

**Board of Selectmen  
August 29, 2012**

**Present:** Kenneth S. Paul, Chairperson; Peter M. Kasprzyk; Richard C. Edwards; Teresa A. Williams, Town Administrator; and Toni Bodah, Secretary.

Also present were: Katherine Miller, Esq., Donahue Tucker & Ciandella; Mike Edgecomb, Director of Government Relations, Time Warner Cable ("TWC"); Freeman Davis; Relf Fogg; Dave Mankus; Jim Miller; Ed Comeau (videotaping); and Jerry O'Connor (videotaping).

Mr. Paul called the posted meeting to order at 4:12 p.m. and led those present in the Pledge of Allegiance. Mr. Paul stated that the main objective of this session is to review TWC's proposed revisions to the draft cable contract.

Ms. Miller referred to the term found on page 1. The Town had proposed a 5-year term, while TWC has countered with a 15-year term. Mr. Edgecomb stated that 5 years is just too short and would result in beginning renegotiations a mere 2 years into the contract. Mr. Kasprzyk referred to the rapid change in technology and suggested cable might not even be around in 15 years. Mr. Edgecomb stated that TWC would likely be willing to meet somewhere in the middle.

Ms. Miller noted that long-term contracts usually include build-out plans and start-up funds. She would expect the Town to seek those again with a 15-year term. She would want to see what TWC would be offering the Town for a 15-year contract. Mr. Edwards asked whether TWC had any plans to expand services over the next 7-15 years. Mr. Edgecomb stated that technology is changing so quickly that he really doesn't know where a lot of this is going. However, he does expect that cable will be provided via internet. Mr. Edwards noted that not everyone has access to internet. Mr. Edgecomb stated that other companies may also get into video via wireless, and he expects wireless to be around for a while. Mr. Edwards believes that the internet is the future, but there are people in Wakefield off the beaten path that are not able to get service. He would expect with a term of 15 years that the contract would include the intent to get everyone in town access to internet. Mr. Edgecomb advised it costs about \$25,000 per mile to run cable and takes 20-25 homes per mile for TWC to receive a return on their investment. Mr. Paul noted that much of Wakefield's zoning precludes meeting TWC's requirements.

Ms. Miller referred to the section regarding taxation, beginning on page 7. She noted this is likely an issue for TWC's legal staff; however, she notes that the purpose is to include existing NH law.

There is another reference to term on page 9.

Ms. Miller referred to section 14 on page 22, performance standards. This relates to changes in technology and whether TWC is favorable to implementing same in Wakefield. She questioned why this language was removed. Mr. Edgecomb stated that TWC is very advanced in technology. Cable companies used to renegotiate based on build-ups. TWC already provides upgrades in technology, so this section is not necessary. The Town should not dictate technology. Ms. Miller stated this section merely provides the Town with options if economically feasible. Mr. Edgecomb believes TWC is already doing this. He added that it is boiler plate language to which TWC will not agree. Ms. Miller suggested a change in the benchmark communities. Some communities listed are served by Metrocast, rather than TWC.

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In this same section, reference is made to TWC providing the Town of Wakefield with an annual report. TWC has revised this language to state that an annual report will only be provided upon request. Ms. Miller asked wondered what prompted that revision. Mr. Edgecomb stated that many towns are provided with an annual report, which is then not read. He wants to be sure the report is wanted before he puts in the time to create same. Ms. Miller would agree to require a single request for the term of the contract.

The service area is discussed on page 28. The Town had proposed that service be provided to every existing residential dwelling and commercial unit. It would not include new construction. Ms. Miller asked why this section was revised. Mr. Edgecomb referred to the cost involved. Mr. Edwards suggested that TWC might consider expanding service by 1 mile each year of the contract as a show of good faith. Mr. Edgecomb stressed that the contract can only be discussed in terms of cable. However, TWC also provides internet and telephone. He stated there is a proposed federal law that would require everyone to build out internet and telephone. If that happens, cable would be expanded by default. Mr. Edgecomb added that the telephone companies get subsidized. TWC would also be subsidized if that bill passes. This, of course, would be funded via taxes.

Ms. Miller noted that the Town has requested service for both residential and commercial units; however, TWC says "no." Perhaps TWC would consider an amount of yearly build-out. Mr. Edgecomb agreed it could be considered, but he does not believe TWC will approve. If it were approved, the cost would likely be passed on to the customers. Ms. Miller stated this could be important when considering the term of the contract. She noted that commercial units were removed; however, it is important that they be included. Mr. Edgecomb does not expect that to be an issue.

Ms. Miller noted that on page 30, the standard installation was changed from 300' to 200'. Mr. Edgecomb referred to the loss in frequency strength as the distance increases. 200' is TWC's standard, while the FCC standard is 125'. At 200', TWC will pay the first \$1000 of the cost (at least it has for the last 18 months).

Ms. Miller referred to section 23, specifically exhibit D, which relates to the PEG channel. TWC has removed the option for a second channel. Mr. Edgecomb stated that we could discuss a second channel; however, the Town would need to demonstrate the need and its plans for that channel. He stressed that channel space is at a premium. Mr. Paul stated that the first channel would be for government use, while the second would be for education and recreation. Mr. Edgecomb noted that there is no charge for the channel, but they would charge for equipment. Generally, towns purchase the equipment. If TWC provides the equipment, they would pass that cost on to the customers. Mr. Kasprzyk questioned whether the Town would be able to purchase the equipment at TWC's cost. Mr. Edgecomb advised that most towns purchase their own equipment, although a TWC representative could make recommendations. He confirmed the Town could purchase it at the same cost as TWC, if not better.

Ms. Miller referred to the possibility of TWC providing a grant or loan to the Town and asked whether that would be spread out over the term of the contract and assessed to each customer. Mr. Edgecomb stressed that any such grant/loan would require a list of what it would be used for.

Mr. Kasprzyk wonders whether the customer could have the option of receiving (and paying for) the second PEG channel. Ms. Miller advised the customer could not have that option as federal law requires it be part of the basic tier. Mr. Edgecomb stated that the loan could be repaid via franchise fees and confirmed there is no interest charge. Ms. Miller asked whether there is any funding available that would not be passed on to the subscribers. She noted that the Town has had a 25-year contract without any funding. Mr. Edgecomb is willing to make that pitch, but has not experienced any previous success in that regard.

A brief discussion followed regarding the cost of packages.

Mr. Edwards referred to the recent (temporary) loss of WMUR and stressed his anticipation that such a loss will not recur. Ms. Miller is aware that the Town cannot dictate the channel line-up; however, this is the only NH station and should be available to NH residents. She stressed the seriousness of this issue and noted that she would recommend revocation of the franchise agreement should Channel 9 be removed. Mr. Kasprzyk asked about receiving Boston stations. Mr. Edgecomb advised that there is currently an effort to have some Boston stations included in this market area. Ms. Miller noted that under an old rule, this area is currently in the Portland market. Mr. Edwards wants to ensure that Channel 9 will not be lost again. Mr. Edgecomb suggested that residents contact their State reps to support the FCC overhaul. Ms. Miller hopes that Mr. Edgecomb will escalate the Town's concern to TWC. Mr. Edgecomb noted that the recent issue with Hearst was a nation-wide issue.

Ms. Miller asked about the cost for a second origination location. Mr. Edgecomb estimated it to be in the area of \$8000 to activate the school. He had no luck in preventing that cost from being passed on to the customers.

Mr. Paul asked about a current build-out map. Ms. Miller has such a map and asked Mr. Edgecomb to provide same electronically. Discussion followed as to the possibility of expanding service at the rate of 1 mile for each year of the contract, with the expectation that same might not be accomplished until the end of the franchise. Mr. Kasprzyk is still concerned with the advancement of technology; however, we need to meet the needs of the community.

Ms. Miller referred to page 34, and the modest recommendation of 2% franchise fees (with the maximum being 5%). She noted such a modest percentage is very helpful to TWC; however, if the Town does not receive funding, it may look to increase that percentage.

Ms. Miller referred to page 36 and the section on the performance bond, which section was entirely eliminated by TWC. Mr. Edgecomb noted that such a requirement is not currently in place and he does not believe there would be an issue. It would cost TWC money, but he is willing to discuss this section. Ms. Miller stressed the importance to the Town to have this bond in place. Perhaps \$25,000 would be more fair.

Mr. Paul asked whether there were any questions from the public. Mr. Fogg stated that the original contract was for 25 years, with the build-out to be completed within the first 5 years. He stressed the importance in getting commitments to have cable on every pole in town.

It is time to have the town completely built out. Perhaps TWC would have more incentive to complete the build-out if the term of the contract were shorter.

Mr. Miller thanked the Board for their diligence on this project. He respects TWC's right to advocate for TWC. His concern is that he sees the same thing in the contract that he sees on his bill: he is paying more for less. Mr. Miller asks what is in it for us. This is a rural town, so build-out is a big issue. The internet is the wave of the future. TWC wants to charge us to run cable in order to charge customers. The Town becomes the investor, but what does it get in return? Mr. Miller noted that the Town has gone 25 years without receiving a penny in order to enhance communication in the community. What is in it for us? Perhaps we do not need a contract that binds us to something where we do not receive anything.

Mr. Mankus was part of the Cable Committee that did look at the build-out. He was actually surprised at how much of the town was built out. He does not believe we are looking at a lot of miles, and 1 mile each year is essential. Mr. Mankus noted the importance of students accessing the internet. He also suggested the installation of cable might encourage development. Mr. Edwards added that the older generation also uses the internet to reconnect to society.

Mr. Mankus stated that the Cable Committee had looked at franchise fees in order to give the Town funds with which to work, rather than to be used to pay back TWC for equipment. He believes that most towns get equipment as a gift for TWC having an exclusive. Mr. Edgecomb estimated that Wakefield would receive about \$34,000 in franchise fees. Ms. Miller believes the cost of funding is divided more fairly when linked to individual bills rather than splitting the cost of a "loan" among all customers.

Mr. Fogg asked whether this contract is truly exclusive. Ms. Miller stated that from a legal standpoint it is non-exclusive (and is so stated in the contract); however, it is actually an economic monopoly because there is no competition. Mr. Kasprzyk suggested there would be more competition when we get rid of wire.

Mr. Miller noted that our PEG channel services Wakefield, Brookfield, part of Middleton and part of Acton, as required by TWC. When franchise fees are available, the other towns will want to jump on the bandwagon, which will quickly result in the need for a second channel. The need is there, or it will be shortly. Mr. Edgecomb stated that TWC will require something in writing regarding the need for a second channel. He added that a TWC representative could assist with specifying equipment. Mr. Edgecomb estimated (for Mr. Miller) minimum start-up costs to be \$5,000. Mr. Miller stressed the Town has never received \$1 in start-up funds. According to Mr. Miller, TWC chose us and has some obligation to help us get this off the ground.

Discussion followed regarding franchise fees and the fact that they can be used for any purpose, including stipends, build-out, etc.

Mr. Mankus noted that the biggest consumer complaint has been pixilation during movies. He wonders what causes this. Mr. Edgecomb advised the issue is often in the home; however, it could be an issue that TWC could address. It is important that the consumers let TWC know of the problem.

Ms. Miller stated that as the next step she will have discussion with the Board of Selectmen and will provide Mr. Edgecomb with revisions. Mr. Edgecomb stressed that the red-lining in the draft is his work, based upon previous negotiations with TWC. There was brief discussion as to whether TWC has met the terms of the original contract. Mr. Fogg noted that the density clause allows the cable providers leeway. Mr. O'Connor stated that the 1987 agreement refers to 100% build-out; however, it is not very specific. He also thanked the Board for having these negotiations in public session.

Ms. Williams presented the Board with several documents for signature as follows:

--The Assessing Department provides DRA with information for their Mosaic Map Project. In the past this has been accomplished by mailing them the Town's CD from Cartographics. Cartographics is willing to supply that information directly to DRA, with the Town's permission. The Board agreed by consensus to authorize Cartographics to provide that information directly to DRA.

--Previously, the Board had executed a contract with June Garneau for the preparation of a new Emergency Management Plan. Unfortunately, Ms. Garneau is unable to locate a signed contract. The Board agreed by consensus to execute this document again.

--Rich Cook of NH Fish & Game is seeking the Board's signatures on a revision of the appraisal of the Union Meadows property. A federal review of the appraisal has resulted in a slight increase in value of the property, which results in a slight increase in value of the easement. This will have no effect on the purchase price, but it does require a new government form. Mr. Mankus indicated that the closing is now scheduled for October. **Mr. Paul moved to execute the change in appraised value, as presented. Mr. Kasprzyk seconded the motion, which passed 2-1.**

--A public hearing was conducted recently, at which time the Board approved several changes to the Sewer Ordinances (relating to removal of any reference to Brookfield, as well as implementation of interest penalties on outstanding septage hauler invoices). Those documents have been revised and are ready for signature by the Board. **Mr. Paul moved to execute the amended Sewer Ordinances, as presented. Mr. Kasprzyk seconded the motion, which passed 3-0.**

--Payment Manifests: **Mr. Paul moved to execute the AP Warrant in the amount of (\$1,141.80). Mr. Edwards seconded the motion, which passed 3-0.**

Mr. Miller advised that a number of individuals met regarding the formation of a non-profit organization, with the goal being to provide administration for the PEG channel. He is hopeful that at the next Selectmen's meeting, he can provide documents for the Board's review. The major discussion is likely to be centered on funding. Things are moving forward fairly quickly now. The plan is to establish a non-profit organization separate from the Town. The mission statement is: To enhance the exchange of community information by facilitating the creation and broadcast of quality public, education and government programming on local cable networks in the greater Wakefield area.

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The proposed name of this organization is ClearView Community Television Services. Mr. Edwards thanked all involved for stepping up to the plate.

There being no further business, the meeting adjourned at 5:40 p.m.

Respectfully submitted,  
Toni Bodah, Secretary

Approval of Minutes:

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Kenneth S. Paul, Chairperson

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Peter M. Kasprzyk

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Richard C. Edwards