



**WORKSHOP SESSION:
7:00 PM.**

Present: Councilors Robert Keays, Doug DeDe, David Scott, Dean Trefethen, Catherine Cheney, Harvey Turner, Dennis Ciotti and Mayor Scott Myers.
Absent: Deputy Mayor Jason Hindle who is away on business.

Also Present: City Manager Mike Joyal, City Attorney Allan Krans, Cable Franchise Committee Chair, Dana Lariviere and Committee Member Parks Christenbury.

- 1. PLEDGE OF ALLEGIANCE**

- 2. DISCUSSION RE:**

- A. Cable Franchise Renewal

Mayor Myers opened the workshop discussion giving a brief history of the process up to now, which began with the formation of the Cable Franchise Renewal Committee 2 years ago which was tasked with working with Comcast to come to a new agreement for the City of Dover.

Joyal began by stating the federal regulations require the agreement to be reviewed within 3 years of the expiration of the contract which is coming up April 15th of this year, so there is some urgency to finalizing this. He expects to come to the Council with a resolution in May. He introduced Committee Chair Dana Lariviere, member Parks Christenbury and Councilor Doug DeDe, the Council representative. He reviewed the renewal process as laid out in federal law, allowing 2 paths to pursue an agreement; informal and formal. He stated that the City of Dover sent a letter to Comcast prior to the 3 year expiration date requesting to enter into negotiations immediately which is a part of the formal process. In addition and parallel to that request, we've also entered into informal talks, which allows us to sit down and let them know what we want. He clarified that the only alternative to coming to a renewal agreement would be litigation.

He continued by reviewing the history of the current agreement and its various changes over the years. Back 35 years ago, the city entered into an agreement with Continental Cablevision which was a local company and a small operation. The city agreed to put the wires on the poles for them to provide the service and at that time the Council also had to approve any rate increases. In exchange for providing the wires on the poles, the company was supposed to provide service to the schools, build-out on streets with a minimum amount of houses, and provide emergency override capability to all households, some of these did not happen. In the 1980's there was a change in the federal law which significantly reduced the local control including approval of rates. In 1991-92, the original contract was due to expire and at the same time federal regulations were once again being changed regarding franchise agreements, and Continental asked for a 15 year contract extension, which the City approved. Continental asked for the extension with the intention of making major



investments to the infrastructure and the 15 years would be the time for them to recoup those costs. Back then the technology of today was not envisioned and it was based on the value of the cable franchise and what the community should receive for that privilege. Next, in the 1990's there were a series of purchases and mergers which all fell under the same licensing agreement. In the mid 1990's the Council recognized that Dover did not have the best agreement in comparison to other communities, with one of the differences being that there were franchise fees being paid by the company to the communities for the privilege of using the public infrastructure. These fees were paid by the company and were not added to the bills. In 1992 the "Cable Act" stated that cable companies were no longer required to "eat" the franchise fee and could now pass this on to the customers. In 1996, the Telecommunications Act was passed which continued to erode any local control although the intent was to encourage competition, it has not happened here yet. Verizon is beginning to branch out into this area in larger municipalities. Around this time, the Council became concerned and formed an Ad-Hoc committee with Howard Williams being the Chair. The Committee discussed with our state delegation the unfairness of the contract. As a result, Channel 22 was enhanced and technical assistance was provided by them, with the city paying for the equipment. The camera operator was also provided by them for the meetings, but now they no longer pay for that and it has become a point of contention. Finally, he concluded that we are still under the old agreement with federal law controlling all aspects including rates, programming, etc. and brings us to the point we are at now in negotiations.

DeDe asked him to explain what would happen if we say "no" to renewal. Joyal stated that in order to not renew we would have to make a case of one of four criteria which would then bring us to litigation. He stressed that litigation would be expensive and extensive as Comcast would go the distance. He continued that in addition we cannot give exclusive rights to one company so the contract that we negotiate now will be the same one that will be offered to others coming in.

Scott asked how many subscribers are there in Dover and how much has this increased over the years.

Joyal stated this is a closely guarded secret as it is considered proprietary information and we cannot force them to give that to us. However, he has been told 11,000 – 12,000 recently but was also told that there were 13,000 in the mid-1990's, and doesn't think that the numbers would have decreased. He continued that we also asked for the average cost of customer bills and were told the average was \$50.00. He clarified that we can only deal with the cable television costs and this would not include any figures for phone or internet services.

Scott asked if we have tried to get competition into Dover.

Joyal stated yes we want to encourage competition, but no one has been willing to come. He explained that there is another alternative being explored in western New Hampshire which is municipal broadband. This would give us local control of pricing through a contracted company but we would have to install the infrastructure.



DeDe stated that one of the reasons that it is difficult for another company to come in is because they would have to put in their own lines. He stated that wireless technology will be their doom.

Keays stated that we don't have much ground to negotiate on but feels we should be pushing about what is being shown on TV; murder, sex, violence which is on during times that kids are watching as well. He wants to see another vendor come in to give the people a choice. He continued that his bill was only \$3.74 back in the 1970's and it is now \$52.40. He feels that there should be more options explored and asked if we have to settle on a 10 year contract.

Joyal stated we don't have to have a 10 year contract, but this is the proposal before us.

Scott asked if there is a benefit between the 10 year vs. 5 year; are we getting something for the extra 5 years.

Joyal explained that it is basically that we wouldn't have to come back to the table so often and that the longer contract offers the city more benefits.

Keays asked about senior citizens and will they offer discounts for them.

Joyal stated no, but there is currently a program for seniors through Dover Housing Authority.

Next, Committee Chair Dana Lariviere gave a brief history of the committee's work for the past 2 years stating that all of the questions asked so far by the Council have all been asked of Comcast by the committee. He explained that their job was an ascertainment process of the future cable needs of the City. They began by getting input from various community groups including the hospital, schools, arena, senior citizens, etc. They also posted an on-line survey for citizens to fill out. He reiterated what Joyal had said earlier about the narrow scope of what the contract can be refused for under federal law, and in discussions with Comcast they have basically had to "show the need" for the additional items being asked, which the Committee has done. At this point they are looking for Council direction as to whether or not they want to go forward with a 10 year contract, or any contract, and if not, we must show why not and it would then move to litigation. He stated that they have touched all of the bases on the formal path in order to cover ourselves if necessary, but they are pursuing the informal path and have the following proposals included in the 10 year contract:

1. Building out to the Three Rivers/Gulf Road area as well as making the service available to all residences, without having a minimum number of houses, but this would exclude industrial.
2. Allowing 3 broadcast origination points which would include rebuilding the city hall and new areas at the High School and Woodman Park School.
3. Dedicating a total of 3 community channels which would include adding the second one within 12 months of the contract renewal and the 3rd would be open for the future once enough need is demonstrated.



4. Technology grant of \$25,000 per year which would be contingent upon signing a concurrent internet service with Comcast.
Lariviere explained that the grant is important because we don't have control over anything but the cable TV portion so this would be of significant value to the city.
5. Performance reviews.
6. Franchise fee of 2% of the total of each subscribers bill which could amount to approximately \$140,000 annually to the city which could be used to fund the educational channels.

Scott stated that this is just another tax to the citizens and is not generosity by Comcast.

Lariviere clarified that it is imposing the cost of the services to the users.

Turner asked what the forecast of future prices is for Comcast.

Lariviere explained that we have no control over this.

Joyal explained the franchise fee and the intent to have the users pay for the upgrades to the equipment etc. which would free up taxpayer money. He stated that he feels that people find Channel 22 to be an incredible service and want it continued, but there is a cost associated with it.

Lariviere stated that this was one of the strongest needs spoken during the ascertainment process.

Keays is not in favor of another tax stating that we already have to pay extra for trash bags and we just keep adding more and more onto the blue collar taxpayers of this city.

Ciotti asked about the rebuilding of the booth at city hall and adding the others, will this be at the city's cost.

Lariviere clarified that it is the link only that is coming from Comcast and that the equipment, maintenance and cost of the operators will be at the city's expense.

Ciotti then asked about the \$25,000 technology grant and will this offset what we currently pay for internet connection.

Joyal stated that we currently pay just shy of \$25,000 for the dedicated lines to tie together the buildings and feels that this would basically be a wash.

Ciotti asked if the matching grant would be increased as their fees increase over the years of the contract.

Joyal stated that this is his understanding.

Cheney asked about the educational channels and will there be the ability to do remotes from different events in the city.

Lariviere stated yes, they can carry events live and then rebroadcast.

Cheney asked if the educational channels would be for school education only or would it include public education as well.



Lariviere stated it is intended to be educational which the definition could be set by the Council.

Cheney then asked about the 2% franchise fee and would this be specifically used to maintain the infrastructure or could they also be used for other purposes.

Joyal stated that it would be a part of the general fund and could be used for whatever the Council decides. He continued that 2% was just an estimate figure but explained that this could be increased to up to 5% or lowered as the Council sees fit.

Cheney stated that having this franchise fee on subscriber bills should allow us to find out how many customers are in Dover then.

Joyal stated that the amount of money would be determined by a certified audit and would be based on cable subscribers only. We would not get an exact count.

Trefethen stated there are different levels of cable services so will the 2% be charged based on the bill itself.

Joyal stated yes it will be a percentage of whatever level of service.

Trefethen stated that he also feels that the technology grant should be indexed based on their increase.

Next, he stated that the \$140,000 amount for the franchise fee is not something that we can count on for very long because there will be competition coming, and there already is competition with Direct TV, etc. so this figure will continue to go down.

Joyal stated that it is true that other current competitors don't have that option because they don't have to register locally, but if Verizon comes in they will have the same contract as Comcast.

Trefethen stated that this assumes that they will be a cable franchise, but they may not be as it is being heavily lobbied to have State-wide franchises and not local. He discussed other technology advances coming in the future which will change everything.

Scott stated that Rochester uses a different cable company, but asked of all the other communities who use Comcast, how many of them have a franchise fee.

Joyal stated all of them and they have had them forever.

Scott stated that was incorrect and his research only found that Somersworth and Rye had the fee.

Joyal stated that he knows for a fact that Portsmouth also has the fee.

Lariviere then explained that there are 2 ways to impose the franchise fee which is either by percentage or as a flat fee to each customer. The committee chose to go with the percentage.

Scott wants it clarified which towns charge what for a franchise fee before this goes to a public hearing.

Lariviere stated that the committee has asked for these agreements as a part of the process.

Scott stated he agrees with Trefethen regarding his statements on incoming competition.

Lariviere stated that the committee was charged with dealing with the here and now of the expiring agreement.

Myers clarified that the payment for the operator to broadcast the meetings is currently coming from the taxpayers as it is no longer being provided by Comcast. He stated



that the franchise fee would be used to offset this and feels that the franchise fee could potentially have a correlating decrease in taxes. He continued that he would not support using the funds for other items i.e., trucks, etc. so the Council needs to decide if they support the recommendations of the committee and decide how to fund it.

Turner stated he is an advocate of bare-bones cable service and feels all of the extra stuff will raise everyone's rates. He would like to see the basic cable rates protected. He asked what percentage of households do not have cable connection at all and use "rabbit ears".

Joyal again explained that we do not have that information and the cable company doesn't have to give it to us.

Turner stated that he doesn't feel that there is a large population without cable. Next he asked about wireless technology and the difference between that and satellite.

Discussion ensued regarding upcoming technology.

Cheney stated she spoke with a technology specialist who explained to her that the franchises are actually looking to go federal more than State-wide and that if Verizon were to come in now and put in their own wires, it would be overbuilding the services since wireless is the upcoming technology.

Trefethen agreed stating that this technology is available now but is not currently economical. He used cell phones as an example of how they built up their infrastructure and now offer new services from that every year i.e., internet connection, music, etc.

Lariviere also agrees with this that we cannot comprehend what is still to come. He further stated that the committee did discuss going for a contract under 10 years but then Comcast took items off of the table.

Trefethen further discussed when competition does come into Dover that this will drive prices down and stated that he has received many calls from constituents on this issue.

Lariviere stated that the committee also talked about bundling services i.e, cable, internet, phone, but reiterated that we only have control of the cable portion anyway.

Mayor Myers asked the Council for direction for the committee.

Turner stated he agrees with this, but does it have to be for 10 years as he feels it is crazy to lock into 10 years at this point.

Cheney asked for clarification of the litigation criteria.

Lariviere stated that one or more of the following would have to be proven;

- Non-compliance of agreement

- Quality of service

- Technical inability to provide service

- Failure to meet cable related needs of the City of Dover

He clarified that none of these services are to be provided at no cost to the city however.



Scott stated this is a good argument for competition and feels that we should do a one-year contract.

Lariviere stated this is not practical because there is a 3 year process for renewal.

Discussion ensued regarding competition.

Joyal clarified that the city has been asking other providers to come into the city since the 1990's but no one has come yet. He stated that when they do come however, we need to provide a level playing field that they provide the same level of services that residents are demanding through the ascertainment process. He stated we can go down the path to find a reason not to renew, but warned the Council that Comcast will fight vigorously under the federal law. He further stated that by having a contract in place it will set the level of service that will be required by the other company(ies) coming in. The other option of municipal broadband would allow us to build the infrastructure and contract out the service and use revenue bonds which would be paid back by the fees for service. The advantage of this would be instant competition and the city would retain control of prices.

Discussion then ensued regarding the length of the renewal agreement. Lariviere again reiterated that the additional items being presented are a part of the 10 year contract and would be off the table for anything less.

DeDe commended both Mr. Lariviere and Manager Joyal for the work on this so far and concurred that the tone of the communications with Comcast is that if there isn't a 10 year agreement, then everything else will be off the table. He reviewed the committee's charge was to ascertain the communities needs versus wants and feels that they were able to achieve more than he thought they would be able to. He agrees that we will see more competition in the future but we are not in a position to negotiate this right now and it is not viable that a company will come in here and lay their own lines with the wireless technology. He concluded by stating the Council should follow the committee recommendations and that New Hampshire is a "user pay" State and this is not a bad thing.

Trefethen stated he is not opposed to the fee but wants it to be based on actual cost so that if it is less or more, we can adjust it accordingly. Secondly, he stated that we do need to address those people who do not have the option of getting cable lines to their location and this agreement does that, but it is a part of the 10 year plan. He concluded by stating that we need to look forward and not to the past and that in 10 years we will have more options.

Lariviere clarified that the franchise fee of 2% is not set in stone and is just the concept.

Cheney stated that her technical engineer source also explained to her that cable companies are extremely territorial, but that if the telecommunications get the State-wide franchise law passed, then the cable companies won't be far behind.



Keays stated he is fed up with all of the services that keep going up and wants them to keep people in mind who have to pay all of these taxes and not just money.

Cheney asked about the connectivity in the Council Chambers for PC's. Joyal stated it is already there we just don't have the PC's.

Cheney stated she agrees with the contract as it will allow everyone to get cable.

Joyal stated that people who can't afford cable will have universal access in public buildings.

Cheney asked if this could be expanded to more places, i.e. the museum and senior center.

Lariviere stated that as it is written now it is in municipal buildings.

Joyal stated we can allocate the money however we want.

Turner stated he likes it all except he wants a price forecast and feels we should be able to get that.

Lariviere stated we don't have the right to demand that information under federal law.

Turner asked if we can use that as criteria to not renew.

Joyal stated no, we have been stripped of all local power by the federal government.

Trefethen stated he is not defending the cable company but they can't forecast fees because they also pay fees to each individual channel that can also raise their prices at will and only more competition can change that, but it won't be at the local level, only at the consumer level.

Myers clarified that there are no other communities that provide multiple local access channels. He thanked Mr. Lariviere and his committee.

Joyal stated that the agreement expires April 15th so he may need to bring a resolution to the Council next week to temporarily extend the contract until the final one is brought before them in the next month or 2.

The final consensus was as follows:

Scott will not support more than a 5 year agreement.

Myers stated that he will agree with the 10 year agreement.

Ciotti also will support because at this time it is the only game in town and although there may be changes within the next 5 years, this is our best deal for now.

Turner will also support.

Cheney will support.

(Keays indicated he was opposed earlier in the meeting, DeDe and Trefethen indicated their support earlier in the meeting.)

3. ADJOURN

Cheney moved to adjourn at 8:55 p.m., seconded by Ciotti. Motion passed unanimously.

**Valerie A. French,
Deputy City Clerk**