

CITY COUNCIL WORK SESSION

Cable Television and Communications Commission

November 20, 2006 - 6:30 p.m.

Council Chambers

City Council Present: Mayor Marchand, Councilors Grasso, Dwyer, Raynolds, Pantelakos, Whitehouse, Smith and Hynes

City Council Absent: Assistant Mayor Ferrini

Officials Present: John P. Bohenko, City Manager; Suzanne Woodland, Assistant City Attorney; John Gregg, Alan Brady, Kathleen Pearce, Brian Gregg, Louis Vinciguerra and Nancy Beach, Cable Television and Communications Commission; Dianne M. Kirby, Deputy City Clerk

I. Call to Order

Mayor Marchand called the meeting to order at 6:35 p.m.

II. Introduction

City Manager Bohenko stated that the Cable Commission is appointed by the City Council and is charged with a number of responsibilities, one of which is to negotiate a contract with Comcast. He introduced John Gregg, Chair of the Cable Television and Communications Commission and turned the meeting over to him.

III. Presentation

John Gregg thanked the Council for allowing the Commission the opportunity to present their PowerPoint presentation regarding what they have studied and learned over the past year and to make some broad recommendations that will support negotiations with Comcast. He introduced the members of the Commission as well as Portsmouth City Staff, John Bohenko, City Manager; Alan Brady, Communications Director; Suzanne Woodland, Assistant City Attorney and Elaine Boucas, Public Works Department; John Gregg stated that cable franchise agreements are constructed within a framework prescribed by federal and state law and therefore, there are things that can and can't be negotiated and there are formal steps that they need to follow. He stated that in addition, the landscape of telecommunications which has always been confusing is now much more so because it is changing so rapidly. He turned the presentation over to Suzanne Woodland, Assistant City Attorney to outline the framework of these changes.

Suzanne Woodland, Assistant City Attorney stated that as part of the Comcast re-negotiation process there is a formal process and an informal process. She stated that the formal process consists of ascertainment hearings. She explained that the ascertainment hearings are where the Cable Commission takes in the information from the public and creates a formal record which becomes part of the negotiation process with Comcast. She stated that the first ascertainment hearing was held on September 8, 2005 with two additional hearings in April 2006 and August 2006. She went on to explain that the informal process is the negotiation

between the cable provider, the City and its representatives. Assistant City Attorney Woodland stated that there are no further ascertainment hearings scheduled at this time, however, the ascertainment process is still open. She stated that if anyone has any comments or opinions they wish to voice they may do so and should do so prior to the next Cable Commission meeting on December 7, 2006. She said that the Commission anticipates that the ascertainment process will close at that time. She stated that this will mean that our formal record making process with Comcast will conclude. She went on to say that to date, the Commission has heard from 45 people, some by mail and e-mail and other via the ascertainment process. She stated that the Commission has also received a petition from 41 others. She said the results have been recorded in a public comment summary, which will be reviewed later this evening. She stated that the Commission is hoping to get a draft contract for public review early next year. She said that there are limits to what can be brought to the table during these negotiations. She said the Commission has no control over pricing or programming packages. She went on to state that the Commission does have input on the franchise fee which is now at 5%, which we hope to maintain and some levity on the duration of the next contract length. Assistant City Attorney Woodland went on to say that the Commission is also looking into potential for educational and public access channels. She said that under our current contract we do have some ability to have additional channels, but there are a number of limitations in the contractual language that we have now. Assistant City Attorney Woodland stated Verizon has been in the market to offer video services. She stated that Verizon came to the City in early 2005 to state that they were planning to enter the market. She said that they opened the door to negotiations, but has since stepped away from the table. She stated that Verizon is waiting to see the results of certain Federal legislative efforts that would change the law in franchising. She stated that Verizon is out there as a potential competitor, but they are not ready to step up to negotiations with the City at this time.

John Gregg thanked Assistant City Attorney Woodland and stated that in addition to the ascertainment hearings, in May of this year, the Commission undertook a telephone survey to assure they had a statistically valid, reliable understanding of the public's attitudes. He stated that the survey was conducted by the UNH Survey Center and included interviews completed with 412 Comcast customers. He stated that the interview concerned views of Comcast performance and interest in public, education and government access television – a topic that emerged from the public hearings conducted in September and April. He stated that the Commission members visited with PEG officials and attended a workshop on PEG access in order to gain an understanding of how they work, how they are organized, what they do, how they are received in their communities, and some understanding of the ongoing support they require.

He stated that as cable companies go, residents of Portsmouth are satisfied with the video television service they received from Comcast. He stated that:

- For context 88% of Portsmouth residents subscribe to Comcast for video television.
- 73% of these subscribers are satisfied with Comcast. 13% are not.
- Subscribers report that during the past year, 47% have had a problem of some type with their service. Most of these were service interruptions. The 11% of customers who

reported a problem other than listed here have a variety of complaints, but if there is a common thread among them, it is that the price is too high.

- For service companies, the ability to successfully handle problems that arise is critically important. 64% of Portsmouth Comcast customers are satisfied in this regard. Among the 24% who were not, again the reasons are diverse but comment about high pricing is an element.
- To understand what aspects of Comcast service subscribers would most like to improve, survey respondents were offered a list of choices. Three of the most important areas of potential improvement are ones that the city has no control over: Price, Pricing Packages, and the Quality of Programs offered. Federal regulations offer no leverage to cities over pricing and channel/programming choices. The City does have limited influence over two improvement areas: Service Reliability and Handling of Service Requests. We can review and negotiate aspects of customer servicing such as the handling of complaints. The final opportunity for Comcast improvement is one that the city has considerable leverage in negotiating: Support for Public Access. 81% of Comcast subscribers believe it is important that Comcast improve its support of Public Access.

John Gregg stated that Public Access was also the predominant topic of conversation at the public hearings they conducted. He stated that virtually all of the 44 people they spoke to were in favor of having public/educational access channels in Portsmouth and a common view was that Public Access would be good for Portsmouth because it would be a conduit of information and news about events and ideas that are not always readily available. John Gregg stated that the counter side of support for Public Access is concern about the cost. He stated that the Commission believes their concern must be respected and considered in developing any future plans, however, for the moment, it may be noted that their concern was with the funding of Public Access – not with Public Access itself.

John Gregg stated that 56% of Comcast subscribers view Channel 22 at least once a month, representing approximately 5,000 households. He stated that the data confirms that Channel 22 is an excellent tool for helping people to be informed about what is going on in City government. He further stated that 73% of subscribers would like a channel devoted to Public Access programs. He stated that 82% stated that they would like to receive more news about what is going on in the community, with further interests in:

- Programs about non Profit Organization Services
- Political Candidate Debates
- Discussion of Local Civic & Political Topics
- Broadcast of Local Theater Productions
- Discussions Produced by Local Residents on topics of interest to them.
- And a small number would like Programs Offered by Local Religious Organizations

John Gregg stated that 53% of the subscribers showed an interest in having a channel devoted to School Programs with broadcasts of school productions, programs produced by high school students, reports from school officials, news about Portsmouth Schools and school and community sporting events.

John Gregg stated that in order to get a better idea on the strength of interest people have in PEG access channels, he stated that they asked if they would be willing to pay something for it. He stated that they are presently not advocating that people will have to pay for the access, but only wanted to get an idea of what the level of interest people have in having PEG access channels. He stated that the results showed that the majority of people have an interest in having PEG access channels, so much so that they would be willing to pay something to receive it.

John Gregg stated that if Portsmouth were to have an educational access channel equivalent to Channel 22, the school system could have responsibility for producing programming. He stated that the Portsmouth School representatives have a definite interest in producing an educational access channel. He stated that Portsmouth High School presently has 60 students taking video production classes. He stated that they are in the process of finalizing a two-year certificate program for TV Production and Broadcasting. He further stated that Portsmouth High School has a room designated to be a production studio and there is interest in outfitting it as the demand for producing programs grows.

John Gregg stated that there are two approaches to governance of Public Access Channels: directly by the city or as a separate nonprofit. He stated that the benefits of operating as a nonprofit organization are that it eliminates the day to day operational oversight from city employees, it limits the city's liability for the actions of the channel and it increases funding options. He further stated that financial support can be obtained from individual and corporate donors, grants, program sponsor fees similar to those seen on PBS, and by the sale of services to the public. He stated that the Cable Commission recommends a nonprofit form of governance.

John Gregg ended the presentation by making the following recommendations.

- That the City of Portsmouth negotiate a new Franchise Agreement with Comcast to take effect upon the expiration of the existing contract on December 31, 2007.
- That the City of Portsmouth request of Comcast the right to operate an educational channel and a Public Access channel in addition to the current government channel, subject to future review and approval by the City Council of governance and operational plans to do so.
- That the Planning Board and the City Council continue to support the amount of \$30,000 for capital expenditures related to cable in the forthcoming Capital Improvement Program.
- That the Cable Commission develop a plan for a Public Access channel to be operated as a nonprofit organization and that this plan be presented to the City Council during 2007.

John Gregg thanked the City Council for the opportunity to meet and make these recommendations.

IV. Questions and Discussion

Mayor Marchand thanked John Gregg and the members of the Cable Commission for a fantastic presentation and opened the meeting up to a question and answering session.

Councilor Pantelakos asked if we had something like this with Continental at one time. She stated that they use to do interviews of people on certain stations. Louis Vinciguerra, Cable Television and Communications Commission stated that public access is completely different and it would be a station all in itself. Councilor Pantelakos stated that she remembers being interviewed once when she was running for an office, but thinks that it was Continental.

Councilor Dwyer asked if the Commission could explain to her that in the presentation they stated that 93% of the public polled want lower price for their cable, but then the Commission stated that the acceptability point is a dollar amount, and at that point there was a comment that the Commission wouldn't recommend a monthly fee be added for the cost of public access and yet the only opposition is that people seem to be concerned about the cost. John Gregg stated that the 93% pertains to the interest people have in lower cable monthly bills from Comcast. He further stated that the question the Commission asked people was whether they would be willing to pay something additionally each month if they had a public and educational channel, but the Commission is not recommending that right now. He stated that it is the Commission's thought that there are other ways to fund the operational expenses of these channels.

Mayor Marchand stated that it is important to layout the pros and cons of both sides. He stated that there is relatively little opposition to the concept of one or both of these channels; it is more who is paying for it. He said that we are not dealing in a many million dollar municipal budget, but there is a legitimate position on both sides. He stated that he feels the Council will agree that the Commission needs to get together to discuss the dollar issue and come back to the Council with their pros and cons for further discussion. He stated that people seem to be in favor of the concept it is the cost that is at issue.

City Manager Bohenko stated that the whole concept was to use capital funds and not the operation of the access channel so it would be a combination of educational programming service access channels. He stated that the Commission would like to see a non-profit operate it. He said the idea would be to set up a studio, make sure that the equipment is there and the operation would not be inside the local government. He stated that the idea was to make it a capital item. Mayor Marchand asked if part of the funding involved is on-going funds, what would be the government's say in terms of the involvement in the programming – the free speech component. Nancy Beach, Cable Television and Communications Commission said that the Commission would create a non-profit that would perhaps get some monies from City government. She stated that it is free speech, but there is a limit. She said the Commission would have guidelines that would be acceptable to the Council if City money was used.

Councilor Reynolds asked if there was a reason that Comcast might not give up these two channels. Alan Brady, Communications Director, stated that Comcast will lose revenue from the advertisement on these two channels. Councilor Reynolds asked if adding these two public channels would increase the subscription rates to Comcast. John Gregg stated that if you could get public channels from Comcast and not with a dish – Comcast would seem to be

a little more inviting. Nancy Beach stated that she owns a dish and would switch to Comcast if there was a public access channel.

City Manager Bohenko stated that we are still in ongoing negotiations with Comcast and we probably want to make sure that we limit a lot of our discussion that might fall into some strategic areas. Assistant City Attorney Woodland stated that we need to be sensitive since we are in negotiations.

Councilor Raynolds asked Assistant City Attorney Woodland if the legislature is to the point where Verizon could be in the market to compete with Comcast soon. Assistant City Attorney Woodland stated that her last contact with Verizon was that they would like to enter the market, they want to compete, but they are waiting to see what happens at the Federal level. Alan Brady stated that if Verizon were to come into the market tomorrow, the current contract with Comcast says they can do it. He said they do not have to wait until Comcast's contract has expired. Councilor Whitehouse stated that he thinks Verizon was very serious at one time and he asked Assistant City Attorney Woodland if there was any indication when this Federal legislation would be passed. Assistant City Attorney Woodland stated that Verizon can always come back to negotiate a contract, however there are certain advantages under the proposed Federal legislation. She stated that it is too early to tell what they are going to do. John Gregg stated that there is no question that Verizon will be here at some point. Mayor Marchand stated that the contract lengths do not have to be concurrent. He said they are completely separate entities and they do not have to wait the entire life of the competitions contract.

Councilor Grasso stated that early this fall, people said to her that they were not interested in public TV if there was any charge or cost that would be picked up by the City. She stated that for that reason she would support the idea of a non profit. Councilor Grasso stated that she has a great concern about the taste of the programs. She said what may not be offensive to one person could be to another. She asked if the public channel could be put on with the government channel. City Manager Bohenko stated that he did not think that these channels should be commingled. He stated that the government channel is basically filled up. He stated that the City is having competition for space with the rerunning of programs. Louis Vinciguerra requested if the education channel could be joined with the government channel as they are both City.

Councilor Grasso asked if in our talks with Comcast, we are asking for two channels. John Gregg said yes. Councilor Grasso asked if we could ask for only one channel. Louis Vinciguerra stated that the channels would not be turned on until we have something to put on them, but we have to have the ability to get them. He stated that the Commission wants it written so that when the government channel is filled up and more space is needed then we can open up the new channel. He stated that when the non-profit channel gets going and they have programming, we will turn that one on. He stated that we have to have the ability to have those channels available if and when we need them. Councilor Grasso stated that she likes the non-profit idea because there are people who are angry at the price of cable.

Councilor Pantelakos asked if this meeting was for negotiating for these two stations. John Gregg stated that it was. He stated that the Commission feels that negotiations will be strengthened with City Council support. Councilor Pantelakos stated that the financing part can be settled later. Louis Vinciguerra stated that all the Commission wants right now is the

two channels. Kathleen Pearce, Cable Television and Communications Commission stated that all they are asking for is the right to have two channels. She said the channels will not come on until we decide how it will be governed, funded and all that.

Councilor Smith stated that what concerns him the most is the actual cost the people are paying for this. He requested to know how the City goes out for bids – what is the process of dealing with companies other than Comcast – do they have to approach us or can we go to them. Alan Brady stated that last year during negotiations, we went out for bids. He stated that they informed all the local cable suppliers what was happening and basically no body came. City Manager Bohenko stated that the key for competition is Verizon. He stated that Verizon is where the competition is going to come from and at some point we could have two providers competing.

Assistant City Attorney Woodland stated that the Commission did a lot of work. She said they went to many other communities to see how they run their public access channels.

Mayor Marchand stated that at this point he wanted to close this up and get some formal sense from the Councilors as to the four recommendations that were outlined at the end of the presentation. They are:

- Recommendation 1. That the City of Portsmouth negotiates a new Franchise Agreement with Comcast to take effect upon the expiration of the existing contract on December 31, 2007.
- Recommendation 2. That the City of Portsmouth request of Comcast the right to operate an educational channel and a public access channel in addition to the current government channel, subject to future review and approval by the City Council of governance and operational plans to do so.
- Recommendation 3. Last year the Planning Board and the City Council approved \$30,000 for capital expenditures related to cable. The Cable Commission recommends the Planning Board and the City Council continue to support that amount in the forthcoming Capital Improvement Program.
- Recommendation 4: That the Cable Commission develop a plan for a public access channel to be operated as a nonprofit organization and that this plan be presented to the City Council during 2007.

City Manager Bohenko stated that on Recommendation Three, if approved it will be placed in the Capital Plan and once in the Capital Plan it can be moved around as needed. Councilor Whitehouse stated that with Recommendation Four, he hopes it is not a last minute decision. He requested that it come in early so the Council can discuss the whole plan sensibly. Mayor Marchand stated that there is a lot of work between now and the end. He stated that tonight is just the principal – that is the key. He said we need to find out if these four pieces are favorable and should they be pursue further. Councilor Dwyer stated that Recommendation Four only refers to a public access channel; it does not refer to educational. She asked is it assumed that if we operate an educational channel that it will be run by the school. John Gregg stated that Recommendation Four deals mainly with a public access channel and we

did not wish to exclude an educational channel, it was thought to be a different matter. Councilor Dwyer ask in reference to Recommendation Three, if we put funds in last year. City Manager Bohenko stated that we did put funds in, but it was for the cameras in the Council Chambers and the governmental channel. Mayor Marchand asked for a show of hands from all who were in favor of the four recommendations and allowing the Cable Commission moving forward with negotiations. Let the record show that all 8 Councilors present raised their hands.

City Manager Bohenko reminded the Council that there is a work session next Monday, November 27, 2006 on the Budget for FY 08 and recommended the Councilors bring last years budget with them to this meeting.

Mayor Marchand reminded the Council that on Wednesday, November 22, 2006 at 11:00 a.m. was the annual Metro Dinner for the needy.

Councilor Grasso expressed her thanks to the Cable Television and Communications Commission for the good job they did on the presentation.

V. Adjournment

At 7:50 p.m., Mayor Marchand closed the meeting.

Respectfully submitted by:

Dianne M. Kirby, Deputy City Clerk