

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 May 10, 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

Dan Reing, Esq.; Outside Counsel; Mintz

John Maher, Director, State Government Affairs

The meeting was called to order by Chair L. Miller at 3:02pm and recorded.

The first item discussed was the PEG Capital Funding. D. Reing opened with how Charter evaluates PEG Capital request, including their interest in and its impact on subscribers, adequacy under Cable Act standards, and as later mentioned, market conditions and ability to recoup funds during the contract period. Charter offered \$150,000 to the exclusive benefit of PEG Capital. The 5% franchise fee, and all that entails, is separate. It was also pointed out that CTSB has reserves on its books.

The cost of HD channels was discussed as to whether they were part of the \$150,000. P. Abbot discussed the multiple aspects to this, such as the possible \$10,000/channel operating costs. The CAC members asked for a full costing – operational and capital – so CTSB can determine the impact on the operating budget. P. Abbot will investigate getting the work order to find the costs – as decoder only needed as already a fiber connection. According to FCC regs, Charter can not charge for downstream network equipment but per the 621 Order, can charge for upstream decoding transmission; component of the Franchise Fee.

It was also noted that the PEG Capital equipment includes another \$32,000+/- left over from the TWC contract. CAC members said they would review the \$150 PEG Capital equipment proposal, after thanking Charter for making it, with CTSB and provide feedback. R. Wood brought up prior discussion on revisiting PEG Capital needs in year 5 of the license renewal for years 6-10 potential needs. P. Abbot did not feel there would be more than \$10-20,000 if that, but was still open to the verbiage discussed in earlier meeting(s).

Moving on to follow up review of Article 5 from last meeting, no one had anything that stood out.

The meeting participants then addressed Articles 7 and 8 of the proposed renewal CABLE TV agreement, as redlined by Charter/Spectrum and annotated by the negotiating subcommittee, through the Exhibits.

ARTICLE 7 - ADMINISTRATION, REGULATION, AND LICENSEE'S PERFORMANCE

Section 7.1 REGULATORY AUTHORITY

The Issuing Authority or their designee(s) shall be responsible for the day to day regulation of the Cable Television System. The Department shall monitor and enforce the Licensee's compliance with the terms and conditions of this Renewal License. The Issuing Authority shall notify the Licensee in writing of any instance of non-compliance pursuant to Section 7.7 infra.

RCW: OK

Section 7.2 INDEMNIFICATION

The Licensee shall, at its sole cost and expense, indemnify, defend, and hold the Issuing Authority, the Town and its officials, boards, commissions, employees, or agents, harmless at all times during the term of this Renewal License from claims for damage due to the negligence or willful misconduct of Licensee, its employees, officers, or agents, and contractors in the construction, installation, operation, maintenance, and/or removal of the Cable Television System under the Renewal License, including without limitation, damage to Persons or property, both real and personal, caused by the construction, installation, operation, and removal of any structure, equipment, wire, or cable installed. Indemnified expenses shall include any judgment, cost, interest, and attorney's fees and costs up to such time that the Licensee assumes defense of any action hereunder. The extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The Issuing Authority shall give the Licensee prompt written notice of its obligation to indemnify and defend any Indemnified Party pursuant to this section. Charter shall not be required to provide indemnity under this Section 7.2 to the extent that the claim results from unlawful acts, willful misconduct, or negligence on the part of the Issuing Authority, Town, or any official, board, commission, employee, or agent thereof.

RCW: added comma between misconduct and or

Section 7.3 INSURANCE

At all times during the term of this Renewal License, including the time for removal of facilities provided for herein, the Licensee shall obtain, pay all premiums for and, if requested in writing, file, with the Issuing Authority, insurance company certificates of the following insurance:

(a) A general comprehensive and property liability policy naming the Town, its officers, boards, commissions, committees, agents and employees as additional co-insureds on claims on account of injury to or death of a person or persons with a minimum liability of Two Million Dollars (\$2,000,000.00) for injury or death to any one Person in any one occurrence and Four Million Dollars (\$4,000,000.00) for injury or death to two (2) or more persons in any one occurrence.

(b) A property damage insurance policy naming the Town, its officers, boards, commissions, committees, agents and employees as additional named insureds, with a minimum liability of One Million Dollars (\$1,000,000.00) for damage to the property of any one Person in any one occurrence

and Three Million Dollars (\$3,000,000.00) for damage to the property of two (2) or more persons in any one occurrence.

(c) Automobile liability insurance for owned vehicles including, but not limited to owned, non-owned and rented automobile(s) and utility service vehicle(s) in the amount of: (i) Three Million Dollars (\$3,000,000) for bodily injury and consequent death per occurrence; (ii) Two Million Dollars (\$2,000,000) for bodily injury and consequent death per occurrence; and (iii) Seven Hundred and Fifty Thousand Dollars (\$750,000) for property damage per occurrence.

(d) Worker's Compensation in the minimum amount of the statutory limit.

(e) The following conditions shall apply to the insurance policies required herein: (i) Such insurance shall commence no later than the Execution Date of this Renewal License; (ii) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town's insurance for contributions; (iii) Such insurance shall be obtained from brokers or carrier authorized to transact insurance business in the State; and (iv) the Licensee's failure to obtain, to procure, or to maintain the required insurance shall constitute a material breach of this Renewal License under which the Town may immediately suspend operations under this Renewal License.

RCW: Has Charter had a chance to review this section further? Will need to review with counsel after Charter comments are finalized.

Section 7.4 PERFORMANCE BOND

(a) The Licensee shall maintain at its own cost and expense throughout the term of this Renewal License a faithful performance bond running to the Town, with at least one good and sufficient surety licensed to do business in the State in the sum of Ten Thousand Dollars (\$10,000). Such a separate and equally funded Performance Bond shall be maintained for each of the five (5) Towns. Said bond shall be conditioned upon the faithful performance and discharge of all material obligations imposed by this Renewal License.

(b) The performance bond shall be effective throughout the term of the Renewal License, including the time for removal of all of the facilities provided for herein, and shall be conditioned that in the event that Licensee shall fail to comply with any one or more material term or condition of the Renewal License, or to comply with any lawful order, permit direction of any department, agency, commission, committee, board, division or office of the Town having jurisdiction over Licensee's acts, or to pay any claims, liens or taxes due the Town which arise by reason of the construction, upgrade, maintenance, operation, and/or removal of the Cable Television System, the Town shall recover from the surety of such bond all damages suffered by the Town as a result therefor, pursuant to the provisions of Section 7.7 and 7.8 infra.

(c) Said bond shall be a continuing obligation of the Renewal License, and thereafter until the Licensee has satisfied all of its obligations to the Town that may have arisen from the grant of the Renewal License or from the exercise of any privilege therein granted. In the event that the Town recovers from said surety, the Licensee shall take immediate steps to reinstate the performance bond to the appropriate amount required herein. Neither this section, any bond accepted pursuant hereto, or any damages recovered thereunder, shall limit the liability of Licensee under this Renewal License.

RCW: While this is per Town, want more than \$10K, as \$10K barely covers anything of this nature today. Will Charter please give an example or two of material term or condition?

Section 7.5 NOTICE OF CANCELLATION OR REDUCTION OF COVERAGE

The insurance policies and performance bond required herein shall each contain an explicit endorsement stating that such insurance policies and performance bond are intended to cover the liability assumed by the Licensee under the terms of the Renewal Licensee and shall contain the following endorsement:

“It is hereby understood and agreed that neither this policy or bond shall be cancelled, materially changed or the amount of coverage thereof reduced, until sixty (60) days after receipt by the Issuing Authority by certified mail of one (1) copy of a written notice of such intent to cancel, materially change, or reduce the coverage required herein.”

RCW: OK

Section 7.6 REPORTING

Upon written request of the Issuing Authority, the Licensee shall submit to the Issuing Authority, or their designee(s), copies of : (i) all certificates of insurance for policies as required herein; and (ii) the performance bond as required herein.

RCW: OK

Section 7.7 DETERMINATION OF BREACH

In the event that the Issuing Authority has reason to believe that the Licensee has substantially defaulted in the performance of any or several material provisions of this Renewal License, except as excused by Force Majeure, the Issuing Authority shall first informally discuss the matter with the Licensee. If these discussions do not lead to resolution of the alleged problem, the Issuing Authority shall notify the Licensee in writing, by certified mail, of the exact nature of the alleged default or noncompliance, including the details relating thereto. The Licensee shall either:

(a) Within thirty (30) days from receipt of such notice, respond to the Issuing Authority in writing, contesting the Issuing Authority’s assertion of default and provide such information or documentation as may be necessary to support the Licensee’s position; or

(b) Within sixty (60) days from receipt of such notice, cure any such default (and provide written evidence of the same), or, in the event that by nature of the default, such default cannot be cured within such sixty (60) day period, to take reasonable steps to cure said default and diligently continue such efforts until said default is cured. The Licensee shall communicate with the Issuing Authority as to the Licensee’s efforts during such cure period..

In the event that the Licensee fails to respond to such notice of default or to cure the default or to take reasonable steps to cure the default within the required sixty (60) day period, the Issuing Authority shall promptly schedule a public hearing to be conducted by the Issuing Authority no sooner than fourteen (14) days after written notice, by certified mail, to the Licensee. The Licensee shall be provided the opportunity to offer evidence and test(challenge?) the Issuing Authority’s evidence, including by presenting witness testimony and cross-examining any opposing witnesses, and generally to be heard at such public hearing. Any such hearing shall be transcribed and any evidence presented therein shall be made part of the public record, subject to claims of confidentiality asserted by Licensee.

Within thirty (30) days after close of said public hearing, the Issuing Authority shall determine whether or not the Licensee is in default of any **material** provision of the Renewal License. In the event the Issuing Authority, after such hearings, determines that the Licensee is in such default, the Issuing Authority may determine to pursue any of the following remedies:

- (i) seek specific performance of any provision in the Renewal License which reasonably lends itself to such remedy as an alternative to damages;
- (ii) commence an action at law for monetary damages;
- (iii) foreclose on all or any appropriate part of the security provided pursuant to Section 7.4 herein;
- (iv) declare the Renewal License to be revoked subject to Section 7.21 below and applicable law;
- (v) invoke any other lawful remedy available to the Town.

RCW: "substantially" is not defined. How do we make sure this is equally understood? Can not agree to crossing out (i) as that section has not been negotiated. Do we not all wish to have this move faster?

See Section 7.8 separate page

Section 7.9 NO WAIVER – CUMULATIVE REMEDIES

(a) No failure on the part of the Issuing Authority, or the Licensee to exercise, and no delay in exercising, any right in this Renewal License shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, all subject to the conditions and limitations contained in this Renewal License.

(b) The rights and remedies provided herein are cumulative and not exclusive of any remedies provide by law, and nothing contained in this Renewal License shall impair any of the rights of the Issuing Authority or the Licensee under applicable law, subject in each case to the terms and conditions of this Renewal License.

(c) A waiver of any right or remedy by the Issuing Authority or the Licensee at any one time shall not affect the exercise of such right or remedy, or any other right or remedy, by the Issuing Authority or the Licensee at any other time. In order for any waiver by the Issuing Authority or the Licensee to be effective, it shall be in writing. The failure of the Issuing Authority or the Licensee to take any action in the event of any breach by the Licensee or the Issuing Authority shall not be deemed or construed to constitute a waiver of or otherwise affect the right of the Issuing Authority or the Licensee to take any action permitted by this Renewal License at any other time in the event that such breach has not been cured, or with respect to any other breach by the Licensee or the Issuing Authority.

RCW: OK

RCW: please explain why this is no longer necessary since the system is digital; renumber sections as needed.

Section 7.11 PERFORMANCE EVALUATION HEARING

(a) The Issuing Authority may, at its discretion, but no more frequently than annually, hold a performance evaluation hearing as it may from time to time deem necessary. Any such hearing shall be open to the public and properly noticed. The purpose of said performance evaluation hearing shall be to review Licensee's compliance with the material terms and conditions of this Renewal License. The Issuing Authority shall have the right to question Licensee concerning the operation, maintenance, and extension of the Cable Television System and any other matters regulated by this Renewal License, including, but not limited to, customer service, complaint response, programming, and PEG Access channels, facilities, and support.

(b) The Licensee shall be given twenty-one (21) days prior written notice of any and all topics to be discussed as well as the date, time, and place of such any performance evaluation hearing. During such review and evaluation by the Issuing Authority, Licensee shall fully cooperate with the Issuing Authority and produce such documents or other materials as are reasonably requested by the Issuing Authority and reasonably related to material compliance with the Renewal License. The Issuing Authority shall arrange for announcement of each evaluation hearing on a PEG Access channel. One or more of the Issuing Authorities may elect to hold a joint performance evaluation hearing with the Licensee. Any such hearing may be in person or held remotely

(c) Within thirty (30) days after the conclusion of any such evaluation hearing, the Issuing Authority(ies) shall issue a written report with respect to the adequacy of Cable System performance, quality of service, and any other matter discussed during the evaluation hearing, and send one (1) copy to the Licensee and file one (1) with the Town Clerk Office(s). If inadequacies are found which result in a violation of any of the material provisions of the Renewal License, the Licensee shall respond in writing within thirty (30) days and propose a plan for implementing any changes or improvements necessary.

RCW: why is designee struck? Otherwise OK

Section 7.12 CABLE ADVISORY COMMITTEE

(a) At the discretion of the Issuing Authority and as provided for in this Renewal License, the CAC may be vested by the Issuing Authority with such power and authority as may lawfully be delegated, including participation in the CAC with the Towns of Great Barrington, Lee, Lenox, Sheffield, and Stockbridge. However, only the Issuing Authority may grant and sign a Renewal License; agree to amend a Renewal License; grant or deny consent to a transfer of a Renewal License; find the Licensee in breach of the Renewal License; or revoke the Renewal License.

(b) The Licensee shall meet with the Issuing Authority or CAC on an annual basis to review the Licensee's compliance with the material terms of the Renewal License. Such meetings may be requested by the Issuing Authority and the CAC; the Licensee's or designee(s) shall make every effort to attend each such meeting, either remotely or in person.

RCW: quarterly meetings – annual not acceptable. Again material terms of license cited, so we all should agree on what are material terms. Otherwise acceptable.

Section 7.13 INFORMATION REQUESTS AND RIGHT TO INSPECT RECORDS AND FACILITIES

(a) Upon written request of the Issuing Authority, the Licensee shall promptly, and no later than within thirty (30) calendar days, submit written information with respect to the Cable System regarding the Licensee, as may be reasonably required to establish the Licensee's compliance with its material obligations pursuant to this License.

(b) If the Licensee believes that any documentation requested by the Issuing Authority pursuant to this Renewal License involves proprietary or confidential information, then the Licensee need not disclose the information to the Town; however, the Licensee shall confer with the Town Counsel, with the Issuing Authority's permission, to explain the basis of the Licensee's claim of a proprietary interest and attempt to implement a mutually acceptable method of confidential treatment of such records such that they shall not become public records.

(c) Upon reasonable written notice, the Issuing Authority may visit the place(s) of business and other premises and examine the records and facilities of the Licensee during normal business hours to determine Licensee's compliance with the material provisions of this Renewal License.

RCW: OK, given previous comments and consensus on material

Section 7.14 QUALITY OF SERVICE

Where there exists evidence which, in the reasonable judgement of the Issuing Authority, casts doubt upon the reliability or technical quality of Cable Service(s), the Issuing Authority shall have the right and authority to require Licensee to request data and information provided by Licensee to the FCC demonstrating compliance with FCC signal quality requirements.

RCW: is there a time proviso here? we did not request one, but possibly should be put in. Can Licensee just provide the data and information it has provided to the FCC? Does the section as written require the FCC to say the Licensee is in compliance with the FCC's requirements? Otherwise just passing reports with no agreement of compliance.

Section 7.15 FINANCIAL, COMPLAINT, AND OTHER REPORTS

(a) The Licensee shall furnish the Issuing Authority, or its designee(s), no later than one hundred twenty (120) days after the end of Licensee's Fiscal Year, Department Forms 200 and 400, prepared in accordance with the Department's rules and regulations.

(b) The Licensee shall furnish the Issuing Authority, or its designee(s), no later than one hundred twenty (120) days after the end of the Licensee's Fiscal Year, a statement of its Gross Annual Revenues, upon which its License Fee is based.

(c) The Licensee shall submit a completed copy of the Department's Form 500 to the Issuing Authority, or its designee(s), as required by the Department.

(d) The Licensee shall file a written report containing the number of Subscribers in the Town with the Issuing Authority, or its designee(s), and said report shall be filed annually with the Financial Reports required herein.

RCW: OK

Section 7.16 NON-EXCLUSIVITY OF REMEDY

No decision by the Issuing Authority or the Town to invoke any remedy under this Renewal License or under any statute, law, or ordinance shall preclude the availability of any other such remedy.

Section 7.17 DUAL FILINGS

If requested in writing, the Licensee shall make available to the Town, at the Licensee's expense, copies of any specifically identified petitions or communications filed by the Licensee with any State or federal agency or commission pertaining to any material aspect of this License.

RCW: OK

RCW: OK

Section 7.19 INVESTIGATION

RCW: OK

RCW: OK

Section 7.21 TERMINATION

The termination of this Renewal License and the Licensee's right herein shall become effective upon the earliest to occur of: (i) the revocation of the Renewal License by action of the Issuing Authority, pursuant to Section 7.7 and exhaustion of all appeals; (ii) the abandonment of the Cable System, in whole or material part, by the Licensee without the express, prior approval of the Issuing Authority; or (iii) the expiration of the term of this Renewal License and non-renewal in accordance with the provisions of the Cable Act. In the event of any termination, the Town shall have all of the rights provided in the Renewal License.

RCW: can't finalize until we finalize language covering (ii). Know this is being worked on by Charter but not sure if completed. Please advise

ARTICLE 8 - GENERAL PROVISIONS

Section 8.1 ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties, supersedes all prior agreements or proposals except as specifically incorporated herein, and cannot be changed orally but only by instrument in writing executed by the parties.

Section 8.2 CAPTIONS

The captions to sections throughout this Renewal License are intended solely to facilitate reading and reference to the sections and provisions of the Renewal License. Such captions shall not affect the meaning or interpretation of this Renewal License.

Section 8.3 SEVERABILITY

If any section, sentence, paragraph, term, or provision of this Renewal License is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any State or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term, or provision thereof, all of which shall remain in full force and effect for the term of this Renewal License.

Section 8.4 FORCE MAJEURE

If for any reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability. Unless further limited elsewhere in this renewal License, the term “force majeure” as used herein shall have the following meaning: strikes; acts of God; acts of public enemies, orders of any kind of the government of the United States of America or of the Commonwealth of Massachusetts or any of their departments, agencies, political subdivisions, or officials, or any civil or military authority; insurrections; riots, epidemics; landslides; lightning; earthquakes; fires, hurricanes; volcanic activity; storms; floods; washouts; droughts; arrests; civil disturbances; explosions; partial or entire failure of utilities; unavailability of materials such as fiber, or any other cause or event not reasonably within the control of the Licensee.

RCW: Where more factors added? Y/N this section is OK

Section 8.5 RENEWAL LICENSE EXHIBITS

The Exhibits to this Renewal License, attached hereto, and all portions thereof, are incorporated herein by reference and expressly made a part of this Renewal License.

Section 8.6 WARRANTIES

The Licensee warrants, represents, and acknowledges that, as of the Execution date of this Renewal License:

- (a) The Licensee is duly organized, validly existing and in good standing under the laws of the State;
- (b) The Licensee has the requisite power and authority under applicable law and its bylaws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents required to be obtained as of the Execution Date of this Renewal License, to enter into and legally bind the Licensee to this Renewal License and to take all actions necessary to perform all of its obligations pursuant to this Renewal License;

(e) This Renewal License is enforceable against the Licensee in accordance with the provisions herein, subject to applicable State and federal law; and

(f) There is no action or proceeding pending or threatened against the Licensee which would interfere with its performance of this Renewal License.

RCW: subsections need to be (c) and (d) Otherwise, OK

Section 8.7 APPLICABILITY OF RENEWAL LICENSE

All of the provisions in this Renewal License shall apply to the Town, the Licensee, and their respective successors and assignees.

Section 8.8 JURISDICTION

Jurisdiction and venue over any dispute or judgment rendered pursuant to any Article herein shall be in a federal or state court or agency of appropriate venue and subject matter jurisdiction located in the Commonwealth of Massachusetts and the parties by this instrument subject themselves to the personal jurisdiction of said court for the entry of any such judgment and for the resolution of any dispute, action, or suit arising in connection with the entry of such judgment.

Section 8.9 NOTICE

Every notice to be served under this Renewal License shall be delivered by hand, sent by certified mail (postage prepaid), overnight delivery service, or electronic mail, and shall be deemed to have been given on the date of hand delivery or on the mailing (including electronic mailing) date thereof. Notices shall be addressed as follows:

(a) To the Issuing Authority:

Select Board

Town Hall

Mailing Address and Street Address

_____, MA 012_____

[[insert e-mail address]]

Or such other address as the Issuing Authority may specify in writing to the Licensee.

(b) To the Licensee:

Charter Communications, Inc.

[[insert e-mail address]]

Or such other address as the Licensee may specify in writing to the Issuing Authority.

RCW: OK

Section 8.10 TOWN'S RIGHT OF INTERVENTION

The Town hereby reserves to itself, and the Licensee acknowledges the Town's right, to the extent authorized by applicable law or regulation, to intervene in any suit, action or proceeding involving this Renewal License, or any provision in this Renewal License.

Section 8.11 RESERVATION OF RIGHTS

Acceptance of the terms and conditions of this Renewal License Agreement will not constitute, nor be deemed to constitute, a waiver, either expressly or impliedly, by Licensee or by the Issuing Authority of any constitutional or legal right, which either party may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The Issuing Authority and Licensee acknowledge that each reserve all of their respective rights under applicable Federal and State Constitutions and laws.

Section 8.12 INCORPORATION of M.G.L. c. 166A, §5

The provisions of M.G.L. c. 166A, §5(a)-(o), as they presently exist and as they may from time to time in the future be amended, are incorporated into this Renewal License Agreement, and shall be governing on all parties.

RCW: discussion needed per Charter.

Section 8.13 NO THIRD PARTY BENEFICIARIES

This License is not intended to create any rights or benefits on behalf of any Person other than the parties to this Renewal License.

Signature page follows.

The group set the agenda for its 5/10/23 meeting at 3pm, which will address PEG capital expenditures and Article 5 as well as Articles 7 and 8.

On a motion to adjourn from R. Wood, seconded by D. Arseneau, and approved on a 3-0 vote, the meeting adjourned at 4:32pm.

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 4/26/23; Redline Proposed License Renewal Agreement from D. Reing, Esquire
- Spectrum Privacy Policy, effective 1/1/2023; Articles 4 and 6, redlined and annotated