do a review and analysis of performance of the cable TV operator.

The CAC will summarize and report their ascertainment Phase One findings and recommendations to the respective Town's Select Boards, as well as has applied this information to the development of the proposed Renewal License provided to the Cable TV provider, Charter Communications, Inc.

All these actions support the ultimate goal of the Charter Communications Cable Negotiating Committee, which is, through its comprehensive review and in-depth analysis of the community's Cable TV needs, to negotiate a Cable TV Renewal License Agreement that meets as many of the identified community needs as possible.

## **Massachusetts Cable TV License Renewal Process**

The Massachusetts Cable TV License Renewal process follows the framework set forth by federal law providing a 36-month period in which to conduct license renewal proceedings; this period is often referred to as the "Renewal Window". The Issuing Authority may commence the formal renewal process on its own initiative and must inform the cable TV operator that it has done so. Massachusetts Department of Telecommunication and Cable ("the Department") has interpreted federal law as requiring the Issuing Authority(ies) to complete ascertainment no later than six months prior to the current license expiration date, which in the case of this Cable TV License Agreement is August 28, 2022. The Department provides a comprehensive guide for renewals: [mass.gov/media/5451/download](https://www.mass.gov/media/5451/download).

The License Renewal process consists of two phases:

- **Phase One:** Review Cable TV operator's performance under the current License Agreement, while ascertaining the needs and interests of the served communities. "Ascertainment" is usually between 24-30 months in duration. This phase formally begins with a Renewal Letter issued by the Licensee or "626 letter".

The steps involved in Phase One are:

- Hold a public hearing
- Conduct a municipality-wide survey
- Meet with community organizations such as schools, senior citizen centers, and police and fire services to determine their proposed needs
- Review the current license held by the cable TV operator in the municipality to determine, for example, which terms and conditions have been particularly beneficial to the community
- Review the cable operator's financial forms (Forms 200 and 400)
- Review consumer complaint records, including Form 500, and municipal records
- Obtain and review a map of the service area, often referred to as the strand map, to determine, in part, whether there are unserved parts of the community
- Tour the cable operator's technical facilities (i.e., headend) and PEG Access studio
- Review licenses granted by other communities in Massachusetts. (Many have been filed electronically and are available on the Department's web site.)

In addition to the steps outlined in Phase One, the Five Town Advisory Committee will provide the Ascertainment document to each of the five Issuing Authorities, Charter Communications, Inc. and the Department and make it available to the public through the five Issuing Authorities' respective websites, as well as hardcopies at each Town's Library, Senior Center, and Town Clerk's office. The report, which you are reading now, also includes a proposed Renewal License from which to begin renewal license negotiations.

- **Phase Two:** Requires the application of the results of Phase One to the review of the Cable TV operator's Renewal License - proposal. This phase formally begins when the Cable TV operator submits its proposal on the Department Form 100, often with supplemental information.

The steps involved in Phase Two are as follows and will commence upon receipt of the Charter Communications' proposal and will be completed by each Issuing Authority in conjunction with the CAC:

- Provide prompt public notice that the cable operator has submitted a renewal license proposal;
- During the four-month period that begins upon the receipt of the proposal, renew the franchise, or issue a preliminary assessment that the franchise should not be renewed; and
- At the request of the cable operator or on its own, commence an administrative proceeding to consider whether:
  - The cable operator has substantially complied with the material terms of the existing franchise and with applicable law;

- The quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the cable system, has been reasonable in light of community needs;
- The cable operator has the legal, financial, and technical ability to provide the services, facilities, and equipment as set forth in the cable operator's proposal; and
- The cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

## **Phase One Implementation**

The CAC laid out the following Phase One Implementation Plan:

- By June 14<sup>th</sup>, 2022: Conduct a public meeting with the Spectrum's representative and Five Town Cable Advisory Committee at which the License Renewal process will be reviewed.
- By June 20<sup>th</sup>, 2022. Complete a paper and on-line cable TV survey open to residents of all Five Towns in the License Renewal process.
- By July 15, 2022: Post cable TV survey results on all Five Town websites.
- By August 14, 2022: complete draft ascertainment proposal document
- By August 30<sup>th</sup>, send letter to the Five Towns / Issuing Authorities notifying them of the CAC progress on this matter including the completion of the ascertainment being complete. Include Phase Two preliminary schedule for Renewal License negotiation pending response and proposal from Charter Communications. Individual CAC Town representatives, or the entire CAC, will make themselves available for Town questions.
- By August 30<sup>th</sup>, 2022: complete review of the CAC's License Renew Proposal by legal counsel; consider counsel's review of Ascertainment document.
- By September 1<sup>st</sup>, 2022: Release the Ascertainment document by email and certified mail including a proposed Renewal License to Charter Communications, Inc.. A formal response within thirty days will be requested as recommended by Mass DTC.. Copies will be sent to all relevant parties; documents will be posted to the website of the Five Towns. A press release will be sent to Berkshire Eagle and Berkshire Edge for immediate release. (This meets the legal requirements for the Issuing Authorities to complete ascertainment no later than six months prior to the current license expiration date.
- Begin implementation of Phase Two.

Additional implementation information on Phase One activities is provided below.

## **Hold a public hearing**

All quarterly Five Town CAC meetings are posted in advanced at each of the Town's websites in compliance with the MA Open Meeting Law; Spectrum's representative receives notice, and the public is invited and encouraged to participate. The meetings are recorded and televised by CTSB and available afterwards through web streaming at CTSB.org. Residents at each meeting are given an

opportunity to speak to CAC members as well as Spectrum representatives. The next quarterly meeting will be held on Tuesday, September 13, 2022. Location will be posted on all Town websites.

After Spectrum submits a proposal to the Five Town CAC, the CAC will schedule a public hearing inviting the public to discuss the pros and cons of Charter Communications' Renewal License proposal with the CAC as to whether:

- Charter Communications has substantially complied with the material terms of the existing franchise and with applicable law;
- The quality of Spectrum's service, including signal quality, responds to consumer complaints and billing practices, but without regard to the mix or quality of cable TV services or other services provided over the cable system, has been reasonable in light of community needs;
- Charter Communications has the legal, financial, and technical ability to provide the services, facilities, and equipment as set forth in the cable operator's proposal; and
- Charter Communications' proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

At this same meeting, the CAC will review its ascertainment process and encourage public comment on the proposed Cable TV Renewal License.

### **Conduct a Five Town-wide Cable TV Subscriber Survey**

State and federal laws protect a municipality's right to assess the cable operator's past performance and determine the future needs and interests of the communities. To that end, the Five Town Cable Advisory Committee conducted a survey of cable subscribers using two different formats to reach the widest possible audience.

- Paper surveys and collection boxes were placed at each of the Four Town's Town Halls, Libraries, and post offices (all but Sheffield, which did not place them in the Post Office but at its Senior Center in addition to the other mentioned locations) from Feb. 1<sup>st</sup> - May 7<sup>th</sup>, 2022. A PDF format was also posted to Town websites for subscribers to print at home and then either mail or drop off at various locations.
- On-line surveys (thru SurveyMonkey via the Town of Lee's license) were posted to each the Five Town websites between March 18<sup>th</sup> and May 7<sup>th</sup>, 2022.
- The cable TV survey availability was announced at the CAC's March 8, 2022 meeting and one or more Select Board meetings and through email blasts of one or more of the Towns.

A total of 464 surveys were collected. There is a high degree of correlation between the paper and on-line survey results. About 24% of respondents self-identified as current non-subscribers of cable TV services (unfortunately the survey did not ask if they had subscribed in the past) and over 94% self-identified as current Spectrum internet users.

Statistically, given the large number of surveys collected and a total of 6,392 Spectrum / Charter subscribers, the confidence level in the survey is over 95% with a margin of error of +/- 4.38%.

The Survey, which follows in its entirety, asked sixteen straight-forward questions to gather information on:

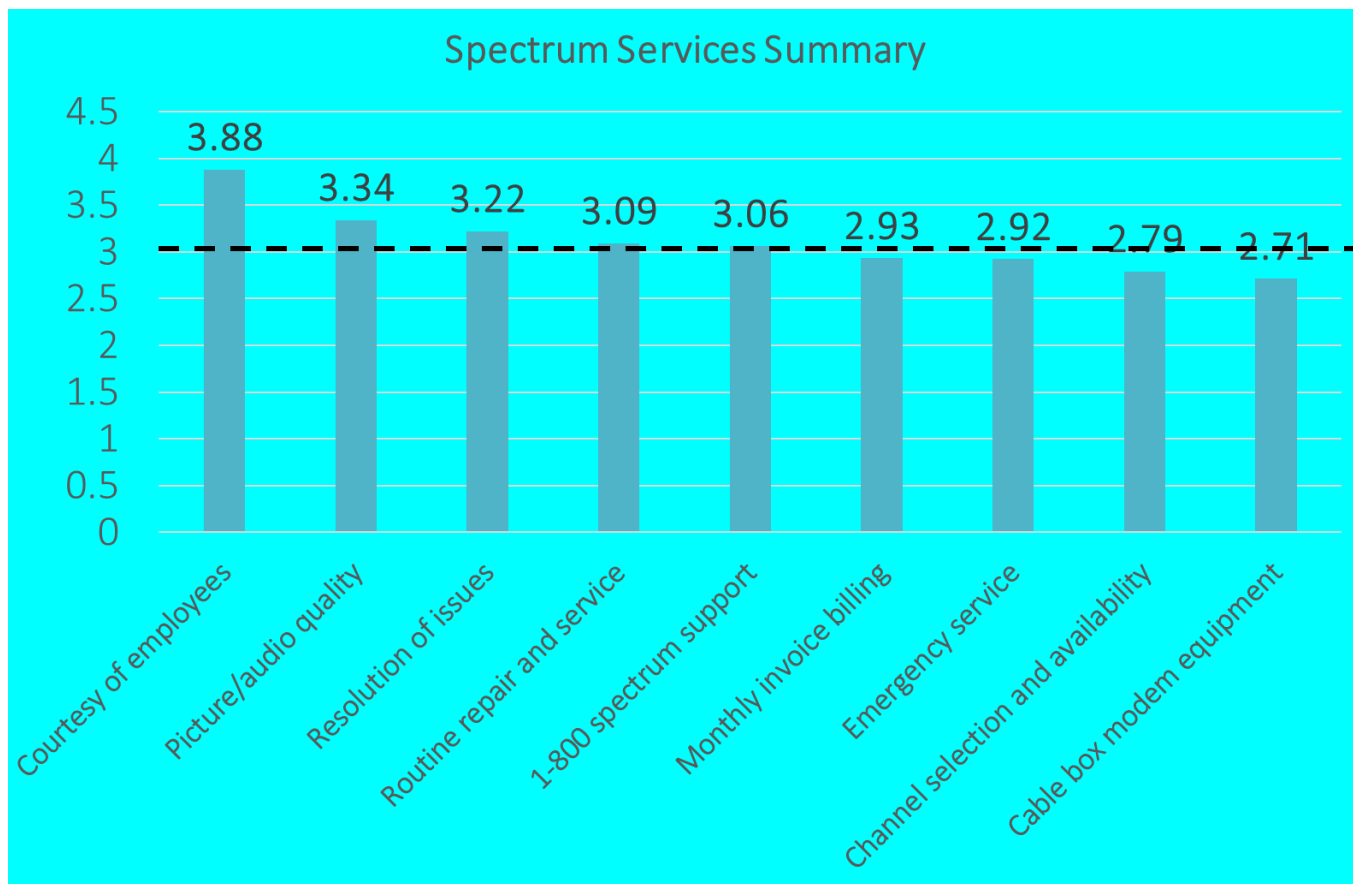
- Demographics
- Overall viewing habits
- Choice of Spectrum services, especially Cable TV services
- Program choices, including opinions on “a la carte” channel selection and tier selection
- Ratings on Spectrum service including:
  - monthly invoice billing
  - routine repair and service
  - emergency service
  - courtesy of employees
  - resolution of issues
  - picture/audio quality
  - channel selection and availability
  - and cable box modem equipment
- Streaming habits
- CTSB, including:
  - viewing
  - viewing choices, and frequency of same
  - awareness of channel placement and CTSB’s website
- Any other comments respondents wished to add

When given the opportunity to add additional comments, 286 written comments were received.

In general, the committee found these common themes in these comments:

- Residents would prefer “a la carte” customizable programming
- Cable TV is too expensive with too many rate increases
- Would appreciate special senior pricing
- Would strongly prefer Massachusetts (not New York) stations
- interest in an alternative to Spectrum / Charter

Questions related to the range of Spectrum services yielded the following result:



Spectrum's service level for the following categories on a scale from 1 (extremely dissatisfied) to 5 (extremely satisfied).

The complete Five Town Cable TV Subscriber Survey and results follow and may also be found at: <https://www.townoflenox.com/home/news/consolidated-five-town-cable-advisory-survey-results>

## Meet with community organizations, such as schools, senior citizen centers, and police and fire services, to determine their proposed needs

The existing Five Town licenses, the Licensee:

*“Shall provide, free of charge, a Standard Installation (250 feet) and Basic Cable Service to all public libraries; police and fire stations; Town Hall; Senior Center; Non-Profit Municipally-owned Community Centers Town Highway Garages and public buildings as designated in writing by the Issuing Authority per MGL c. 166a, s.5(e). Such locations receiving free basic cable service as of the Effective Date will continue to receive it, regardless of the length of the drop”.*

In conversations with community organizations from all Five Towns, the committee has found that some public buildings are not currently receiving Basic Cable TV as outlined in the respective Cable TV License agreements, as reported below. The committee is working to resolve these issues.

### Town of Lenox

The committee found that Basic Cable TV was not installed in either the library or the Lenox Community Center / Senior Center and is the process of requesting this service.

Position	Phone	Email / Contact Info	Still being used?	Any Issues With Current Cable TV Service?	Recommended Changes (if any)
Library Director	(413) 637-0197 ext. 121	<a href="mailto:koneil@lenoxlib.org">koneil@lenoxlib.org</a>	No	Yes	Yes
Chief of Police	413-637-2346	<a href="mailto:lenoxchief@townoflenox.com">lenoxchief@townoflenox.com</a>	Yes	No	No
Chief	(413) 637-2347	<a href="mailto:cobrien@townoflenox.com">cobrien@townoflenox.com</a>	Yes	No	No
Town Manager	(413) 637-5500 ext.	<a href="mailto:cketchen@townoflenox.com">cketchen@townoflenox.com</a>			
Assistant Director	(413) 637-5535	Same as Darlene's	No		TBD
Director	(413) 637-5530	<a href="#">Contact Darlene McCauley   Lenox, MA (townoflenox.com)</a>	No		TBD
<a href="#">Contact William J. Gop   Lenox</a>	(413) 637-5525		Yes	No	No
"					No
Superintendent of Schools	(413) 637-5550	No email contact			
Chairperson		<a href="#">Contact Robert Vaughan   Lenox, MA (townoflenox.com)</a>	No		

### Town of Sheffield

The committee found that Basic Cable TV was not installed in the fire department and is the process of requesting this service

Building	Responsibility	Position	Phone	Email / Contact Info	Still being used?	Any Issues With Current Cable TV Service?	Recommended Changes (if any)
Bushnell-Sage Library	Deena Caswell	<a href="#">Library Director</a>	229.7005	dcaswell@cwmars.org	No	Yes	TBD
Police	Eric Munson III	<a href="#">Chief of Police</a>	229.8522	emunson@sheffieldpd.com	Yes	No	No
Sheffield Volunteer Fire Department	Kaileen Wolfe	<a href="#">Volunteer firefighter</a>	229.7033	krwolfe.kw@gmail.com	No	Yes	Yes
Town Hall	Rhonda LaBombard	<a href="#">Town Administrator</a>	229.7000	rlabombard@sheffieldma.gov	No	No	No
			x152				
Senior Center	Kathie Loring	<a href="#">Executive Director</a>	229.7037	kloring@sheffieldma.gov	No	Yes	Yes
<a href="#">SBRSD – Southern Berkshire Regional School District</a>	Chris Thompson	Technology Director	248.0767	cthompson@sbrsd.org	No	Yes	<a href="#">Yes</a>

## Town of Stockbridge

The committee found that Basic Cable TV was not installed in the Stockbridge Senior Center and is the process of requesting this service. In addition, the committee found the cable TV supplied to the Police Dept. was currently being paid by a non-profit police support group. The town manager was notified that the service should be provided by Spectrum at no additional cost to the town.

Building / Area	Responsibility	Position	Phone	Email / Contact Info	Still being used?	Any Issues With Current Cable TV Service?	Recommended Changes (if any)
Fire Dept.	Vincent Garofoli	Chief	413-298-4866	firechief@stockbridge-ma.gov	Yes	No	No
Police Dept.	Darrell Fennelly	Chief	413-298-4179	policechief@stockbridge-ma.gov	Yes	Yes	Contact Mike
Town DPW	Hugh Page	Highway Superintendent	413-298-5506	highway@stockbridge-ma.gov	?	?	?
Library	Wendy Pearson	Library Director	(413) 298-5501	<a href="mailto:wpearson@cwmar.org">wpearson@cwmar.org</a>	No	No	No
COUNCIL ON AGING – STOCKBRIDGE SENIOR CENTER	Diane Sheridan / Theresa Zanetti	Chair	413-298-4170 ext 250	coa@stockbridge-ma.gov	No	Yes	Yes
Town Hall	Michael Canales	Town Administrator	413-298-4170 ext 100	TownAdministrator@stockbridge-ma.gov			

Information from the Town of Lee and the Town of Great Barrington will be made available when the data is received.

**Review the current license held by the cable TV operator in the municipality to determine, for example, which terms and conditions have been particularly beneficial to the community.**

The committee reviewed the current Cable TV License Agreement in order to meet this requirement. It is important to note that the Cable TV License negotiated in 2013 was a merger of two separate Time Warner Cable TV contracts into one unified contract. Four of the current Five Towns, Great Barrington, Lee, Lenox, and Stockbridge were under the same license and Sheffield was under a different license. It made sense to all the Towns and Time Warner Cable to negotiate a single Renewal License. Prior to the 2013 Renewal License, many of the Towns had gone through a list of Cable TV companies, which had been subsequently acquired by other Cable TV companies until Time Warner Cable TV was the dominant carrier in the area. The 2013 Renewal License, which is the subject of this Renewal License process, was primarily based a 2003 Cable TV License from Century Berkshire Cable Co..

Given the sparse population of Berkshire County, the distance between residences, low growth prospects, the cost-of-service provision, and current industry trends, it is highly doubtful the area will ever see competition for Cable TV Licensing. Through no fault of its own, Charter Communications faces no traditional competition in Berkshire County. All five Town Cable TV Licenses were assigned to Charter Communications when they acquired Time Warner Cable TV in 2005.

Following detailed reviews of the current Cable TV License for terms and conditions that have been particularly beneficial to the community, it was noted such conditions were few given Charter Communications' implementation of the Cable TV License. It was determined their beneficial nature, as well as many other terms and conditions, needed to be improved and significantly strengthened to ensure the benefit of the Renewal License to the communities of each of the Five Towns.

It is the committee's opinion the current license agreement includes the following terms and conditions that have been particularly beneficial to the communities:

- Standard Installation and Basic Cable Service at no cost to public libraries; police and fire stations; Town Halls; Senior Centers; Non-Profit Municipally owned Community Centers; Town Highway Garages; and other public buildings
- Standard Installation and Basic Cable Service at no cost to all public schools, including two Regional School Districts as well as the requirement that Licensee install additional Cable TV outlets in the public schools and Regional School Districts on an as needed basis as mutually agreed upon with the Issuing Authority(ies)
- Emergency Alert System ("EAS") in accordance with FCC regulations
- Public access to programming on the three PEG Access channels
- Annual payment to the Town's to fund CTSB for PEG Access purposes equal to five percent (5%) of the Licensee's Gross Annual Revenues
- A onetime payment of \$212,000 payment in 2013 used for PEG Capital Needs to the Five Towns, which was separate from the annual 5% payment
- A modest (\$.50) ("License Fee") per Town subscriber per year payable to the Town
- Customer service office's location in Lee, MA

The committee also reviewed the result of the Survey in which respondents favorably rated or commented on terms and conditions of the Cable TV License. These were:

- Somewhat reliable TV and broadband network.
- Spectrum quick to repair downed lines from storm damage and service interruptions
- Web notifications on service outage and estimated time to repair are helpful

- Spectrum's on-line billing to credit cards
- Ability to save by bundling internet, Cable TV, and phone
- Local Spectrum customer service office in Lee

Also reviewed were the result of the Survey in which respondents unfavorably rated or negatively commented on terms and conditions of the Cable TV License. These were:

- Charter Communications' reluctance to provide lower cost options when subscriber locked into a high cost premium programming package
- Lack of any meaningful competition in the 5 Town area for provision of Cable TV
- Introductory, teaser rates as well as arbitrary rate increases that exceed the Cost of Living
- Fees, taxes, rental costs in general
- TV video interruptions and freezing, glitches, and video and sound being out of synch.
- Dropped channels
- Lack of Massachusetts based network channels, news, legislative, and sports coverage. Examples included Red Sox, Patriots, and Bruins' broadcasting
- Massive gaps in channel coverage, redundant channel programming
- Paper billing in general, including recent zip code issue, late invoices, and too quick of service cancellation for non-payment
- 1-800 Spectrum in general
- Ongoing service issues
- Inaccessibility of CTSB channel assignments 1301, 1302 and 1303
- Poor CTSB TV video quality; though all PEG Channels are produced and recorded in HD then downgraded by Spectrum to standard definition

### **Review the cable operator's financial forms (CTV Forms 200 and 400)**

The committee has reviewed Charter Communication submitted Forms 200 and 400. These were provided on 4/27/2022 showing the CTV Form 200 for the year ending 12/31/21 and the CTV Form 200 for the same year ending. The committee has no comments on either of these forms other than to note that Total Net Assets increased by \$19.6 million dollars, of which an increase of \$19.9 million dollars is derived from subscriber devices.

### **Review consumer complaint records, including CTV Form 500 and municipal records**

Members of the committee were shocked to find upon review of Charter Communications' CTV Form 500 for 2020 and 2021 that they showed the following information, which is in direct contradiction to subscriber survey results, subscriber's written comments, and CAC member's personal experiences in assisting subscribers who have been unable to resolve their complaints.

		Year 2020					Year 2021				
Town		Complaints	Average Resolution Time	Resolved to the satisfaction of both parties	Resolved, customer dissatisfied	Not resolved	Complaints	Average Resolution Time	Resolved to the satisfaction of both parties	Resolved, customer dissatisfied	Not resolved
Gt. Barrington	Billing	3	4-7 Days	3	0	0	3	4-7 Days	3	0	0
	Customer Service	3	4-7 Days	3	0	0	1	4-7 Days	1	0	0
	Reception	1	4-7 Days	1	0	0	1	4-7 Days	1	0	0
Lee	Billing	2	4-7 Days	2	0	0	2	4-7 Days	2	0	0
	Customer Service	1	4-7 Days	1	0	0	0	4-7 Days	0	0	0
	Reception						0		0		
Lenox	Billing	1	4-7 Days	1	0	0	1	4-7 Days	1	0	0
	Customer Service	7	4-7 Days	7	0	0	7	4-7 Days	7	0	0
	Reception	0	0	0	0	0	0	0	0	0	0
Sheffield	Billing	1	4-7 Days	1			0	4-7 Days	0		
	Customer Service						1		1		
	Reception						1		1		
Stockbridge	Billing	4	4-7 Days	4	0	0	1	4-7 Days	1	0	0
	Customer Service	1	4-7 Days	1	0	0	3	4-7 Days	3	0	0
	Reception						0		0		
		24	0	24	0	0	21	0	21	0	0

Written survey comments from subscribers were indicative.

- *“We would like other options. Service recently has been fine, but we've been through 4 -6 cable boxes and 2 modems. Each failure brings a repairman who knows PRECISELY how to fix the problem and then, there is failure again.”*
- *“Internet keeps going out and not as fast as they say. Keeps dropping you off. Cable boxes are old and keep needing to be rebooted”*
- *“Internet service is good. TV service is the worst I have ever experienced. At over \$250/month I should not need to reboot my modem television boxes three times a week. Verizon Fios and Comcast are vastly better services.”*

When several members of the CAC discussed this issue of connector boxes with the local Spectrum store clerk at Spectrum’s customer service location, she said the Spectrum store replaces 2-3 such devices PER WEEK due to subscriber complaints. However, she noted the vast majority of such replacement boxes are mailed directly to the subscriber’s home on the 1-800 Spectrum service representatives recommendations following a subscriber’s reception complaint being received or at the request of a local service technician after a home trouble call. The area’s Spectrum service manager, during the CAC’s June 2022 quarterly public meeting did not dispute the replacement of “hundreds” of cable boxes per year”. He said that such numbers are “routine” given the 6,392 subscribers in our respective five town area.

The issue at hand for the committee is that Charter Communications’ Form 500 reflects virtually no reception complaints for the past 2 years, as shown above for 2020 and 2021.

The current Five Town License Agreements define a complaint as:

*“Any customer inquiry regarding picture quality, service requests, other technical matters or billing”*

which is consistent with the Massachusetts DTC Department’s Form 500 Adoption Order 1999 defines a complaint as:

*“Any written or verbal contact with a cable operator in connection with a subscription in which a person expresses dissatisfaction with an act, omission, product or service that is (1) within the operator’s control, and (2) requires a corrective measure on the part of the operator”.*

Unfortunately, the Five Town’s Charter / Spectrum area representative has been less than forthcoming and evasive in inquiries regarding their record keeping on complaints and subscriber equipment complaints, telling the CAC at a public meeting that Charter / Spectrum only replaces the boxes “when a customer asks for one”. The CAC found the representative’s multiple responses to questions on how subscriber complaints were shown to be improperly recorded as willful ignorance. Charter / Spectrum is replacing hundreds of cable boxes following customer complaints and not listing any of these complaints in their annual Form 500 filings per our license agreement and the MA DTC Form 500 guidance. The Five Town CAC has elevated this MA DTC and license compliance issue to the Mass Department of Telecommunications and Cable.

It’s the CAC’s opinion that Charter Communications / Spectrum:

- 1) Is in violation of the Department’s Form 500 Adoption Order 1999 and the current Cable TV License agreements by filing inaccurate annual Form 500, which annually have grossly underreported the true tally of subscriber complaints;
- 2) In light of Charter’s / Spectrum misleading and inaccurate Form 500 filing, the CAC has been unable to properly assess the cable operator’s past performance as part of our Ascertainment process; and
- 3) In the proposed Renewal License, and any proposal received from Charter Communications, the CAC will insist on an increase of performance bond, inclusion of liquidated damages, and other license language additions to address the gross and continued under-reporting of subscriber complaints.

### **Obtain and review a map of the service area-to determine, in part, whether there are unserved parts of the community**

Members of the committee have reviewed recently submitted strand maps in the Five Town Area and in general found that the vast majority of the Five Town area have cable TV service. Each Town and Issuing Authority will address the small number of areas without service in their respective Town, as the CAC does not anticipate or expect Charter Communications to build out its network other than by the terms and conditions of the current license and proposed Renewal License. Issuing Authority(ies) may seek to do so through ARPA funds or potential federal and State grants.

### **Tour the cable operator’s technical facilities (i.e., headend) and PEG Access studio**

Members of the CAC have visited Spectrum’s customer service office in Lee, 20 Silver Street, on several occasions. The last formal meeting conducted at this location, which also serves as the headend location, was on April 7, 2020 to review detailed maintenance and outage logs, strand maps, as well as financial forms with Spectrum’s representatives. Also discussed was the required technical infrastructure and costs required to broadcast all three PEG Access channels in HD TV from CTSB’s studio.

Members of the CAC have also been to CTSB’s PEG Access studio on many occasions and have a standing invitation to drop in at any time during normal business hours for a tour of the facility located at 40 Limestone (Route 102), Lee.

## Review licenses granted by other Massachusetts municipalities

Massachusetts DTC web site lists 351 municipalities in Massachusetts, of which 193 municipalities have one Cable TV licensee provider, 106 have two providers, and 14 have three providers. The population per square mile and the location of a municipality adjacent to a large urban area, such as Boston, equates favorably to the number of providers.

The number of licenses by provider documented by the Department is as follows:

Comcast	240
Verizon	114
Charter	70
RCN	19
Cox	1
Town Provider	3
No Cable	39

Charter Communications Cable TV licenses fall primarily in Western Massachusetts, west of Worcester.

Based on our research, it's the committee's assessment that it's highly unlikely Southern Berkshire County's economic base could support more than one traditional Cable TV provider. However, given industry trends, including changing consumer habits, cable-free "Home 5G" service through Verizon, T Mobile, and AT&T with streaming TV could be a competitive (abet unlicensed) alternative to Charter Communications in the next several years.

City / Town	Total Population (2020 Census)	Total Area in square miles	Population per square Mile
Lee	5788	26.1	222
Lenox	5,095	21.2	240
Great Barrington	7172	44.8	160
Sheffield	3,327	48.6	68
Stockbridge	2,018	18.7	108
<b>Five Town cumulative total:</b>	<b>23,400</b>	<b>159</b>	<b>NA</b>

In contrast, the population / area statistics for three urban municipalities with multiple Cable TV providers show multiples higher population densities:

Newton	88,923	18.16	4,897
Boston	689,326	4840	14,242
Arlington	46,308	5.50	8,427

In general, the committee found that Massachusetts Cable TV license agreements, even between different cable TV providers, are remarkably similar.

- All licenses are highly regulated by state and federal law
- All are non-exclusive, revocable cable television renewal licenses to Licensee, authorizing and permitting Licensee to construct, upgrade, install, operate and maintain a Cable Television System and provide cable service within municipal
- The typical license renewal term, the maximum term under FCC regulations is 10 years. A few towns (Westfield and recently renegotiated Belmont for example) have opted for a shorter, 5 year renewal term.
- All licenses typically include a license fee to the Issuing Authority equal to fifty cents (\$.50) ("License Fee") per subscriber per year as provided in M.G.L. c. 166A, §9. This cost is directly passed along to the subscriber as an added fee.
- If the municipality is associated with a Community TV station, the Licensee typically provides an annual payment to the Town, or the Access Corporation, for PEG Access purposes, which is between two and the FCC maximum of five percent (5%) of the Licensee's Gross Annual Revenues. This cost is directly passed along to the subscriber as an added fee.
- If the municipality is associated with a Community TV station, the Licensee typically includes PEG Capital access funding for technical equipment improvements. The amount varies widely, based on community TV needs, of between \$1.60 to \$18.08 per subscriber per year. This capital cost is directly passed along to the subscriber as an added fee.
- If the municipality is associated with a Community TV station, the number of PEG Channels vary between 1 and 3. More recent license agreements require at least one high-definition (HD) channel.
- Minimum cable drops per aerial mile the licensee is required to provide for Cable TV service at no cost to a subscriber start at 15 drops per aerial mile and increase to no limit. The Five Town licenses include 20 drops per ariel mile
- Line extension distances, the distance by which the licensee must extend the cable service from the cable plant in the public way without charge to consumer, range from 125' and 250'. The Five Town licenses line extension distance is 250'
- Virtually all of PEG Channels in communities East of Berkshire County are broadcast on lower, double digit channel numbers (including Charter / Spectrum's), making their community TV stations much more accessible to subscribers. While all of Charter Communications /Spectrum's Community TV stations in Berkshire County broadcast PEG Access channels on channels 1301, 1302 and 1303. This information is contained in the table below.

## Community TV Stations and PEG Access Channel Assignments in Berkshire, Franklin, Hampshire, and Hampton Counties

Town/City	CMC	Berkshire	Franklin	Hampshire	Hampton	Provider
Amherst	Amherst Media			12, 15, 17		Comcast
Buckland	Falls Cable		17			Comcast
Cheshire	Northern Berkshire Community Television	1301, 1302, 1303				Charter / Spectrum
Clarksburg	Northern Berkshire Community Television	1301, 1302, 1303				Charter / Spectrum
Conway	Frontier Community Access TV				12, 15, 23	Comcast
Dalton	Dalton Community Cable Association	1301, 1302, 1303				Charter / Spectrum
Deerfield	Frontier Community Access TV				12, 15, 23	Comcast
Granby	Granby Community Access and Media Inc.			12, 15		Comcast
Great Barrington	CTSB (Community Television for the Southern Berkshires)	1301, 1302, 1303				Charter / Spectrum
Greenfield	Greenfield Community Television		15			Comcast
Holyoke	Holyoke Media				12, 15, 23	Comcast
Lanesborough	LCATV	1301, 1302, 1303				Charter / Spectrum
Lee	CTSB (Community Television for the Southern Berkshires)	1301, 1302, 1303				Charter / Spectrum
Lenox	CTSB (Community Television for the Southern Berkshires)	1301, 1302, 1303				Charter / Spectrum
Ludlow	LCTV				191, 192, 193	Comcast
North Adams	Northern Berkshire Community Television	1301, 1302, 1303				Charter / Spectrum
Northampton	NCTV	12, 15, 23				Comcast
Palmer	M-Pact TV				12, 15	Comcast
Pittsfield	Pittsfield Community Television	1301, 1302, 1303				Charter
Russell	Russell Municipal Cable TV				N/A	Municipal
Sheffield	CTSB (Community Television for the Southern Berkshires)	1301, 1302, 1303				Charter / Spectrum
Shellburne	Falls Cable		17			Comcast
Springfield	Focus Springfield				12, 15, 17	Comcast
Stockbridge	CTSB (Community Television for the Southern Berkshires)	1301, 1302, 1303				Charter / Spectrum
Sunderland	Frontier Community Access TV		12, 15, 23			Comcast
West Springfield	West Springfield Public Access TV				15	Comcast
Westfield	Westfield Community Access Television				12, 15	Comcast
Whately	Frontier Community Access TV				12, 15, 23	Comcast
Wilbraham	Wilbraham Public Access				191, 192, 193	Charter / Spectrum
Williamstown	Willinet	1301, 1302, 1303				Charter

It is important to note that the PEG Access channel numbers were previously 16, 17, and 18 in Berkshire County until the transition from analog to digital TV in +/- 2019. The transition to channel 1301, 1302 and 1303 was done under a clause in the 2013 agreement without prior discussion or negotiation with the Five Town Issuing Authorities.

## Phase 1 License Renewal Requests to Spectrum

The Five Town Cable Advisory Committee, representing the residents of the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge completed ascertainment as of August, 2022.

**The letter of transmittal will be sent on August 30, 2022 notifying Spectrum that the Five Town CAC has completed ascertainment. A copy of ascertainment results as part of an RFP and a draft license agreement containing terms and conditions was sent. The transmittal asked for a formal response in 30 days, a timeline suggested by the MA DTC as a reasonable response time frame.**

This proposed Renewal License recognizes the Issuing Authorities state and federal rights within the Cable TV License Renewal process. Specifically:

- Negotiable within Cable TV License Renewal:
  - Town and community needs
  - Town residents' input, service suggestions, consumer complaints, etc.
  - Spectrum performance (or non-performance), unserved parts of the community, ideas to improve service, etc.
  - License comparison with other MA Cable TV Licenses
  - CTSB Capital and operational needs over next 5-10 years
- Non-Negotiable within Cable TV License Renewal:
  - Price of cable service and any added fees
  - Programming

This Ascertainment Document details Phase One activities which have identified and addressed all of the items that are within the negotiable category per this request for proposal. As such, the following are included in the proposed Renewal License, in no particular order of importance and not meant to be an inclusive listing:

- Full, 5% funding of PEG operation funds under FCC guidelines paid quarterly, not annually as similar to other towns in Mass
- A capital expense project contribution of \$.95 per month per subscriber in line with other Mass towns to fund critical CTSB infrastructure as outlined in the Capital Needs Funding request attachment (for years 1-5)
- Continuation of basic cable TV service to town owned public buildings as per existing contract agreement at no cost
- Additional license agreement sections which include state and federal protection guidelines of subscriber privacy, annual privacy written notices, and monitoring similar to other towns in Massachusetts
- The return CTSB's current PEG channel assignments (1301, 1302, 1303) to consecutive channels under 50 similar to the vast majority of PEG stations in Massachusetts to make it easier for resident subscribers to locate community TV channels

- Include CTSB programming schedule in the commercial station programming lineup
- Provide a process to transition all CTSB PEG channels to HD broadcasting in 2023
- 10 year license term
- Full price disclosure on all future Five Town cable TV subscription offers including standard rates after promotions
- Improvements to license agreement, which include:
  - More comprehensive definition of “revenue” similar to other towns in Massachusetts with worksheet attachments in Appendices
  - Addition of, and more specific language to previous definitions to avoid ambiguity, misunderstanding, or confusion.
  - Improved performance bond and an additional section to include liquidated damages to help ensure agreement compliance.
  - Strengthened language in almost all sections pertaining to subscriber or user rights, or including new language on same, as defined and mandated by the FCC and the MA Department of Telecommunications and Cable.
  - Strengthened complaint tracking, resolution procedures, full resolution, and timelines.
  - Adjusted insurance policies requirements and coverage to be up to date.
  - Strengthened the Performance Bond section with coverage amounts for each of the Five Towns.
  - Addition of a Determination of Breach section.
  - Clarified and strengthened Licensee’s reporting requirements and obligations.
  - New forms on which to report calculation of Annual Gross Revenues and Quarterly PEG Fee payments.
  - Detailed complaint resolution procedures.
  - Clause requiring Spectrum maintain the same PEG video quality as commercial stations in future years
  - Closed captioning per ADA and FCC law (FCC requirements to caption PEG programming may vary, depending on whether the programming is shown on television or via Internet protocol IP as of 11/15/2015).

In addition, the following are items we would appreciate the opportunity to discuss in the Renewal License:

- “a la carte” customizable programming
- Senior and Low-Income based pricing (similar to those offered in other Massachusetts municipalities)
- Additional Massachusetts, particularly Boston, news stations to alleviate “orphan” miss-DMA classification.
- Reduction of programming repetitiveness, i.e. same program listed over and over on different channels.
- Resolution of poor quality cable boxes
- Improved 1-800 Spectrum support training due to lack of consistency in answers

## Phase Two Implementation

Upon completion of all Phase One activities, which will occur before September 1, 2022 with the issuance of the Five Town Ascertainment Document, including its Proposed License Renewal, the committee has established the following timeline for Phase Two implementation, with all dates on or before and subject to adjustment based on the date on which Charter Communications submits the required Renewal License proposal:

- Sept. 13, 2022: Quarterly Mtg. of the Five Town CAC with ascertainment overview and public comment
- October 1, 2022: Charter Communications provides a formal response and Renewal License proposal to the Five Town CAC, as well as a completed Form 100 to the Department within the 30 days requested by the CAC
- October 1-7, 2022: Five Town CAC provides required public notice of Charter Communications submittal of a Renewal License proposal and schedules a public hearing, which may be scheduled as part of its quarterly CAC meeting on December 13, 2020. The Renewal License proposal is provided to each Issuing Authority
- December 13, 2022: The CAC hold the public meeting on Charter Communications' Renewal License Proposal
- October 15 – December 31, 2022: CAC's review of Charter Communications' Renewal License proposal commences, as well as discussions with the Issuing Authorities, as requested. Charter Communications and the CAC begin negotiations on the Renewal License's terms and conditions
- January 31, 2023: The CAC, in consultation with the Issuing Authorities, decides either to:
  - A – Recommend that the draft License Renewal agreement be approved by the Issuing Authorities
  - B - Issue a preliminary statement, including to the Issuing Authorities, that the franchise agreement should not be renewed and why, including statements on such considerations as the quality of the service, response to billing complaints, billing practices, does not meet the future cable related community needs and interests, while taking into account the cost of meeting such needs and interests
- February 28, 2023: Each of the Five Town's Issuing Authorities review the CAC's recommendation regarding the Renewal License renewal and take a vote on a new Renewal License agreement or request an extension from the Department.
- March 1, 2023: the 2013 Cable TV License agreements expire. The 2023 Renewal License agreements are approved and signed by all parties, or a Department extension is approved and the parties continue to negotiate until a Renewal License is agreed upon, accepted by the Issuing Authorities and signed by all parties. Depending on circumstances, the Department will be asked for assistance and additional extensions may be required.

# **The Five Town Cable TV Advisory Committee**

## **Frequently Asked Survey Questions Answered**

### **1. Why does the Southern Berkshires and Berkshire County have just one cable provider when other cities and towns in Eastern Massachusetts seem to have more than one?**

*The cable density of subscribers in the Southern Berkshires per square mile is a fraction of the more densely populated cities and towns in Central and Eastern Massachusetts with more than one cable TV provider. It's simply not profitable for more than one cable TV company to compete in such a small market.*

### **2. Will Southern Berkshires and Berkshire County ever have a choice in Cable TV providers?**

*The high cost of installing new fiber or cable, not including pole attachment leases is estimated between \$2,000 - \$5,000 per residence. This high investment needed for potentially ½ of a small market would likely be a poor return on investment for a 2<sup>nd</sup> cable TV company.*

*Home 5G technology solves most of the high cost of cable or fiber installation and in the near future, may offer a choice in (internet) TV provider options. Unlike fiber, cable, DSL and other common modes of internet that get you online with a wired connection, cellular internet plans take a fixed wireless approach. As the name suggests, homes will get its internet connection wirelessly through a receiver that picks up the wireless providers signal and then broadcasts it throughout your home as a Wi-Fi network. Since Home 5G uses wireless technology, it avoids most of the investment and expense including pole rentals and cable installation. Verizon, AT&T and T Mobile have all announced 5G wireless capability that they say will offer speeds comparable to fiber but without the high cost of installing cable or fiber of users accessing data. While 5G home internet service is not yet widely available in Berkshire County, the list of areas is expanding every month. Both Verizon and T Mobile offer "check availability" on their websites with a email notification signup for any changes.*

### **3. How are Charter / Spectrum prices compared to those of other Massachusetts Cable TV providers?**

*Promotional offerings and differences in programming aside, the committee's research indicates that Spectrum's cable TV packages are "priced competitive" with other cable TV providers in Massachusetts such as Comcast, Verizon and RCN and are less expensive than satellite TV providers such as Dish and Direct TV. While internet TV and streaming video packages can be less expensive than Spectrum TV, they require (Spectrum?) broadband and do not support local community TV.*

### **4. What's the difference between internet TV and cable TV?**

*Cable TV is a town licensed delivery system that gets its name by how it's transmitted to you, which is through coaxial or fiber-optic cables. Consumers pay a small subscription fee (5% of revenue) to support local community PEG (Public, Education and Government) TV station which broadcasts town meetings, events, education, etc.*

*Internet TV is unlicensed and provides no support to local community TV. It's accessed and viewed via the internet directly from the service's platform*

## **5. Why does Spectrum Cable TV carry out of state, Albany NY TV stations? What can be done to fix this?**

*The market of a television station is currently established by its “Designated Market Area” (DMA) as defined by Nielsen and/or modified by the FCC. Berkshire County is assigned to the Albany, Schenectady, Troy, NY market, (#60 of 210 in US) by reference to the Nielsen Station Index Directory (Annual Station Index) in combination with the United States Television Household Estimates (Household Estimates). The standard seems archaic and predates cable to the time of broadcast TV. The Federal Communications Commission concluded in 2016 that Nielsen’s DMAs remain the best way of defining local TV markets, including citing online video as a way to resolve problems in so-called “orphan” counties such as Berkshire country served by a station or stations from another state. In survey comments, Southern Berkshire County residents expressed clear frustration that the Albany based TV stations are not providing Massachusetts state specific sports, news and information about upcoming legislation that they residents feel is necessary for an informed electorate.*

*While it possible for the FCC change the DMA of the Berkshires from NY to Massachusetts, the process is made by design, extremely difficult. Existing television broadcast stations in Albany profit by this assignment and would likely not willingly give up control of their territory. The FCC has stated “departing from the existing Nielsen DMA market determination system would create enormous disruptions in the video programming industry disproportionate to any benefit gained, and would be unlikely to increase the amount of local programming”.*

*When Congress passed the STELA (Satellite Television Extension and Localism Act) Reauthorization Act of 2014, it provided a means by which the FCC is able to add or delete communities from a commercial broadcast television station’s local DMA. Before submitting a petition, the orphan county must:*

- 1) Demonstrate that the proposed modifications are both “technically and economically feasible.” The petitioners would have to decide what channels they are seeking to add and would be tasked with demonstrating why their choice is the most appropriate.*
- 2) Demonstrate support for the petition by satisfying factors outlined in the Reauthorization Act. The petitioners must be able to assemble information that can only be obtained by retaining experts in this field, by securing evaluations of DMA areas, by making inquiries and assessment of the extent to which the existing channels will resist the petition or that the requested channels support the petition, as well as hiring attorneys who have the expertise and experience practicing before the FCC.*

*The costs associated with the application process, retention of experts, generation of market data studies and reports to satisfy the conditions and issues that the Act imposes, and the hiring of experienced FCC attorneys to represent the petitioners would be considerable. To date, Southern Berkshires’ state and federal legislators have all expressed a willingness to support a Massachusetts based DMA, but as of Aug. 2022, there has been no progress to resolve this issue.*

## Appendix

### Feb. 2, 2022 letter from Mass DTC re: cable TV license expiration



CableLicenseExpiration.pdf

### February 2022 Spectrum Rate Card



Lee Lenox  
Stockbridge.PDF

### 2013 CTSB PEG Access Agreement



CTSB PEG Access  
Agreement\_May\_2013

### Spectrum Annual Payment Summary to CTSB



Spectrum Annual  
Payment Summary Of

### March 2022 Spectrum Billing Practices and Equipment



03.15.2022 Billing  
Practices and Equipm

### March 1, 2022 Spectrum Price Increase



03.01.2022 Charter  
Price Adjustment.2.pd

### Spectrum Forms 200 and 400



04.27.2022 Form 200  
and 400 Documents a

## August 15, 2022 CTSB Capital Funding Request



CTSB CAC Capital  
Funding Request Augi

## Spectrum's Five Town Strand Maps



Stockbridge\_MA\_Serv  
iceAreas.pdf



Lenox\_MA\_ServiceAre  
as.pdf



GreatBarrington\_MA\_  
ServiceAreas.pdf



Lee\_MA\_ServiceAreas  
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T. Sheffield.pdf