

The seal of the City of Lowell is a circular emblem. It features a central scene with a sun rising over a river, a bridge, and various buildings. The text 'LOWELL' is written in a large, serif font across the middle of the seal. The words 'MANUFACTURING' and 'COMMERCE' are written in smaller letters around the top and bottom of the seal respectively. The seal is rendered in a light gray color, serving as a background for the title text.

The City of
LOWELL

**Comcast of Southern New England
Community Antenna Television
System
Franchise Renewal License**

January 13, 2015

*Presentation to the Lowell City Council Technology & Utilities Subcommittee
Presenter: Mirán Fernandez, Chief Information Officer and Cable TV Coordinator*

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What is the Community Antenna Television System License?

- This License governs the Community Antenna Television System within the City of Lowell.
- The Community Antenna Television System is often referred to as Cable Television, Cable Video, CATV, or simply Cable.
- The Community component of this License directly impacts the City's cable subscriber community, as well as the Public, Educational and Government Access, commonly referred to as PEG channels within the cable system.
- The focus of this License is video services transmitted over or otherwise cablecast on the CATV system within the City of Lowell.
- The License expired on October 10, 2013 though it has been extended throughout the renewal negotiations to date.

Why Don't We Have Other Cable Operators To Choose From?

- Comcast is the only cable operator that has sought a License within the City, after acquiring the AT&T Broadband infrastructure which was already in place.
- Any Cable Operator considering providing services within the City needs to account for the capital investment necessary to establish its own infrastructure.
- Though the City has repeatedly approached other Cable Operators about seeking a license to operate CATV in Lowell, we seldom receive a response, and when we do, it is to inform us that "... Lowell is not currently part of our business plans..."
- To specifically address the question of Verizon, Verizon has not only told us repeatedly that the City of Lowell isn't a part of their business plan, but has also officially announced the end of new FiOS franchises within the country.
- The City is always prepared, and stands ready to negotiate with any Cable Operator that may be interested in a License to conduct business here.

Why Does One Contract Require So Much Effort?

- Because it isn't just the Cable Franchise that is impacted!
- During the renewal process, the negotiation team considers:
 - Cable-specific regulatory ordinances at the Federal and State level
 - General Federal and State code regulation changes
 - Local right-of-way ordinances and code provisions
 - Changes to gross revenue calculations and formulas
 - Customer service provisions
 - Technology advances and changes
 - Institutional Network (I-Net) changes
 - New and renewed licenses from other communities
 - Certain agreements committed to via "side letter"
- Negotiations for this License Renewal began in October of 2012, understanding that the License was set to expire in October of 2013, and was extended through multiple amendments.
- The City's Negotiation Team included members of the City's Law Department and City's MIS Department.

What is the Cable License Statutory Framework?

The Cable License process is governed by the following statutory framework:

- Federal Jurisdiction
 - 47 USC (Cable Act – Title VI)
 - Code Federal Regulations (Part 76-FCC rules)
 - FCC Jurisdiction
- State Jurisdiction
 - MGL (C. 166A)
 - Code Massachusetts Regulations (207 CMR 2.00)
 - DTC jurisdiction (Cable Division)
 - Formerly the Department of Telecommunications and Energy (DTE)
 - Now the Department of Telecommunications and Cable (DTC)
 - Department of Public Utilities (DPU)
- Local Jurisdiction
 - MGL (C 166A §1) establishes the Issuing Authority (aka, “Local Franchising Authority” or “LFA”) as the City Manager

Is There Anything We Specifically Can't Negotiate?

Because of the statutory framework, **the following four items can not be negotiated** as a part of the License, or serve as a basis for License denial:

- 1) Non Video-related services. Negotiations are strictly related to Cable Television video-related services. Any other specific services or facilities (e.g., Internet, telecommunications, wireless services, etc.), except for Institutional Network-related services and facilities, are not allowed.
- 2) Rates. Negotiations are not allowed to establish or negotiate cable rates, which are negotiated by the DTC, as the certified franchising authority for regulating basic service tier rates and associated equipment costs in Massachusetts.

Is There Anything We Specifically Can't Negotiate?

- 3) Channel Lineup. Negotiations are not allowed to specify channel lineup, except for the broad categories of programming and the carrying of PEG channels.
- 4) Channel Placement. Negotiations are not allowed to specify channel placement, beyond ensuring that PEG channels are available to the lowest subscription rate tier.

As you consider these negotiation constraints, some of them may directly conflict with your thoughts about the renewal process, what we have negotiation control over, and requests from existing subscribers.

- While our hands are tied in many ways, this doesn't mean that our negotiations can't deliver results!

Lets take a look at the renewal process...

The Renewal Process

The Renewal Process is subject to Section 626 of the Cable Act (47 U.S.C. §546), along with specific Massachusetts considerations.

- Formal Renewal Process
 - Within 6 months of 36 month window, the Cable Operator may preserve its rights by requesting a Formal Renewal Process.
 - Public Policy requires Due Process Protection (ascertainment) for the incumbent Cable Operator, to protect the Cable Operator's investment.
 - Presumption of renewal places the burden on the LFA to prove why renewal may not be appropriate.
 - Assuming the renewal is moving forward, there is a proposal process, and either a renewal, denial, or administrative proceeding.
- Informal Renewal Process
 - 47 U.S.C §546(h): Notwithstanding any other provision of §546, the Cable Operator may submit a proposal at any time, and the LFA may, after notice and opportunity for public comment, grant or deny such proposal **at any time**.
- Concurrent Processes

The Renewal Process - Ascertainment

- The City of Lowell chose to pursue the Formal and Informal Renewal Process concurrently with Comcast.
- Ascertainment hearings were held on March 13, 2013 and on April 10, 2013 to elicit facts in order to determine:
 - a) The future cable-related needs and interests of the community; and
 - b) To review Comcast's performance under the existing franchise.
- During the ascertainment hearings:
 - Over 30 residents took time to appear and speak at the podium.
 - Over 140 letters of support were received from the subscriber community.
 - Several reoccurring themes emerged, all of which were incorporated into the negotiations.

The Renewal Process - Ascertainment

- Subsequent to the ascertainment hearings, Comcast submitted a Renewal License Proposal to the City.
- The City began negotiations towards the Renewal License.

Lets look at the results...

Negotiation Results

- A **10 year renewal** of the License through 10/10/23. This is considered essential due to rapidly evolving technologies, along with a changing legislative landscape, and introduces a better degree of stability, allowing us to better plan on the City's cable and video-related needs.
- A **non-exclusive commitment** to Comcast of Southern New England. Should the opportunity materialize, the City stands prepared to negotiate with any cable provider that is interested in coming to the City, and investing in the infrastructure necessary to deliver services within the City.
- The City continues to **maximize our Franchise License Fee** payments at the maximum \$.50 per subscriber, as allowed by law. These license fees are used to fund operational expenses related to the license.

Negotiation Results

- The City continues to **maximize our PEG access funding** payments at the maximum 5% of the operator's gross revenues, as allowed by law. These payments are used to fund operations at Lowell Telecommunications Corporation (for municipal and government broadcasting), Lowell High School and the Greater Lowell Technical High School (for educational broadcasting).
- An **increase in capital payments** specifically earmarked for the City's cable and video-related needs of approximately 25%, from \$120K/year to approximately \$150K/year. Combined with the ten year renewal period, this allows us to realistically forecast the upgrade and replacement of existing equipment, and related expenses.
- An **increase of one additional PEG channel**. The City's PEG programming will be expanded from four PEG channels to five PEG channels, with the PEG use of the additional channel yet to be determined.

Negotiation Results

- A **continued discount to qualifying Senior Citizens**. Qualifying seniors from past contracts are grandfathered into savings, while all new seniors receive 10% off of the basic rate.
- A **continued commitment to the Education Connection Program**. This program provides (1) high-speed Internet services to public schools, libraries, and qualifying private schools, and (2) standard cable services to schools and municipal buildings.
- A **continued commitment to maintain, manage, and expand the City's Institutional Network (I-Net)**. The City's I-Net is used as the basis for interconnecting City buildings, schools, and other critical infrastructure.
- A **continued commitment to PEG access programming advancements**. This allows the City and Comcast to review and pursue the integration of new and emerging technologies and advancements in PEG programming based on technical feasibility.

Renewal Recommendations

At this time, the Franchise License Authority has determined the following:

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

Renewal Recommendations

- The City's Negotiation Team recommends that the Franchise License Authority enter into a new ten year License with Comcast as described above.
- Questions?

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The City of **LOWELL**

Franchise Renewal License

Questions