

April 18 2017

Final Version

Board of Selectmen
Town of Princeton
6 Town Hall Drive
Princeton, MA 01541

Recommendation Letter for the Cable TV License

The Cable Advisory Committee has reviewed the Town of Princeton cable licensing Exhibits submitted at or subsequent to the Public Hearing of March 13, 2017 as continued to April 3, April 5 and April 19 of 2017. While we are very grateful to both applicants, Charter and Comcast, for their proposals, and while we recognize that licenses must be nonexclusive pursuant to 47 USC 541, we are cognizant of the fact that both applicants have made their applications contingent on receipt of a single allocation of MBI construction funding¹, all as understood by the applicants. Under these circumstances, it would be unreasonable and impractical to simultaneously award licenses to two applicants as that would wholly frustrate the intended process of MBI funding a single applicant. We are therefore constrained, by necessity, to select only one applicant when both applications are by their terms contingent on receipt of MBI funding to be made available to only one applicant.

We have evaluated the Charter and Comcast proposals in accordance with the Town's Issuing Authority Report (IAR) and applicable law. Applicable law includes MGL c. 166A, Section 6 which states, "In the event more than one application is filed in any city or town, the issuing authority shall choose that applicant or those applicants which in its opinion will best serve the public interest." Applicable law also provides, "A franchising authority may award, in accordance with the provisions of this subchapter, 1 or more franchises within its jurisdiction; except that a franchising authority may not grant an exclusive franchise and may not unreasonably refuse to award an additional competitive franchise." 47 USC 541. As mandated by DTC regulations, applicants may not make material changes to their amended applications (207 CMR 3.03(3)), and the

¹ In this connection, note MBI informally advised the Town of Princeton that the Town would have to select one applicant, not two, for MBI to fund construction of the Princeton system, so the Town does not have the option of awarding licenses to both applicants. Regarding the MBI funding contingency, see Comcast November 3, 2016 Form 100 Cover Letter, "It is important to note that Comcast's proposed license submission is contingent upon reaching a cost-sharing agreement with all parties and the execution of a Grant Disbursement Agreement with Mass Tech and the MBI," and see Comcast response to Form 100 Item 1 making the proposal contingent on both a cost sharing arrangement among Town, Comcast and MassTech and the MassTech Grant Disbursement Agreement. See Charter reply to Form 100, Question 22, also making its proposal contingent on receipt of MBI funding.

Committee accordingly does not here review or give weight to proposals or testimony that would materially change an amended application.

The application of licensing criteria is here carried out to make a reasonable selection, consistent with applicable law and the public interest. Our review of the proposals and recommendations is set forth below.

Our review of this information finds that both applicants, Comcast and Charter, are national leaders in the provision of cable service and both are qualified financially and technically to construct and operate cable TV systems. Both applicants propose to provide systems that would make available cable TV service to substantially all residences in the Town serviced by Princeton Municipal Light Department, subject to the receipt of lawful permissions and easements to access those residences. Both applicants propose to provide reasonable customer service terms and conditions consistent with applicable law. Notwithstanding the foregoing, the Cable Advisory Committee is constrained to select a single applicant (as explained above) and recommends the award of a cable license to Charter, based on the factors set forth below.

Substantial adoption of Town's IAR draft license specifications

The Cable Advisory Committee finds that Charter's amended proposal more substantially adopted the Town's Issuing Authority Report draft license as its proposed Princeton license, subject to some edits of its own. The IAR notes that the terms and conditions of the Town's IAR draft license reflect the cable needs and best interests of the Town and public (IAR Section 0.2). By more substantially adopting the Town's draft license, the Cable Advisory Committee finds that Charter's proposal shows more overall commitment to meeting Town cable needs specified in the IAR and better meets several important Town needs. For example: The Town's IAR draft license sought specification of a construction timetable (IAR draft license, Section 3.4). Charter draft License Section 3.4(a) includes a commitment to complete system construction within twelve months of a grant commitment from MBI and receipt of pole licenses and completion of make-ready. The Comcast draft license does not include its proposed construction completion timetable. Charter draft license Section 3.4(b) adopts the Town IAR draft license specification for quarterly reports on construction (not included in Comcast draft license). Charter draft License includes terms similar to the Town IAR specifications for inspection of strand maps (Charter draft license Section 4.5) and for plant inspection (Section 4.10) (not in the Comcast draft license). Charter draft License Section 4.11 substantially incorporates the Town's IAR specification for Licensee repairs to private property as needed as a result of cable system construction/operation causing damage to private property (not included in Comcast draft license). Charter draft License Section 11.2 commits to participation in Town performance review sessions, adopting corresponding IAR section (not included in Comcast draft license); and see Section 13.1 of the Charter draft license, adopting the Town's IAR

specification for providing information showing compliance (which may be used for compliance and payment oversight), not included in the Comcast draft license response to IAR. Charter's draft license provides for indemnification of town after reasonable notice, whereas Comcast provision in its IAR response/draft license provides for indemnification only if claim notice occurs within 10 days.

The Committee finds that Charter's draft license better meets the cable needs of the Town as reflected in the Town's IAR draft license. In addition, the Committee finds that Charter's more substantial adoption of Town IAR draft license terms may expedite the process of codifying its proposal into a provisional and/or final license, thus expediting the licensing process and construction commencement.

Further adoption of Town draft license specifications is evident with respect to certain PEG Access provisions sought to meet future PEG needs, discussed below.

Public Educational and Government (PEG) access channels and support.

Charter has proposed providing the carriage of an educational access channel from Wachusett Regional High School at no cost to Princeton subscribers, if requested by Issuing Authority. (See Charter Amended Proposal Draft License Section 6.1(b).) The foregoing responds to Town IAR Draft License Section 6.1(b) specifying that Licensee shall provide Access channels if requested by Town.

Charter has proposed providing two additional channels for Public and Government access during the term of the License, if requested by the Town. (See Charter Amended Proposal Draft License Section 6.1(b).) The foregoing responds to Town IAR Draft License Section 6.1(b) specifying that Licensee shall provide Access channels if requested by Town.

Charter has proposed to include a video return line at no cost from either Thomas Prince School or Town Hall in the event that the Town requests it for a future Public or Government access channel. (See Charter Amended Proposal Draft License Section 6.3.) The foregoing responds to Town IAR Draft License Section 6.3(a) specifying that Licensee shall transmit programming from Town Hall and the Thomas Prince School if requested by the Issuing Authority.

Charter has proposed that it will provide capital funding for Public or Government access cable in the amount of \$25,000. (See Charter Amended Proposal Draft License Section 6.5.) In addition, based on programming levels, Charter would provide an additional \$25,000 capital funding. Charter also proposed annual PEG funding of up to 1.25% of gross revenues.

While Comcast does not propose the provision of PEG Access programming as part of the Final License, Comcast is amenable to discussing and evaluating the need, technical feasibility, availability and sustainability of content, and costs during negotiations of the Final License. (See Comcast Amended Proposal, Response to Town Clarification Request at Section 0.1(C), Item 15). The Comcast draft license

contains no language about a framework for meeting future PEG Access needs and interests of the Town.

The foregoing provides substantial evidence of Charter's proposal providing for more specific and firm commitments for providing PEG Access channels and related support to meet future Town needs. With respect to the foregoing PEG commitments, we note that 47 USC 541 of the Cable Act explicitly provides that a Local Franchising Authority may use the initial licensing process to ensure provision of PEG services. The IAR identified applicant adoption of Town-proposed license terms, including PEG proposals as relevant to evaluation of applicants and Charter's proposal offers firmer commitments regarding the provision of PEG channels and video return line terms making its proposal more favorable in this regard.

Standard and Non-Standard Installations

Comcast has proposed that they will provide a standard installation of 250 feet aerial to subscribers in the Town.

Charter proposes a standard installation of 125 feet aerial to the subscribers in the Town.

Although we find some basis for finding that the Comcast standard installation may be more favorable than the Charter standard installation proposal (as set forth in their respective draft licenses), the Cable Advisory Committee finds that other factors discussed above (including Charter's relatively greater adoption of Town license terms and provision of a clearer framework for the provision of PEG channels and video return lines) outweigh the Comcast standard installation as a possible factor in terms of meeting the Town's need for a strong and definite applicant commitment to building the Princeton cable system and meeting Town needs.

Other significant considerations

Charter provides, at no additional cost to subscribers, their in-house produced local programming Channel 3 from Worcester. This channel provides local content regarding news, sports, and local issues to all subscribers.

Comcast provides, at no additional cost to subscribers, New England Cable News. New England Cable News is a regional 24-hour cable news television network owned and operated by NBC/Universal serving the New England region of the United States.

Charter Channel 3 appears more geared to including Princeton-specific local origination programming which meets local needs sought by Town through provision of local PEG channels.

Recommendation

After a thorough review of all the information provided by the applicants, and based on multiple licensing and public interest factors discussed above (including Charter's adoption of Town proposed license terms and resulting benefits as discussed above) and based on the evaluation criteria contained in the IAR, the Cable Advisory Committee recommends that the Board of Selectmen choose Charter as the applicant that best meets the licensing and public interest needs of the Town in providing Cable TV to the residents of Princeton.

We are grateful to both applicants for their proposals. As discussed above, while we recognize that licenses must be nonexclusive, we are cognizant of the fact that both applicants have made their applications contingent on receipt of a single allocation of MBI construction funding, all as understood by the applicants. Under these circumstances, it would be unreasonable and impractical to simultaneously award licenses to two applicants. We are therefore constrained, by necessity, to select only one applicant. Having selected Charter (above) we are constrained to deny the Comcast application based on good faith findings and weighing of the multiple factors discussed above. After decades of not having cable service, the paramount public interest need of the Town is to expedite the provision of cable/broadband and we are hopeful that Charter and Comcast both recognize and respect the Committee's efforts to meet this need in the context of helping as volunteers to execute a difficult and challenging process of cable licensing.

Respectfully,

The Cable Advisory Committee

Darcy Rowell, Chair
Paul Caneen, Vice Chair
Philip Gransewicz, Member
David Union, Member
R. Lane Ware, Member
David Hilton, Alternate