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Mr. Timothy R. Carroll  
Town Administrator & EMD  
Chilmark Town Hall  
401 Middle Road  
Chilmark, MA 02535-0119  
By Email: [townadministrator@chilmarkma.gov](mailto:townadministrator@chilmarkma.gov)

Dear Mr. Carroll

I am writing to express my strong interest in having the opportunity to again represent the Towns of Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury and West Tisbury in the cable licenses renewal process with Comcast. As you are aware, I represented your Vineyard towns in the last license renewal process with Comcast, completed in 2013. That process, as those involved will remember, was very extensive with respect to the “ascertainment of cable-related community needs and interests”, and in the extended strategic planning and negotiation phase. A great deal was achieved working together, and a number of those achievements were not only first of their kind in the Commonwealth, but have also not since been replicated elsewhere. Those results included:

- A requirement that Comcast extend the Cable System to areas served by underground utilities. Under the prior license, the cable operator had no obligation to extend the Cable System to areas served by underground distribution plant. (The then current license provided for “line extension” only for aerial plant (15 dwelling units per mile.) In the renewal, “where underground conduit is existing, unoccupied and in useable condition or is otherwise provided to the Licensee”, Comcast is now obligated to extend the cable system, upon request, when the density requirement is 20 dwelling units per underground mile. (Significantly lower than the 50 dwelling units per underground mile where there is no existing or provided conduit.)
- Importantly, in those areas which do not meet the density requirements set out in License, the formula for determining the per subscriber contribution is based on “the number of dwelling units in the line extension area”, and not “the number of dwelling units requesting [cable service] in the line extension area”. This was a critical issue that was subject to extensive negotiations with Comcast by this office, greatly assisted by financial consultant KFA Services (Mike Katz) out of Washington State. Both Mike and I knew and understood that the “formula” as written in those cable licenses where a formula was included (a relatively small percentage of cable licenses in Massachusetts, and getting smaller), had rarely, if ever, worked, much less even been

considered or applied, to extend a cable system. The reason for that failure was built into the formula itself. Before a potential subscriber could decide whether to subscribe, they will want to know what their cost will be. Under the traditional formula, the per Subscriber cost cannot be provided without first knowing how many of the dwelling units will subscribe. Without knowing what the cost will be, many who are interested in cable service are nevertheless unable to make a decision/commitment to proceed ahead. This dilemma (“Catch 22”) prevents the formula in its traditional form, from being utilized.<sup>1</sup> Both Mike Katz and I described and explained this dilemma in support of our position that the formula needed to be changed as described herein, and as was agreed to by Comcast and included in the Licenses.

Under the revised formula used on the Vineyard, those subscribing to cable television are making up for the lower number of dwelling units, but are not making-up for the fact that some dwelling unit owners do not initially agree to subscribe. As we have discussed, this also helps resolve the “free loader” problem, where some residents could wait for the cable line to be extended at the cost of others, and then be able to subscriber without having to pay/contribute for their share of the line extension.

This was not an easy matter to prevail on, but we did. No Comcast cable license either before or after the current Martha’s Vineyard licenses has ever used the number of dwelling units, rather than the number of dwelling units requesting service/subscribers, to calculate the per subscriber cost.

- Extension of Cable System to Certain Roads – In some, but not all of the licenses, Comcast was required to extend its Cable System to certain roads, or portions thereof. (E.g. Oak Bluffs – Little Rock Way and Great Rock Way and Chilmark – Doctors Creek Path and Middle Line Road.)
- Chappaquiddick (Extension of the Cable System) – in a first of its kind agreement in the Commonwealth developed by this office together with KFA Services (Mike Katz), and with outstanding work by the Chair of the Island Cable Committee (strategic/negotiating) and by the Town of Edgartown and its administration, the Comcast cable system was extended to Chappaquiddick. (Forwarded hereafter as **Appendix D.**)
- Standard Installation – Standard installation was expanded to include underground drops (up to 150 feet). In the prior license there was not standard underground installation). Additionally, the license specifically provides that a Subscriber may install its own conduit, subject to certain requirements.
- Local Emergency Alert System Override Capacity - In addition to the Emergency Alert System provided pursuant to FCC regulations, Comcast was required to provide a local emergency alert system that will enable the person(s) designated by the Issuing Authority to gain access to the video and audio of the maximum number of channels that can be overridden through available equipment for such purposes, both by means of telephone and computer in times of an

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1. While the specific wording of the “formula” can differ slightly from license to license in those cable licenses where the formula is used (mostly limited to Western Massachusetts in recent years), no Comcast cable license either before or after the current Martha’s Vineyard licenses has ever used the number of dwelling units, rather than the number of dwelling units requesting service/subscribers to calculate the per subscriber cost.

emergency endangering the Town or its residents and for periodic testing to override channels on the Subscriber Network with an emergency message. The towns were responsible for their proportionate share of the cost of said local emergency alert system and installation, to an aggregate maximum payment of Fifteen Thousand Dollars (\$15,000). Comcast reserves the right to pass through any costs in excess of Fifteen Thousand Dollars (\$15,000) to its Subscribers. Comcast was also required to provide the Town, as needed and requested, with any operational information needed to access and use the system. I note that this sort of Local Emergency Alert has not, for a number of reasons, been in cable licenses in the Commonwealth for over 20 years. I am unaware whether or not the Towns and Comcast moved ahead with this.

- Capital Support for PEG Access - \$500,000 for all the Towns (proportioned based on each Town's subscriber count. Additionally, by side letter agreement between the parties, \$120,000 was paid by Comcast to the Towns as a settlement for a breach of Section 7.11 "PEG Access Cablecasting" of the then current cable license. (Per the settlement agreement regarding the \$120,000 could not be passed through or otherwise charged by Comcast to its cable subscribers.)
- PEG Access Channels - Three (3) PEG Access channels, plus fourth (4<sup>th</sup>) PEG Access any time between the second (2<sup>nd</sup>) and the seventh (7<sup>th</sup>) anniversary of the License, if the Select Board/Board of Selectmen of each such Town believes in good faith that an additional PEG Access channel is required for the provision of PEG Access Programming and so notify Comcast in writing. I assume that for a number of reasons, this option was not exercised, but that does not diminish the value of having had the option or wanting to have it in the next renewal licenses. By contrast, there have been less than a handful of Comcast cable licenses providing the option or possibility for a 4<sup>th</sup> Access Channel. Additionally, many Comcast licenses that provide for only two (2) Access Channels require an unworkable nearly round the clock minimum programming requirement which excludes any bulletin board programming in order to get the 3<sup>rd</sup> channel.
- PEG Access Video Return/Local Origination - Comcast maintains the existing video return locations. Additionally, Comcast agreed to construct the new Video Return Line Hub and fiber connections, at no cost to the Towns or Access Provider, at the new Access Provider studio located at 58 Edgartown-Vineyard Haven Road. The estimated cost of this work by Comcast was \$19,433.
- Comcast was required to construct and activate additional Video Return locations if requested by the Town or its Access Provider, the cost of which is the responsibility of the Town or its Access Provider. Additionally, the Town or its Access Provider could install their own video return lines to the Access Studio or Comcast's Video Return Line Hub, consistent with Comcast's video return and cable system.
- Customer Service Office – Continues the requirement for a local customer service office on Martha's Vineyard, which shall be conveniently located, and available for, among other things: the payment of bills; receiving customer inquiries and complaints, made in person, including without limitation, those regarding billing, Cable Service, installation, and equipment malfunctions; answering general inquiries and the return and/or exchange of Subscriber equipment. Said customer service office shall be open for walk-in business during Normal Business Hours.

- Electronic Program Guide (“EPG”) for PEG Access Programs - Comcast agreed, in a side letter, to provide for the Access Channel programming schedule to be submitted to its Electronic Program Guide contractor for insertion on Comcast’s Electronic Program Guide. To my knowledge, Martha’s Vineyard remains the only communities in the Commonwealth of Massachusetts that has received the option of having an EPG for PEG Access.
- Standard Cable Service to Public Buildings – Comcast was required to continue providing “Standard Cable” (Basic and Expanded Basic tiers, including New England Cable News, CNN, Weather Channel, History Channel, etc.) to public buildings. Additionally, there is no “standard installation” requirement for any new public building (i.e. charging the town for a “drop distance” of greater than the standard installation distance for a dwelling unit) as is common in many Comcast licenses. Due to the Federal Communication Commissions 2019 “In-Kind Consideration” order, this issue is significantly changed and this time.
- Senior Discount – Comcast voluntarily continue to offer a discount equal to ten percent (10%) per month off its Basic Service level, however the means the financial need criteria were materially expanded to also include Mass Fuel Assistance or Property Tax Elderly Asset/Income Relief under M.G.L. Ch. 59, sec. 5 or its equivalent.

A review of cable licenses in the Commonwealth of Massachusetts, since the last Vineyard renewal, and more specifically over the last three (3) years, will evidence that the towns (and cities) that this office has worked with have achieved the greatest amount of PEG Access/community television financial support, particularly capital funding for equipment and facilities.<sup>2</sup> Those licenses also include distinctive and/or unique, and critically important, legal and policy provision, ranging from the definition and calculation of “gross revenues” (including the methodology to determine the cable portion of bundled services/revenues) to crucial “level playing field” and license modifications terms and condition, and most recently rejection of license provisions regarding a potential post-cable service environment, not present, in most, and often, all, cable licenses in the Commonwealth. Now more than ever, these legal and policy provisions, are essential to a town receiving the negotiated benefits of its cable renewal agreement going forward.

In response to the inquiry, contained in the legal notice, regarding “extensive experience in this field, and demonstrated beneficial outcomes for municipal clients”, I have also attached hereto, a list of cable licenses and the results thereof, that I have completed from January 2018 to the present. (**Appendix A.**) I also note that municipalities I am currently working with include, but are not limited to, the Towns of Burlington, Berkley, Conway, Dover, Falmouth, Marlborough, Natick, Northfield, Sudbury, Stow, Wenham and Yarmouth.

Because of the relative proximity to the Vineyard, I note that this office had the leading and decisive role in last year’s Comcast cable license renewal by Nantucket. More specifically, this office, working through Nantucket Community Television, developed and negotiated the financial terms that

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2. The Cable Act sets out, as you are aware, a framework where the franchising authority determines its “cable-related community needs and interests”. Those cable-related needs and interests, of course, differ in various respects in community from community. In representing a town, I work to ensure that the community fully reviews and considers its cable needs going forward for the entire term of the renewal franchise.

were used by the Town of Nantucket in its cable license renewal agreement with Comcast, and most all of the License document itself, was drafted by this office. Town counsel, of course, presided over the finalization of the matter for the Town. (The Director of Nantucket Community Television, who was also directly involved with this process, Lisa Getter, can be reached at (508) 901-1557 and at [lisa@nctv18.org](mailto:lisa@nctv18.org).) Additionally, this office developed, through in-depth financial analysis and documentation, the basis upon which the Lower Cape towns reached a financial agreement with Comcast in late 2020. I have attached hereto a copy of that financial analysis as **Appendix C**. As I wrote in that document, *“[t]he capital dollar number of \$990,000 was selected for this exercise because it is close to \$50 per subscriber for the 10-year term ... a solid, yet reasonable capital number, with a 6-figure, and not a 7-figure, dollar number. The use of the \$990,000 number for this exercise was not intended to preclude seeking a higher capital number if the “future cable-related community needs and interests”, in total, require a higher capital dollar number. (This need is, under the Cable Act and in negotiations, balanced by cost.) Nor, does it preclude a lower PEG Capital number if the cable-related needs so justify.”* The final PEG Access capital number was \$900,000, plus an additional \$35,000 payment for the Public/Educational Access studio, suggested on this end and agreed to by Comcast at the final negotiation session. The Towns, by and through their counsel, were kind enough to request this office’s direct participation in negotiations with Comcast. (The Director of Lower Cape Community Access Television, who is familiar with these license renewals, Teresa Martin, can be reached at (508) and at [tmartin@lowercapetv.org](mailto:tmartin@lowercapetv.org).)

Moving forward, together with your Towns, I will work to achieve excellent cable license results and legal provisions at this challenging time of transition in cable and do so in a cost-effective manner. While town specific issues, such as the extension of the cable system, as well as important financial and policy license provisions can and will present challenges, the good news is that since the time of the last license renewals on Martha’s Vineyard, the cable license renewal process has, in a number of respects, been less contentious and more consensual.<sup>3</sup> This is, however, in the process of changing for a number of reasons.

My hourly rate for these legal services would be Two Hundred Twenty-Five Dollars (\$225) per hour. Additionally, I would anticipate that many discussions and meetings can and will, at least for a while, be held electronically. I am prepared to cap the cost for legal services, as roughly set out in the attached Scope of Services (**Appendix B**), for the license renewals at a “not to exceed” dollar amount of Three Thousand Dollars (\$3,000) per town or a total of \$18,000. However, that cap would not include legal services arising directly or indirectly from a dispute regarding the extension of the cable system or the local emergency alert system, but would include costs related to the continuation of the Comcast customer service office on the Island (an issue on the mainland, but likely not, based on my experience and judgment for the Vineyard). Additionally, legal services provided separate and apart from the license renewals, if needed to pursue and/or enforce the Comcast’s current license obligations to extend the cable system, would, of course, be outside of the renewal license process. I propose this “not to

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3. Most recently, this office was able to successfully navigate two (2) significant license changes sought by Comcast, involving both the definition of “Gross Annual Revenues” and, most critically, provisions by which Comcast sought to shape a potential post-cable use of the public ways and potentially deny the town(s) compensation for Comcast’s use of the public ways for non-cable use in a potential post-cable service environment, as also described above.

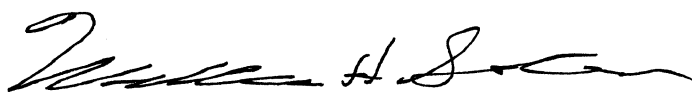
exceed” dollar amount, rather than simply an estimate or possible range of costs, to provide financial certainty to the Town, particularly in the uncertain financial time going forward. Please note that if the cable license can be effectively completed at a lower cost than this cap, I will do so. Finally, as you are aware, the renewal franchise will provide financial and other benefits to the Town which far exceed the cost of arriving thereat.

I would, of course, be please to speak with you, the Island Cable Advisory Committee and/or any other Town representative(s) about the cable franchise renewal and legal services therefore, at a time that is convenient for you.

I would very much look forward to having the opportunity of working with the Vineyard Towns on its Comcast cable franchise renewal.

Thank you.

Sincerely,



William H. Solomon

Enclosures

- cc: Mr. Jeffrey Madison, Town of Aquinnah  
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- Mr. James Haggerty, Town of Edgartown  
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