

CABLE COMMISSION MEETING
WEDNESDAY, March 6, 2002

The Portsmouth Cable Commission met on Wednesday, March 6, 2002 at 3:00 p.m. at City Hall in the City Manager's Conference Room.

Gene Fisk Chairman called the meeting to order at 3:05 p.m.

The following were present: Gene Fisk, Chairman
John P. Bohenko, City Manager
Robert Sullivan, City Attorney
Jarrett Celli, Commissioner
Louis Vinciguerra, Commissioner
Gerald Howe, Ex-officio

Motion made by Louis Vinciguerra to accept the minutes of the February 6, 2001 meeting. Seconded by Jarrett Celli.

Gene Fisk called the meeting to order and referred to the e-mail received from John Gregg, a relatively new resident of Portsmouth, who has experience in negotiating cable franchise agreements for Rye, NY. He has had 9 years experience with TCI Cable negotiating with them and is interested in working with us. John Bohenko, City Manager has sent him an application for him to complete and return.

Gene Fisk then asked the members if they had questions for the lawyers. As Jerry Howe would be at the meeting later, he had prepared questions for Gene Fisk as follows: What do you feel the trends are for the City? What would be the appropriate life of the contract? Which option would be the best, formal or informal? Should we wait for resolution of AT&T? What do you think Portsmouth as a community should pursue for benefits under a new contract? What option do you feel would be in the best interest of the City?

Gene Fisk questioned the time frame of starting negotiations and stated that we want state of the art, and quarantees that we have the same quality.

He stated that the Mayor would like to have a public in-put session and asked if this would be advantageous for us. And if so, could you (the attorney representing the City) do a 5-minute presentation as to what the City's responsibility is under the law, what we can control and what we cannot.

Louis Vinciguerra referred to the telephone system and the cable regulations.

John Bohenko, City Manager stated he was thinking more on the financial end, a lump sum or hourly rate and what other towns/cities do they represent? Would it be beneficial to join other town/cities in our negotiations? What options do we have to find another vendor under the law, formal or informal?

The first interview began with Tony Delyani and Sarah Knowlton representing the law firm of McLane, Graf, Raulerson & Middleton.

Followed by Sharon Cuddy-Somers and Rob Ciandella of the law firm of Donahue, Tucker & Ciandella.

Attorney Rob Ciandella explained that there are two forms of cable franchise renewals, formal and informal. He explained “looking forward” and “looking back” and related this as the difference between the Planning Board and the Zoning Board of Appeals. Looking forward is the procedure of the cable operators to meet future cable needs of the municipality. The formal renewal process solicits a proposal of the cable operator within 6 months of the notice. The cable operator submits a proposal and the municipality has 4 months in which to accept or issue a denial. If the proposal is denied, the cable operator has a right to appeal the denial in Federal Court.

John Bohenko, City Manager asked that within our renewal, can we investigate possibilities of another vendor. Attorney Ciandella answered no. Under the formal renewal process the municipality is required to begin a public ascertainment process within 6 months of date of letter that went to the Mayor. The cable operator submits a proposal and the municipality has 4 months in which is accept or issue a preliminary denial.

The cable operator must submit a proposal for renewal to begin the informal process, and the franchising authority must afford the public adequate notice and an opportunity to comment before granting or denial of the renewal.

Attorney Ciandella stated that he has negotiated renewals for 35 municipalities. John Bohneko asked out of those 35 communities are there any with a similar time frame as ours and are they served out of the same cable head end. What communities on the seacoast area do you serve? Seabrook, Durham, Somersworth, Dover to mention a few. What other communities would be served and are up for renewal at the same time as ours?

Formal and informal renewal was discussed and also what would be the future cable needs of the City?

Attorney Ciandella explained the process of renewal by assembling as much information as possible including needs of schools, library, interests of people, and to bring them in before the board and ascertain what the needs would be in the future. Prepare a counter proposal and create a negotiations agenda and at this point we would be ready to sit down

to negotiate. It was stated that a public in-put hearing was necessary and would be beneficial.

John Bohenko asked what the responsibility is under the federal act and the local cable commission's responsibility?

Jerry Howe asked if you can go back and forth from formal to informal? Yes you can go back and forth, but the formal process can be an expensive proposition.

Louis Vinciguerra asked what if we found that there is little they did wrong, would you be able to get something that we do not have that you think we can get? Yes, if the cable operator fails to get what we need, it becomes an informal process.

Bob Sullivan stated that the primary complaint among the people is the rates, the second being bundling. The Spanish channels were discussed and whether we really needed two Spanish speaking channels. Atty. Ciandella stated that they are a "must carry channel". Bob Sullivan asked if there was a possibility of eliminating these two Spanish channels. The FCC could be petitioned for relief from this "must carry" channel.

Jerry Howe asked whether under Federal law could we negotiate and sign an exclusive contract? Answer: you can not have an exclusive contract. He then asked what Attorney Ciandella felt was an appropriate length of contract and why. A longer term would be less costly rather than negotiating every 2 or 3 years. Attorney Ciandella suggested including a "state of the art" clause. Sharon Cuddy-Somers stated that some of the costs will be passed on to the consumer.

Bob Sullivan asked about fees and proposals.

Louis Vinciguerra stated he wants to get 5% of everything that is on cable, and discussed the cable line usage.

The fee issue was discussed and Attorney Ciandella stated there are 4 phases. The first is the flat fee, 2nd designing request for proposals and schedule for completion of negotiations and design budget for this, 3rd is the negotiation phase and the 4th phase is implementation.

John Bohenko City Manager asked if Attorney Ciandella would be the principal in the negotiations and requested that he be the principal. Attorney Ciandella stated that he would be.

Jerry Howe then asked if we should wait for resolution of AT&T purchase? Attorney Ciandella asked if we had received the Form 394, the Request to Approve Merger of AT&T. City Manager asked Bob Sullivan to check into this. Attorney Ciandella stated Form 394 has a 120 day process and to be ready to move quickly.

Gene Fisk asked how long does this process take? We have six months from date of notice to begin process to reserve our right to go to formal process. Then go to the City Council with a plan for our renewal and have a public in-put session.

Louis Vinciguerra asked if the City could get some municipal freebies? Would like to receive as many benefits as possible. We should have in our master plan that we can have plant extension in industrial land areas.

John Bohenko City Manager asked Attorney Ciandella to prepare a formal proposal and submit to Bob Sullivan.

The Committee thanked Rob Ciandella for coming.

The interviews were over at 4:50 p.m.

The meeting resumed with John Bohenko stating that we need counsel to help guide us with the franchise renewal negotiations and we need to determine how to pay for this counsel. He also stated that he wanted Attorney Ciandella in front of all public meetings.

John Bohenko stated he felt that we should wait to see what the proposal is and suggested that Bob Sullivan contact the McLane firm. Also suggested that the Financial Department be present at the next meeting, we need to go into informal process and need to do input and this would cost money.

The public also needs to know that the City is not responsible and cannot control fees.

We need to have a public in-put session to reserve our rights and have the City Council authorize the Cable Commission to negotiate. We have 6 months from January 2, 2002.

Gene Fisk asked if a work session with City Council should be held prior to the public in-put session which public in-put session should be held prior to June 2002.

MOTION made by Louis Vinciguerra to adjourn. Seconded by Jarrett Celli.

Respectfully submitted,

Gene Fisk, Chair