

Meeting Minutes
Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge
Five Town Cable Advisory Committee Negotiating Subcommittee for Negotiating
Renewal Cable TV License with Charter Communications (Spectrum)
Wednesday April 12, 2023 at 3:00pm; Virtual Meeting over Zoom

Subcommittee members present: Linda Miller, Chair

Dennis Arseneau

Rene Wood

Rich Fredericks, Exec. Director, CTSBTV

Charter Communications: Paul Abbot, Esq.; VP, Local Government Affairs

Trish McCausland, Esq., V-P, Associate General Counsel

John Maher, Director, State Government Affairs

Dan Reing, Esq.; Outside Counsel; Mintz

The meeting was called to order by Chair L. Miller at 3:03pm and was recorded; no introductions were required.

The first item discussed was the PEG revised capital proposal. D. Reing had requested the explanation column for how the new numbers were derived. Needed for a counter proposal/evaluation. D. Arseneau emailed descriptors of equipment and attached quotes for all equipment, and associated required accessories, during the meeting. Security cameras/alarm system not quoted yet and will send on when available. R. Wood discussed the implications of her incorrect meeting posting, which did not allow the CAC to meet as planned. Next discussed was HD equipment #15; P. Abbot will take control of this cost/arrangement. Three channels in one location; P. Abbot "it's on us". Various ways of accounting/billing for this were discussed. Closed caption is not a capital expense – an operating expense – and off the capital expense sheet.

TO DO: CAC to get quotes, descriptions, and costs to Spectrum for their consideration. Maybe finished with capital expenses for years 1-5. Question of what to do with capital expenses for years 6-10; R. Fredericks will put a list together what he currently has that will expire or need to be replaced in years 6-10; will be an attachment to the lease renewal. This will be shared with Spectrum and negotiated.

Question of Scott's input was taken up but there had been no specific question to him regarding his observations and comments the CAC should be aware of. This discussion will take place and conveyed back to the CAC. TO DO: Review of his comments, if any, with the CAC at a future meeting.

Discussion on documents received from Spectrum as a follow-on to the last meeting. R. Wood conveyed her thoughts on the survey questions and response, including comments on who wants to pay anything more except for those willing to pay up to \$1./month for capital purchases. L. Miller and D. Arseneau also provided their comments. Spectrum was thanked for providing additional written answers and that new explanations of the PEG fee/Franchise fee on the bills will be reflected in a few billing cycles.

Article 2- Grant and Term of Renewal License

§§2.1 - 2.4: Accepted as written below:

Section 2.1 GRANT OF LICENSE

Pursuant to the authority of Chapter 166A, §1 of the General Laws of the Commonwealth of Massachusetts and the Cable Act, and subject to the terms and conditions set forth herein, Select Board of the Town of _____, acting as the Issuing Authority of the Town, hereby grants a non-exclusive, revocable Cable Television Renewal License to Licensee, authorizing and permitting Licensee to construct, upgrade, install, operate, and maintain a Cable Television System and provide Cable Service within the municipal boundaries of the Town.

Section 2.2 RIGHTS AND PRIVILEGES OF LICENSEE

Subject to the terms and conditions herein, the Issuing Authority hereby grants to Licensee, the right to construct, upgrade, install, operate, and maintain a Cable Television System in, under, over, along, across or upon the public streets, lanes, avenues, alleys, sidewalks, bridges, highways and other Public Ways or places in the Town within the municipal boundaries and subsequent additions thereto, including property over which the Town has an easement or right-of-way, or which the Licensee may use pursuant to 47 U.S.C. 541(a)(2), for the purpose of Cable Television System reception, transmission, collection, amplification, origination, distribution, or redistribution of audio, video, text, data or other signals in accordance with the laws of the United States of America, the Commonwealth of Massachusetts and the Town. In exercising rights pursuant to this License, Licensee shall not endanger or interfere with the lives of persons, interfere with any installations of the Town, any public utility serving the Town, nor unnecessarily hinder or obstruct the free use of public ways and places.

Section 2.3 APPLICABLE LAW

This Renewal License is granted under and in compliance with M.G.L. c. 166A and all other general laws and acts of the Massachusetts General Court, and in compliance with all applicable federal law, including, but not limited to the Cable Act, and all rules of the Federal Communications Commission ("FCC"), and all other State and federal rules and regulations. This Renewal License is subject to all rules and regulations of the Massachusetts Department of Telecommunications and Cable ("the Department") and federal law.

Section 2.4 TERM OF RENEWAL LICENSE

This Renewal License shall commence upon the Effective Date, February 28, 2023, and shall expire on February 28, 2033, unless sooner terminated as provided herein or surrendered.

§2.5(a) and (b): Accepted as written below.

Section 2.5 TRANSFER AND ASSIGNMENT OF RENEWAL LICENSE

(a) Subject to applicable law, neither this Renewal License, or control thereof, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly, or indirectly, or by transfer of control of any Person, company or other entity holding such Renewal License to any other Person, company, or other entity without the prior written consent of the Issuing Authority, which consent shall not be unreasonably or arbitrarily withheld. Such consent shall be given only after a public hearing, subject to fourteen (14) day duly published notice, upon receipt of a written application therefore on forms as may be prescribed by the Department or FCC. Any such consent process shall be

consistent with the transfer requirements of M.G.L. c.166A, §7; 207 CMR §4.00 et seq.; the Cable Act; and FCC regulations, all as they may from time to time be amended. Any application for consent to a transfer or assignment, if required, shall be signed by the Licensee and by the proposed transferee or assignee, or by their authorized representatives, evidence of whose authority shall be submitted with the application.

(b) To the extent it is consistent with any governing federal or State law, a mortgage or other grant of a security interest in this Renewal License to a banking or other financial institution, or a pledge or grant of other security interest in the stock of Licensee to a banking or other financial institution, shall not be a transfer requiring consent of the Issuing Authority. Should such mortgagee or other holder of a security interest or pledgee assume control of the Cable Television System, such Issuing Authority consent shall be required in accordance with applicable law.

§2.5 (c) CAC proposed section to now read: “To the extent it is consistent with any governing federal or state law, no consent under subsection (a) shall be required if such sale, assignment, or transfer is to an entity under common control with the Licensee. For a proposed transfer that is not to an entity under common control with the Licensee, but which Licensee nevertheless believes is an internal transfer not subject to review, Licensee shall ask the Department to determine whether consent under subsection (a) shall be required. The Issuing Authority must be notified of any such requests to the Department, and the Department’s ultimate determination, which shall be binding on the Licensee and Issuing Authority.” *End of (c).*

Proposed update to §2.5 (c) by D. Reing:

(c) To the extent it is consistent with any governing federal or state law, no consent under subsection (a) shall be required if such sale, assignment, or transfer is to an entity controlling, controlled by, or under common control with the Licensee. For a proposed transfer that is not covered by the preceding sentence on request of Licensee, the Issuing Authority, or on the Department’s own initiative, the Department may determine whether or not a particular transaction shall be considered a transfer or assignment or change of control thereof under M.G.L. c. 166A, § 7, for which consent under subsection (a) is necessary. The Issuing Authority must be notified of any such request made by Licensee to the Department, and the Department’s ultimate determination, which shall be binding on the Licensee and Issuing Authority.

Comments from D. Reing: See new (above) language to clearly address a process for a potentially disputed internal transfer.

In reviewing this section, Charter went back to look at the Massachusetts law and regs on this issue and has revised to incorporate the specific language from 207 CMR 4.01. This should cover uncertain situations that don’t fit within the first sentence in the manner provided for in Massachusetts law.

Considerable discussion was generated on §2.5(c) with Charter saying intra-corporate or inter-corporate is not a transfer thus does not require approval. Review of previous discussions on what is a transfer and concern on CAC part that the CAC may disagree when stated by Spectrum to be intra-corporate or inter-corporate but looks like it is actually a transfer, yet the 5 Towns were not notified for approval and thus did not approve. Only leaves the CAC to sue.

Idea to have DTC make the decision if any disagreement to inter-or intra-corporate, or transfer. FCC Form 394 reviewed. Discussion of a separate subsection (d) to address this point or having the current proposed (b) become (d); discussion of citing MGL C 166A §7 in one of the §2.5 subsections, as well as 207 CMR 4.01 defining transfer. *D. Reing to do some restructuring/rewriting of §2.5 for final review.*

§2.5(d) – (i):

(d) Subject to all applicable laws and regulations, in considering a request to transfer control of this Renewal License, the Issuing Authority may consider such factors as the transferee's financial, legal, and technical performance qualifications, as allowable under applicable federal or state laws or regulations, and request such reasonable information as allowable under applicable law or regulations.

(e) For purposes of Section 2.5, the word "control" shall comply with the definition of such in 207 CMR 4.01.

(f) The consent or approval of the Issuing Authority to any assignment, lease, transfer, sublease, or assumption of control by a mortgagee of the Renewal License granted to the Licensee shall not constitute a waiver or release of the rights of the Town in and to the streets and Public Ways or any other rights of the Town under this Renewal License, and any such transfer shall, by its terms, be expressly subordinate to the other terms and conditions of this Renewal License.

Old (g) is removed and subsequent sub-sections re-lettered.

(g) The Licensee shall submit to the Issuing Authority an original and one (1) copy, unless otherwise required, of the application and FCC Form 394 requesting such transfer or assignment consent.

(h) Unless otherwise allowed by applicable law(s), the Issuing Authority shall make a decision on said written application within one hundred and twenty (120) days of receipt of said application. After 120 days, the application shall be deemed approved, unless said 120 day period is extended by mutual written consent of the parties.

(i) Any proposed controlling or owning Person or transferee approved by the Issuing Authority shall be subject to all of the terms and conditions contained in this Renewal License and so agrees with and by their signature to the transfer or assignment document.

§2.6 Effect of Unauthorized Transfer Action – Entire Section on HOLD.

To be revisited in Section 7.7 and others.

§2.7 Non-Exclusivity of Renewal License: Accepted as rewritten.

Section 2.7 NON-EXCLUSIVITY OF RENEWAL LICENSE

This Renewal License shall not affect the right of the Issuing Authority to grant to any other Person, a license or right to occupy or use the Public Ways, or portions thereof, for the construction, installation, operation, or maintenance of a Cable Television System within the Town or the right of the Issuing Authority to permit the use of the Public Ways for any purpose whatsoever. If the Issuing Authority grants any other Person such a license, the Issuing Authority shall modify this License, upon request by Licensee, to ensure that the obligations applicable to Licensee are no more burdensome or less favorable than those imposed on the new Person granted a license by the Issuing Authority.

In the event any change to state or federal law occurring during the term of this Renewal License materially alters the regime of cable licensing applicable to any Persons desiring to construct,

operate or maintain a Cable Television System in the Town in a way that reduces the regulatory or economic burdens for such Person when compared to the terms of this Renewal License, then, Licensee shall have the right to avail itself of the options provided for thereunder, or at Licensee's written request, the Issuing Authority shall agree with Licensee to amend this Renewal License as provided at 207 CMR §3.07 et seq. to similarly reduce the regulatory or economic burdens on Licensee.

§2.8 Police and Regulatory Powers: Accepted as rewritten.

Section 2.8 POLICE AND REGULATORY POWERS

Licensee acknowledges that its rights are subject to the Town's right to adopt and enforce generally applicable by-laws, laws, and regulations in the lawful exercise of its police powers to the full extent permitted by law, with respect to the safety and welfare of the public. The Licensee shall comply with all applicable Town by-laws and lawful regulations, provided such are of general applicability and not specific to this License, the Licensee and/or Cable System. In the event of any conflict between this License and any Issuing Authority's by-laws, laws, or regulations, apart from the lawful police powers of the Town, materially contradicting the applicable provisions of this License, the terms of this License shall prevail. This License is a contract and except as to those changes, which are the result of the Issuing Authority's exercise of its general police power, neither party may take any unilateral action, which materially changes the mutual promises in this contract. Any changes to this License shall be made according to Section 8.1.

§2.9 Removal or Abandonment: Previously Not Accepted, due to need for some language to make sure the Town(s) have recourse and not left with any removal, or any other expenses involved in removal or abandonment. Also want written notification of removal or abandonment. D. Reing presented new language for this section, which was accepted.

Section 2.9 REMOVAL OR ABANDONMENT

Pursuant to M.G.L. c. 166A, §5(f), and subject to federal law, including in particular the Cable Act, upon termination of this Renewal License by passage of time or otherwise without right of renewal, and unless Licensee renews its Renewal License for another term, transfers its License to a transferee approved by the Issuing Authority, or the Issuing Authority approves the Cable System remaining in place, Licensee shall remove its supporting structures, poles, trunk and distribution system, and all other facilities from the Public Ways and places and shall restore all areas to their original condition. If such removal is not completed within six (6) months after such termination, the Issuing Authority may deem any property not removed as having been abandoned. Any disposal of such abandoned property shall be in accordance with Massachusetts law and if the Issuing Authority removes such abandoned property, it shall do so at Licensee's sole expense.

§2.10: Accepted as rewritten.

Section 2.10 PROCEEDINGS UPON EXPIRATION OR REVOCATION OF RENEWAL LICENSE

In the event this Renewal License is revoked or that it expires without renewal, the Issuing Authority and the Licensee may transfer the Cable System to the Town or a subsequent Licensee subject to Section 627 of the Cable Act.

Article 3 – Cable System Design, Construction, Operation, and Maintenance Standards

§3.1: Accepted as rewritten.

Section 3.1 SUBSCRIBER NETWORK

(a) The Licensee will maintain a Cable Television System, which meets or exceeds all required FCC technological standards during the duration of this Renewal License.

(b) The Licensee shall continue to maintain throughout the term of this Renewal License, twenty-four hour, standby power at the Headend facility(ies) and any sub-headends. Such stand-by power shall provide continuous capability, contingent upon availability of fuel necessary to operate generators, and shall become automatically activated upon the failure of the Licensee's normal power supply.

(c) The system design of the Cable Television System and Subscriber Network shall at all times throughout this Renewal License meet all applicable FCC technical standards and all applicable technical specifications contained in this Renewal License.

§3.2 Service Available to All Residents: ON HOLD

Changes previously accepted are incorporated below. However, there is no agreement on the standard cable installation as 250 feet is in the current contract and Spectrum wants 150'; (b) –(e) still under discussion/negotiation.

Section 3.2 SERVICE AVAILABLE TO ALL RESIDENTS

(a) The Licensee shall make its Cable Service available to substantially all residents of the Town, regardless of type of dwelling or its geographical location in the Town subject to Section 3.2(b)-(f) below, unless the Licensee is legally prevented from providing such Cable Service.

(b) The Licensee shall install Cable Service within fourteen (14) days of a request at a Standard Cable Installation charge to any residence in the Service Area currently served by the Cable System as indicated on the map attached as Exhibit A, (and as it may be supplemented upon additions to the plant) except that Licensee may charge for the costs of labor and materials necessary to provide service beyond two hundred and fifty feet (250') one hundred and fifty feet (150') from the Cable System in the public way and/or to provide a customized installation, including any undergrounding, boring, or trenching. For purposes of this Section, private roads (i.e. roads not serviced by the Town) are not in the public way.

(c) In order to fulfill a request for cable service to a residence, the Cable System shall be extended at Licensee's expense, from existing Cable Plant to any and all areas of the Town containing twenty (20) residences per aerial mile of cable plant or fractional proportion thereof necessary to provide service. Said service shall be made available and fully activated to requesting subscribers no later than sixty (60) days after the Licensee's receipt of permission to attach cable to poles. Density per aerial mile of Cable System shall be computed by dividing the number of residential dwelling units within 150 feet of the plant to be installed by the length, in miles or fractions thereof, of the total amount of new construction of aerial cable necessary to make service available to the residential dwelling units in such area in accordance with Licensee's system design parameters. The cable length shall be measured from the nearest point of access to the then-existing Cable System, provided such

extension is technically feasible from that point of access and located within the public rights-of-way. The total cable length shall exclude the drop cable necessary to serve individual subscriber premises.

(d) The Cable Television System shall be further extended to all areas in the Town that do not meet the requirements of subsections (b) or (c) above upon request of the prospective subscribers in such areas and based upon the following cost calculation: If a request for an extension requires the construction of the Cable System into an area which does not contain the twenty (20) residences per aerial mile of cable plant or a fractional part thereof, the Licensee and the potential subscriber(s) will each be responsible for their proportionate share of construction costs.

(e) When the Licensee has forty-five (45) day prior notice concerning the opening of residential subdivision trenching, or of the standard installation of conduit for the location of utilities, it shall install its cable in such trenching or conduits or may seek permission to utilize alternative trenching or conduits within a comparable time frame; provided that such residential subdivision meets the density requirement of subsection (c) above, or has an actionable request for service pursuant to subsection (d) above.

(f) The Licensee shall expeditiously seek all necessary permits.

§3.3 Maps: Accepted as rewritten.

Section 3.3 MAPS

Within forty-five (45) days after a written request to the Licensee, the Licensee shall, without charge, make available to the Issuing Authority for inspection accurate and readily readable strand maps of all existing and newly constructed Cable System plant at the closest Licensee's business office. The Town agrees to maintain the confidential nature of such maps. However, consistent with the definition of Service Area, Licensee shall upon request of the Issuing Authority or their delegate, update annually on January 15th strand maps to reflect additional cable plant (except drops) installed over the past year. Such updates shall be available for inspection to the Town, in accordance with the procedures noted herein.

§§3.4, 3.5, 3.6, 3.7: Accepted

Section 3.4 COMMERCIAL ESTABLISHMENTS

The Licensee may make Cable Service(s) available to any commercial, not-for-profit, or non-profit establishment(s) in the Town provided that such establishment(s) agrees to pay for the installation and monthly subscription costs as established by the Licensee. It is herein acknowledged that certain programming service may not be available to commercial establishments pursuant to applicable law or the Licensee's agreements with programmers.

Section 3.5 EMERGENCY AUDIO ALERT

The Licensee's Subscriber Network shall comply with the FCC's Emergency Alert System ("EAS") Regulations, 47 CFR 11, et seq.

Section 3.6 TREE TRIMMING AND CUTTING

In the installation, maintenance, operation, and repair of the poles, cables, wires and all appliances or equipment of the Cable System, the Licensee shall avoid all unnecessary damage and injury to any and all shade trees whether in the Public Way or on private property and shall cut or otherwise prune such trees only to the least extent necessary. Licensee shall comply with all applicable regulations regarding trimming and cutting of trees. Licensee shall make reasonable efforts to secure the permission of the Town or property owner prior to any reasonable tree trimming.

Section 3.7 UNDERGROUND FACILITIES

Upon receiving due notice of the installation of telephone, electric and all other utility lines underground, the Licensee shall likewise place its facilities underground. Underground cable lines shall be placed according to any Public Works, Highway Department or other Town by-law or regulation and in accordance with applicable state law. It is the policy of the Town that existing poles for electric and communication purposes be utilized wherever possible if available on reasonable terms and that underground installation is preferable to the placement of additional poles, provided that said underground placement is required of other utilities. When possible, Licensee may use the underground conduit maintained by the Town provided that such use (i) is found by the Issuing Authority to be reasonable and at the sole cost and expense of the Licensee; and (ii) does not interfere with the Town's use or anticipated use of said conduit(s). Any such use by the Licensee shall be subject to the advance notification and approval of the Town and the right of the Town to supervise any such use. Licensee shall maintain membership and participate in the Massachusetts "DIG-SAFE" program and shall comply with all applicable "dig-safe" provisions, pursuant to M.G.L. c. 82, §40.

§3.8: Accepted as rewritten.

Section 3.8 PEDESTALS

In any case in which pedestals housing passive or active devices are to be utilized in the Town Public Ways or within the Town public lay-out, such equipment shall be placed in a low-profile, above-ground electronic control box in accordance with applicable regulations, and at Town approved locations to be determined when Licensee applies for a permit, which will not be unreasonably denied.

§3.9: Accepted.

Section 3.9 RESTORATION TO PRIOR CONDITION

(a) Whenever the Licensee takes up or disturbs any pavement, sidewalk, or other improvement of any Public Way or public place, the same shall be replaced, and the surface restored in as good condition as before entry and to such standards required of utilities operating within the Town and as soon as practicable. If the Licensee fails to make such restoration within a reasonable time, the Issuing Authority may notify the Licensee in writing of the required restoration and the reasonable time for completion of the restoration. Upon failure of the Licensee to comply with the time specified, the Issuing Authority may cause proper restoration and repairs to be made and the expense of such work shall be paid by the Licensee upon demand by the Issuing Authority. Any damages to private property shall be determined in accordance with M.G.L. c. 166A, Section §22 and applicable law.

(b) Underground crossings of paved roads will be by boring under the road, not by trenching or opening the surface of the road except to the extent that boring is not feasible or is otherwise unreasonable to do.

§3.10: Accepted as rewritten.

Section 3.10 COOPERATION WITH BUILDING MOVERS

The Licensee shall temporarily raise or lower its wires or other equipment upon the reasonable request of any Person, including without limitation, a Person holding a building moving permit issued by the Town. The expense of such raising or lowering shall be paid in advance by the Person(s) holding the building move permit, but without charge to the Town. The Licensee shall be given reasonable notice necessary to maintain continuity of service, which notice shall be no less than 60 days.

§3.11 Relocation of Facilities: Rewritten as below is acceptable to CAC. Changes in yellow from Charter.

Section 3.12 EMERGENCY REMOVAL OF CABLE SYSTEM

If, at any time, in case of fire or disaster in the Town, it shall become necessary in the exercise of police powers of the Issuing Authority or any public safety or other designated public official, to adjust, move, or remove any of the wires, cables, amplifiers, appliances, or appurtenances of the Cable System, the Town shall have the right, within its police power, to do so at the sole cost and expense of the Licensee. In such case, the Town shall notify Licensee of the cables or other equipment which have been adjusted, moved, or removed.

Per D. Reing's comments; Per discussion on 3.15.2023, Charter has relocated this from below to make clear that emergency removals are handled distinctly from relocations under 3.11. Also, we've added the highlighted language to clarify this is about getting Charter's facilities out of the way to accommodate emergency work – whether through adjustment, movement, or removal.

§3.12 Town Use of Licensee's Poles and Conduit: Section removed; Removal acceptable to Sheffield; Renumber remaining section. **Note to Chair Miller: Other Towns need to weigh in on this Section.**

Old §§3.13 and 3.14: Accepted and renumbered per removal of previous Section 3.12

Section 3.13 RELOCATION OF FIRE ALARMS

The Licensee shall reimburse the Town at cost for any reasonable expense including materials and labor caused by the relocation of any fire alarm, cable, or equipment to make poles ready for the Licensee's Cable System. The Town shall cooperate in this relocation so as to minimize delay in Licensee's construction schedule.

Section 3.14 SERVICE INTERRUPTION

Except where an emergency situation necessitating a more expeditious procedure, Licensee shall use reasonable efforts to avoid the interruption of service for the purpose of system construction, routine repairing or testing the Cable System and only do so during periods of minimum use.

§3.15: Accepted as rewritten, per 3.15.23 session.

Section 3.15 RIGHT TO INSPECTION OF CONSTRUCTION

(a) The Issuing Authority or its designee(s) shall have the right, upon reasonable advance written notice, to inspect construction and installation work performed subject to the provisions of this Renewal License, as it shall deem necessary to ensure compliance with the material terms and conditions of this Renewal License. Any such inspection(s) shall not interfere with the Licensee's operations, except in emergency situations.

(b) Any inspection conducted by the Issuing Authority or its designee(s) shall be at the sole cost and expense of the Issuing Authority or its designee(s) and the Licensee shall be afforded the opportunity to be present during all such inspections.

§3.16: Accepted as rewritten, per 3.15.23 session.

Section 3.16 CONSTRUCTION, UPGRADE, TECHNICAL, AND MAINTENANCE STANDARDS

(a) The Licensee shall operate and extend a Cable System and render efficient service to Subscribers as required by this Renewal License and applicable laws and regulations during the term

of this Renewal License. The construction, maintenance and operation of the Cable System for which this Renewal License is granted shall be in conformance with all applicable provisions of the the Massachusetts Electrical Code, the National Electrical Safety Code, all applicable rules and regulations of the Occupational Safety and Health Administration (OSHA), the Massachusetts DTC, Department of Public Utilities, the FCC and all State and generally applicable Town building and zoning codes and all land use restrictions. All FCC regulations concerning technical standards are incorporated as independent standards of this Renewal License as well, including but not limited to 47 CFR 76.601 sub-part K, et seq.

(b) Copies of any technical performance tests required under FCC rules and regulations shall be submitted within 30 days of a written request and at no charge to the Issuing Authority. The Licensee's Cable System shall incorporate a technically advanced design configuration and operation consistent with standard cable industry practices.

(c) If, as a result of technological development(s), the Licensee's Cable System could be enhanced, the Licensee shall investigate the feasibility of implementing such new development(s) and shall implement such technological development(s) if such implementation (i) can be done without adding a financial burden to subscribers and (ii) is technically and economically feasible and viable for the Licensee as determined by Licensee. However, the Licensee shall not avoid implementing any and all system or technological standards as required by the FCC during this Renewal License period. In determining whether or not the Licensee shall implement such new development(s), the Licensee will consider, among other factors, the remaining term of this Renewal License; performance demonstrating the operational feasibility of the new development(s); construction and other related costs; the adaptability of such development(s) to the Licensee's Cable System or any part thereof; the potential marketability of the new service(s) and other factors affecting the economic feasibility and viability of implementation of the new development(s); and adoption of such new development(s) by neighboring communities.

(d) The Licensee shall maintain audio variations within its control between channels in the Cable System in accordance with FCC Technical Standards.

(e) All Licensee's structures, lines, equipment, and connections in, over, under, and upon streets, sidewalks, alleys, and public ways and places of the Town, wherever situated or located, shall at all times be kept and maintained in a safe condition and in good order and repair.

§3.17 Maintenance Log: Still under discussion. How does Charter determine outages, which may trigger refunds to customers? Not really a maintenance but service or outage log. Not sure if belongs in this section or in another section. Charter is still reviewing, per D. Reing's comment of later March: **Charter is working on a response to Rene's request for a better understanding of how outages are identified.**

§3.18 Emergency Removal of Cable System: Section removed and renumber remaining sections. Previous comments asked to tie §3.11 and §3.18 together or merge content of both sections. Charter to review as §3.11 may not be place for discussion of emergency situations. Need definition for "removal / remove". For Charter – move / remove means to get the line out of the way.

D. Reing: per discussion on 3.15.2023, Charter moved this section to follow Section 3.11 "Relocation of Facilities" and revised the terminology regarding move/cut/remove to reflect the purpose that in emergency situations Charter's facilities may need to be adjusted, moved, or removed to accommodate the Towns' police powers.

§3.19 Private Property, now Section 3.18 due to renumbering.

Concerns about ease of customer to collect on damaged property, which is the result of Charter's personnel on-site. Do not want to leave residents to be on own in pursuing damage collections. Concerns about MGL cited being weak from a consumer's perspective. Charter will relook at this, which they did per comments below.

D. Reing's comments: In discussion on 3.15.2023, Rene mentioned that while she does not disagree with the point made by Charter above, she believes the statute does not provide enough protection to the public. Additional concerns are that it should not be held to a different standard than any other entity that may use and access private property, and imposing a franchise requirement that is not generally applicable will create that scenario. March 28, 2023 comment.

After discussion and Charter stating it wished to be treated the same as any other utility company, the revised 3.18 was accepted as written below.

Section 3.18 PRIVATE PROPERTY

The Licensee shall be subject to all applicable laws, by-laws, or regulations regarding private property in the course of constructing, upgrading, installing, operating, and maintaining the Cable Television System in the Town including, but not limited to, M.G.L. c .166A, §22, as it may from time to time be amended.

§3.20: Removal of Section is accepted.

End of section.

Article 5- Local Access Programming: Public, Educational, And Governmental (PEG) Access Channels, Programming, and Operation

§5.1. PEG Access Channels

§5.1. (a) and (b) acceptable as written

Section 5.1 PEG ACCESS CHANNELS

(a) Upon the Effective Date of this Renewal License, the Licensee shall continue to make available a total of three (3) licensee-owned Subscriber Network channels for PEG Access purposes, which shall be used to transmit non-commercial PEG Programming to Subscribers and, except as otherwise provided for herein, shall be subject to the control and management of the Town and the Access Corporation. Said Access Channels shall be included in the Licensee's Basic Service.

(b) All PEG Access Channels transmitted to Licensee by CTSB with closed captioning will be broadcast with closed captioning to the extent required by applicable law.

(c) Not Acceptable. Want PEG channel placement to be consistent with the majority of PEG channel locations provided by Charter contracts outside of Berkshire County. Want PEG channel placement to be consistent with the majority of PEG channel locations provided by Charter contracts

outside of Berkshire County. In the lowest tier per FCC regulations, which means accessible to the lowest tier without their having to know to go outside of their tier to find the PEG channels. Open to other wording to accomplish this goal.

Robust Discussion still around placement of PEG Channels and, that while everyone get the GUIDE, too far up the list for them to be useful. CAC understand this is a Charter decision, just pleading for lower and easier to find channels than 1301,-02,-03 and they do not need to be consecutive channel numbers but would like PEG channels standardized in Berkshire County to reasonable channel numbers like they are in the rest of Spectrum's MA municipalities. No resolution, though P. Abbot did say he would look into it and reach out to the programming people where such decisions are made. Technical issue or marketing issue?

(d) Tied to (c). Did not take up (d) in this discussion but it had been rewritten by Charter to take the Access Corporation language out of (d).

(d)The Licensee shall not move or otherwise relocate the channel locations of any PEG Access channel(s), without advanced written notice to the Issuing Authority. Such written notice shall be provided at least thirty (30) days in advance unless Licensee is legally mandated by the FCC or the Department to move a PEG Access channel(s) sooner.

(CAC had previously expressed wanting to add language to tie any future relocation of PEG channels in this renewal license to be consistent with PEG channel relocations in the majority of Charter Cable TV contracts outside of Berkshire County. Just want to be treated the same as other municipalities with Charter TV contracts outside of Berkshire County. Somehow Berkshire County has been treated unfavorably and unequally.)

§5.2. Access Corporation. Accepted to read:

Section 5.2 ACCESS CORPORATION

CTSB shall be the designated Public Access Corporation to provide services to public Access Users.

§5.3. Public Access to the Cable System. Accepted to read:

Section 5.3 PUBLIC ACCESS TO THE CABLE SYSTEM

Any resident of the Town, or any non-commercial organization based in or servicing the Town, shall have the right to place programming on the PEG Access channel dedicated to public use subject to any rules or policies established by the Town or CTSB. The parties recognize that any PEG Access channel facilities, equipment, and training will be available on a shared basis to each of the Towns pursuant to their respective Renewal Licenses.

§5.4. Government Access to the Cable System. Accepted to read:

Section 5.4 GOVERNMENT ACCESS TO THE CABLE SYSTEM

Any PEG Access channel provided herein and dedicated to Government Access shall be available to the Issuing Authority for the purposes of non-commercial municipal access television programming in accordance with 47 U.S.C. 531. Such channel may be used by government departments and agencies to inform subscribers about the Town, or other government, and its services. Government Access

programming shall be coordinated and managed by the Access Corporation, unless the Town decides to operate Government Access under a government department

§5.5. Educational Access to the Cable System. Accepted to read:

Section 5.5 EDUCATIONAL ACCESS TO THE CABLE SYSTEM

Any PEG Access channel provided herein and dedicated to Educational Access use shall be available to any School, or School District, serving the Town for the purposes of non-commercial Educational Access television programming in accordance with 47 U.S.C. 531. Educational Access programming shall be coordinated and managed by the Access Corporation in cooperation with any such School or School District.

§5.6. License Fees. *BELIEVE this was accepted to read as follows, but EVERYONE please review again, particularly the yellow section which had a note from D. Reing to discuss.* R. Wood made a comment that each town needs to make sure its General By-Laws are updated to transfer this money through ATM action, per K-P Law.

Section 5.6 LICENSE FEES

(a) The Licensee shall continue to pay to the Issuing Authority, throughout the term of this Renewal License, a License Fee equal to five percent (5%) of the Licensee's Gross Annual Revenues, as such term is defined in this Renewal License, less the amount paid by Licensee under Section 5.6(h) below. Said License Fee shall be used for, among other things, support of the Access Corporation, PEG Access programming, and for any other purpose allowed by law.

(b) Funding provided by the Licensee hereunder shall be paid in accordance with Section 5.6 (c) below; provided, however, that if the license or renewal license of another cable operator (or its successor or assign) in the Town, provides for such operator to pay a lower percentage during such time period, then the percentage of the Licensee's License Fee shall be reduced to match such lower percentage over that same time period.

(c) The License Fee payments, pursuant to Section 5.6(b) above, shall be made no later than forty-five (45) days following the end of each calendar quarter. Upon request, Licensee shall provide a Gross Revenues Report Form and Calculation of Quarterly License Fee Payment in the form of (or substantially similar to) Exhibits D and E. For purposes of this Section 5.6.(c), the period for determining Gross Revenues shall be the preceding calendar quarter.

(d) In the event that the License Fees herein required are not tendered on or before the date fixed in Section 5.6(c) above, interest due on such fee shall accrue from the date due at the Prime Rate.

(e) The Licensee shall not be liable for a total financial commitment pursuant to this Renewal License and applicable law in excess of five percent (5%) of the Licensee's Gross Annual Revenues; provided, however, that said five percent (5%) shall include any license fee payable to the FCC and the State; and furthermore provided, however, that said five percent (5%) shall not include the following: (i) the PEG Access capital grants herein (Section 5.7); (ii) any interest due to the Town because of late payments; (iii) any damages herein (Section 7.8); and (iv) any taxes or other fees or charges which the Licensee shall be required to pay to the Town or any State or federal agency or authority.

(f) The Licensee may withhold from the payment under subsection (a) above, an amount equal to five percent (5%) of Gross Annual Revenues derived from sources other than cable subscribers and apply such amount against the costs incurred by the Licensee in installing the connections required in

the Town under Section 5.11 and Exhibit B of this Renewal License until such time as the costs of the connections in the Town under Section 5.11 and Exhibit B have been recouped.

(g) Unless otherwise required by applicable law, if services included within the definition of Gross Annual Revenues are provided to subscribers in conjunction with services not within such definition for a single aggregate price, and the total cost of such bundled services reflects a discount from the aggregate retail prices of the services contained therein when provided separately, the five percent (5%) License Fee shall be calculated in accordance with GAAP.

(h) Subject to applicable law, Licensee shall, on or before March 15th of each year, submit a second license fee to the Issuing Authority equal to fifty cents (\$.50) per subscriber per year as provided in M.G.L. c. 166A, §9. The number of subscribers, for purposes of this section, shall be calculated on the last day of each calendar year.

§5.7. PEG Access Capital Funding. In negotiation; this section will refer to the Exhibit C listing the equipment agreed upon. (From previous discussions, need some language on year 6-10 potential capital equipment needs; possibly to reopen agreement in year 5 and discuss. **ON HOLD as negotiations not finished.**

§5.8. Method of Payment. Accepted to read:

Section 5.8 METHOD OF PAYMENT

All payments by the Licensee to the Town pursuant to this Renewal License shall be made payable to the Town and deposited with the Town Treasurer.

§5.9. Recomputation. Accepted to read:

Section 5.9 RECOMPUTATION

(a) Tender or acceptance of any payment shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the Issuing Authority or the Access Corporation may have for additional sums including interest payable under this Article 5.

(b) Not more than once every three (3) years, the Issuing Authority or its designee, including an independent certified public accountant hired by the Issuing Authority, shall have the right to inspect records necessary to verify Gross Annual Revenues, as defined herein, in order to establish the accuracy of the payments tendered hereunder. If after any such inspection, an additional undisputed payment is owed, such payment shall be paid within thirty (30) days after any recomputation. The interest on such additional payment shall be charged from the original due date at the Prime Rate during the period that such additional amount is owed.

§5.10. Equipment Ownership.

After discussion focusing on the High Definition (HD) equipment pricing resting with Charter, but they are not committing to pay for it. It will be included in the PEG Access Capital costs and may or may not be charged to Spectrum customers. Would be a piece of equipment that would be on their front end or somewhere in the field. May be handled as an operating component, under the 621 order; issue of delineating it as equipment, capital expense, or the service of providing transport. In the 5% fee or not? Charter will figure this out and discuss further with the CAC. In the 5% or not? Charter may wish to have

a separate section in Article 5 on this matter; they will bring this forward. Considerable discussion on this.

This section was accepted to read:

Section 5.10 EQUIPMENT OWNERSHIP

The Issuing Authority may, at its discretion, delegate responsibility to the Access Corporation for the control and management of the PEG Access channels. The Issuing Authority shall notify Licensee of such delegation in writing no later than 30 days after the effective date of said delegation. The Town, or the Access Corporation, shall own all PEG Access equipment purchased with funding pursuant to Section 5.7 supra. The Licensee shall have no obligation to maintain or insure any such PEG Access equipment.

§5.11. Remote Origination Points. HOLD.

CAC has not finalized Exhibit B. Charter needs to understand what Exhibit B encompasses and what origination sites and return lines are actually being used today; also not willing to agree to a specific technology. This is a CAC responsibility and specifically that of each Town's representative. CAC is the party holding this up.

§5.12. PEG Access Channels Maintenance. Accepted to read:

Section 5.12 PEG ACCESS CHANNELS MAINTENANCE

(a) The Licensee shall monitor the PEG Access Channels for technical quality in accordance with FCC rules and regulations.

(b) The Town or the Access Corporation shall be responsible for maintaining the picture and audio quality of PEG Access programming delivered to Licensee. The Licensee shall be responsible for maintaining the return infrastructure up to the point of connection for the PEG Access Channel modulators and demodulators, except as otherwise addressed in this Renewal License.

§5.13. Censorship. Accepted to read:

Section 5.13 CENSORSHIP

Neither the Issuing Authority, the Licensee, nor the Access Corporation shall engage in any program censorship or any other control of the content of PEG Access programming on the Cable System, except as otherwise required or permitted by applicable law.

§5.14. Access Programming. Accepted to read:

Section 5.14 ACCESS PROGRAMMING

Except as otherwise set forth in applicable law, editorial discretion and the content of the programming on the Public Access Channel, and any liability therefor, shall reside solely with, and be the sole responsibility, of the Access Corporation.

§5.15. Third Party Rights

Section 5.15 THIRD PARTY RIGHTS

The Issuing Authority and the Licensee herein acknowledge and agree that the Access Corporation is not a party to this Renewal License and that any provisions herein that may affect the Access Corporation are not intended to create any rights on behalf of the Access Corporation.

§5.16. PEG Access Programming Costs. Accepted to read:

Section 5.16 PEG ACCESS PROGRAMMING COSTS

(a) Except as otherwise provided for in this License and applicable law, there shall be no direct charges to the Town, the Access Corporation, or PEG Access Users by the Licensee for use of the PEG Access facilities required herein, provided, however, that the Licensee may line-item and/or otherwise pass-through such PEG access annual funding costs to subscribers strictly in compliance with applicable laws and regulations.

End of section.

Next meeting and agenda were set for 4/26; additional meetings were set for May 10th and 24th.

On a motion to adjourn from R. Wood, seconded by D. Arseneau, and approved on a 3-0 vote, the meeting adjourned at 4:48pm.

Respectfully submitted,

Rene C. Wood;

Sheffield delegate to Five Town Cable Advisory Committee and member of the Negotiating Subcommittee

Documents used in the meeting:

- Agenda for 4/12/23
- 4.11.23 Redline to Proposed License Renewal Agreement from D. Reing, Esquire
- Charter's survey questions regarding franchise fees and PEG fees
- Charter's answers to 5 questions asked at the previous negotiation meeting