
Portsmouth
Cable Commission Public Hearing
7:00 p.m. – November 14, 2002
City Hall/City Council Chambers

The Portsmouth Cable Commission held a Public Hearing on Thursday, November 14, 2002 at 7:00 p.m. at City Hall in the Council Chambers.

Gene Fisk Chairman called the meeting to order at approximately 7:00 p.m.

The following were present: Gene Fisk, Chairman
John P. Bohenko, City Manager
Gerald Howe, Ex-Officio
Jarrett Celli, Commissioner
Louis Vinciguerra, Commissioner
Stephen Wrenn, Commissioner
John Gregg, Commissioner

Also present was Robert Ciandella of the firm of Donahue, Tucker & Ciandella, legal counsel to the City.

Chairman Gene Fisk welcomed everyone and introduced himself as well as each of the members of the Committee.

He stated that this is the 3rd and final public input session to solicit public comment and input ascertaining to the future cable television franchise related needs and interests of the City of Portsmouth. Under Federal law governing the franchise renewal process the City and the Cable Commission must identify the future cable related needs and interests of the City so that the City can evaluate the cable operator's renewal proposal to determine whether it meets those needs and interests. The hearing we are holding tonight will focus on the cable related needs of healthcare facilities and providers, economic developers including City administration and Chamber of Commerce representatives, non-profit groups and Arts & Cultural organizations. Before we get started with testimony as I said this is the third and final hearing that we will be holding and so I thought I would ask Rob Ciandella to outline for us where we all head from here as regards to this new Contract.

Thank you Mr. Chairman. Mr. Ciandella stated that what we intend to do from here is to have a period for written submissions to be made a part of the record of the ascertainment part of our work. What we'll move to next is developing a request for proposal which we will publish and which we will solicit a provider to meet what we have established as the future cable needs of the City. We will also solicit a proposal from AT&T Broadband to meet those future cable related needs. We will then make a counter proposal to AT&T and of course evaluate any responses we receive from the request for proposal as well

and at that point negotiations will be joined. The way the Federal law works it really sets up two tracts that are pursued contemporaneously to conduct these negotiations. The Federal law sets up what is known as a formal tract for cable franchise renewal and a formal tract is really intended to establish a record by which a Federal Judge could review the legality of a denial of a cable franchise renewal and the way Congress has set this up part of reserve their rights to proceed on the formal tract but nearly all of these franchises are concluded on what is known as the informal tract which is much more back and forth process and both parties in this matter have reserved their rights to proceed on the formal tract but we will through solicitation of the AT&T proposal and the counter proposal, except to be moving forward within the next 90-120 days when we commence negotiations.

Chairman Fisk opened up the hearing, tonight we will be hearing from a number of organizations. Arts & Culture is where we would like to begin. Joanne Grasso Chairman of the Blue Ribbon Committee on Arts & Culture is in the audience and Mr. Fisk asked if she would like to begin the hearing.

Thank you all for having these public hearings, I think the Commission has done a very thorough job in seeking input from the public. It is very frustrating that two of the main concerns the public, as we have no control over which is rates and package choices. I represent the Arts & Culture Commission, we are now just getting organized, in fact our group has not yet had its first meeting as a group so the answers to the question will be very limited. Perhaps when the successor contract is negotiated we will have more to say. I would like to go through the questions.

1. Is there a technology plan that can be shared with the Commission?

Answer: Not at this time, but we do plan to use Channel 22 as a way to communicate with the public as well as the City's Web page.

2. Are there any plans to construct new arts & cultural facilities?

Answer: At this time we do not have plans to construct a new Arts & Culture facility, we are just really a baby and not very far along.

3. Do plans exist for, or is there any interest in exploring, utilizing leased access or public access channels on the cable system to promote artistic and cultural events in the City?

Answer: We do not have plans to explore or access public television but plan to use Channel 22 and the Web page to inform the public of things that are happening.

4. Do plans exist for, or is there any interest in exploring, utilizing leased access or public access channels to broadcast artistic and cultural events or other types of events over the cable system?

Answer: We don't have plans to explore public access channels at all but use channel 22 and the webpage to inform the public of things that are happening. We have no interest in exploring leased access or public access channels.

5. Have you identified, either through the technology plan, or otherwise, specialized telecommunications services or products you would like to see provided to the community?

Answer: We have not yet discussed or come up with any need to plan special telecommunication services or products.

6. Is there any way that the administration of the arts and cultural organization functions and/or facilities management would be improved through the use of the cable system, or is there any way that you could foresee such improvement taking place?

Answer: The Arts & Culture Commission would like to promote events relating to the Commission and meetings, etc. that would take place.

7. Are there plans in place, or has it been considered, to utilize the cable system to broadcast arts and cultural workshops or seminars using the City's access channel?

Answer: We do not have any seminars or workshops scheduled due to the fact that we are newly formed but we would probably be able to use something like this in the future and again at this time we don't have any plans for this.

8. Are there plans in place, or has it been considered, to utilize the cable system to broadcast cultural events using the City's access channel?

Answer: There are no plans for cable system to broadcast cultural events around the City at this time as we are just being organized.

The Arts & Cultural Commission would like to promote events relating to the Commission and the meetings, etc. that will take place. We do not have any seminars or workshops scheduled because we are just newly formed but we would probably be able to use something like that in the future. Again, at this time we don't have any plans for that. Again there are no plans for the cable system to broadcast cultural events around the City at this time as we are just being organized. I do want to thank you all for inviting the non-profits here tonight and for the thorough job you are doing.

Gerry Howe stated that we know your organization is in its infancy and I applaud the progress you have made to date but do you think there is some potential to use cable access or technology that might be represented in the contract to broaden the impact of Arts & Culture in Portsmouth? Councilor Grasso answered there is always a possibility but will have to wait as this is a broad question, I think to answer this we would have to look in the future and then have more specific answers. I think you will be seeing a lot happening to the Arts this year and also the Democratic Convention in Boston will impact Portsmouth because people will be looking for places to stay and I feel this will impact the Arts & Culture, so there are a lot of things around the Arts & Culture group and it is very hard at this time to pinpoint anything specific.

John Bohenko stated that one of the things the Commission is looking at is utilizing Channel 22 in an emotional sense rather than broadcast cultural events. What we want to do is get people out to the cultural events within the City and I think there is a lot of opportunity. I think over time is how we expand our use of Channel 22 to promote those

things like small 2 minute clips on what is happening in the City and if we do have a studio available at the high school is create a 2 minute clip on some event that is happening and maybe run it on a weekly basis. So I think what we talked about was the idea of using Channel 22, using the ability to promote what is happening in the City and get people out to those events.

Joanne Grasso stated that we can best support the Arts & Culture Community by getting people to attend them and to broadcast on cable would defeat the purpose of supporting the Arts locally. We would really like to use it as notification of events.

Economic Development and Chamber of Commerce – Tom Cocchairo, Director of Communications for the Greater Portsmouth Chamber of Commerce. I was asked to come and speak tonight by the President, Peter Hamelin in support of the work you are doing and there are a lot of different ways that the Chamber and community can benefit from expanded capability and increased programming on our local access channel. Some of the things mentioned in the letter, we have e-coast, but more than that the Chamber as you know a large menu of business seminars, forums and those kinds of things that if someone in the community cannot make it would benefit from seeing it and it has been said earlier tht maybe we could tease people to go to local events, but there are also those citizens of Portsmouth that cannot make it such as handicap, and those kinds of things that can't make it to local events or to various arts & culture kinds of things that an expanded or broadened vision for this public access channel should be considered. Speaking on a Chamber of Commerce prospective, there obviously are a lot of cities around the country who have public access channels for visitors and that certainly is something that we would like you to consider in support of our downtown businesses and etc. The teaser would work very well in that kind of capacity. You have Washington DC you can turn to a channel and see all the different events going on for the day and get a flavor of the kinds of things you can go and see, the best of the City.

As you probably know there is a group of people who would like to get a radio station here so that there can be local programming on a wide range of subject matter. There has been some difficulty because of the FCC and number. of licensing available and frequencies, but maybe it could be considered as part of the cable access to have maybe audio kinds of things, a studio and not only can you have picture and video, but some kind of an audio components, some kind of interviews of different things going on so that when you don't have radio you can turn your TV on and get audio reports on various things that are going on.

Back to a Chamber prospective I think one of the greatest qualities of this community is our social capital and be able to mobilize that social capitol is something this access channel can do to let people know what is going on given the opportunity to volunteer, express opinions and be able to give the thought process beyond just a group of volunteers like yourselves who are here, broaden the discussion to a wider group of people so they can have the opportunity to make input to projects like this. Thank you very much for your time.

Nancy Carmer, I work as staff to the City's Economic Development Commission and I also sit on the E-Coast roundtable. I believe you have copies of my written response to your questions to Mark Simpson the Chairman of the Economic Development Commission so I will go through those. First of all, thank you for the opportunity to participate in the cable franchise renewal process and I would just like to address as the questions were enumerated in the invitation to speak tonight.

1. Is there a technology plan in place that can be shared with the Commission?

Answer: We currently do not have an Economic Development Commission technology plan available to share with the Commission at this time.

2. Do plans exist for, or is there any interest in exploring, promoting commerce or e-commerce through the cable system?

Answer: Although there are no plans at this time for promoting commerce of e-commerce through the cable system on the City side I think it is something that could be explored and that gets into the next question.

3. Do plans exist for, or is there any interest in exploring, utilizing leased access or public access channels on the cable system to promote the "e-coast"?

Answer: As someone who sits on the e-coast technology roundtable I know there are currently on going conversations with e-coast representatives. Opportunities for marketing the e-coast area I think that is something we would want to explore and express interest in although there are no details at this time. I know the Chamber is currently working to put together a marketing budget together so maybe we can include this in our conversations with them and in our partnership that the City has with the Chamber of Commerce on e-coast.

4. Do plans exist for, or is there any interest in exploring, utilizing leased access or public access channels to broadcast business seminars or other types of events over the cable system?

Answer: No plans currently exist for public access to broadcast business seminars or other types of events other than what we are currently using the cable system for as a bulletin board of up-coming events and broadcast public meetings, public hearings of public input sessions and I might add a wonderful opportunity for people who can't get out for any variety of reason, whether disabled, or children, or whatever. I would also add that I think there are some opportunities we in the past provided free seminars on how to develop a business plan, how to do marketing. The Chamber has also recently done some business seminars and opportunities. I think their current topics were Shipyard, how to get certain manufacturing contracts working with federal agencies and I think there maybe opportunities there. Again, when we plan for the business seminars, it was targeted to the retailers downtown. One thing we did, first of all, it was really difficult for the retailers to agree on a time, so I think using the public access channel for those kinds of things would be terrific.

5. Do plans exist for, or is there any interest in exploring, broadcasting business seminars or other types of events over the cable system on a pay-per-view basis?

Answer: We do not have any plans right now for broadcasting business seminars or other events of pay per view basis.

6. Have you identified, either through the technology plan, or otherwise, specialized telecommunications services or products you would like to see provided to the community, including high speed internet access?

Answer: Addressing specialized telecommunications services or products, I think that these are very important for the local business community. Just yesterday at the tech forum that was held, a survey of 1997 CEO's and senior management people in Seacoast high technology companies conducted by the Taylor Group, access to adequate telecommunication infrastructure ran on a scale of 5 and I think what that does is indicate its importance to this industry and our commerce and how important it is for them to reach their next level of growth. We are going to stay a tech cluster here. Another thing that came out in some reports yesterday is that it is kind of interesting that 9.1% of our people here in Portsmouth are employed here and are self-employed and I think that that also opens up another opportunity for the importance of advanced telecommunications services to those kinds of entrepreneurs that are trying to work in Portsmouth. We have had some inquiries in the past of opportunities for teleconferencing and I don't know if this is a question that I turn on to you that is something that is possible in the future or am I off base in thinking this maybe an area where we could provide some teleconferencing opportunities.

8. How important is it to your business that you have choice and competition among providers of advanced telecommunications services, such as Broadband Internet access? And lastly with regard to the importance of choice and competition among providers of advanced telecommunications services to businesses.

9. The response is that it is very important. New Hampshire currently ranks 2nd to Colorado in the US in the percent of employment in high tech industries and we know the Portsmouth area is the leader of high tech and entrepreneurship in the state so it is extremely important for Portsmouth businesses to have choice in advanced telecommunication providers to keep their costs in check for this very critical part of the industry.

Once again thank you very much for the opportunity to participate in this process.

Gerry Howe asked what benefit would it be to the business community if Portsmouth had business Internet access? I don't think we do at this point, and I know no one uses non-business for business. Nancy Carmer answered that she didn't know how to answer this question. Mr. Howe asked if it would give us a competitive advantage with other communities if we had business access to the Internet? I think it would, don't you? I think it would be something else we have to offer to potential businesses especially if we are going to be the e-coast, I think it would be a benefit. Nancy Carmer responded again, it is not my area of expertise and difficult for me to respond.

Steven Wrenn stated that you are opening a can of worms when you provide cable access to broadband businesses, what businesses do you offer that to, do we manage that ourselves, there's a lot of things. The thing to have is to have the access being dropped into the City somewhere so that we can get it. So it is something to think about during the contract negotiations. Talking about having the extra access dropped in and take into account the businesses that we think that might want access in the future and then build that capability with maybe a pipe a little bigger into the City so it is something to think about but the implementation and management of that is something that we really have to go through.

Jerry Howe asked if this could be addressed? Steve Wrenn answered yes, it could be addressed and by having this dropped in, we could say we already have it already built in.

Gene Fisk asked moving on to healthcare facilities and providers, do we have any representatives here tonight?

John Bohenko, City Manager responded that we received a fax and Elaine stated that we did receive a response from Aids Response Seacoast and Mr. Bohenko asked this be entered into the record or read it. Gene Fisk stated we have a 2 page document from Aids response of the Seacoast, Arthur Nicholson, Network Manager regarding AT&T Broadband Cable Franchise Renewal & Non-Profits and Chairman Fisk proceeded to read the response from Aids Response Seacoast.

“In response to your request for information I would like to offer the following from Aids Response Seacoast a non-profit corporation in Portsmouth. Although I am unable to attend this evenings meeting I welcome the chance to participate in the future.

1. AIDS Response Seacoast is developing a technology plan. We are reviewing dedicated Internet Access (Broadband/dsl) telephone service, wide area networks and other emerging technologies.
2. Presently we do not have any on going plans to utilize the public access channels on our cable system, AIDS response Seacoast did take advantage of a Public Service Announcement (PSA) from AT&T Broadband to promote AIDS Response at no-cost in 2001. We would like to discuss the possibility of running a PSA ongoing as well as run educational programs on public access channels at no cost.
3. Yes, non-profit access to AT&T's Broadband system would enhance the way we do business, low or no-cost Internet access allows staff members to use the Internet more frequently for research and to use email as an efficient communication tool with colleagues in other organizations and with clients, volunteers and participating organizations. Additional services that may be useful include wide area networking; telephone service as well as access to community access channels.
4. As our Agency grows we are building alliances with other non-profit agencies throughout the state. Seamless connectivity with is the key to our success.

Looking at community access channels as a portal to providing training and education to public, clients and staff.

5. Yes
6. Our non-profit is very interested in exploring producing programming, to promote AIDS education and our Agency.”

Chairman Gene Fisk asked if we have any other non-profit or healthcare related speakers tonight? Would anyone from the general public like to speak? As you know this is our last hearing.

Peter Bresciano stated he hoped he was not the only one that is a cable customer that has his head spinning with all these desires from all these different organizations. Some of these organizations, businesses, they don't even have a TV in their office and I am going to foot the bill for what they get or what the City gets from AT&T. You've got to be real, it just makes my head spin. I have a couple of questions. Does the City receive funding other than from a franchise fee from AT&T?

John Bohenko answered other than the franchise fee the City did receive a one-time grant, I believe, for the purchase of equipment, is that correct Gene, that is correct. And in addition to that we had a settlement about two years ago relative to the issue of network and provision of that and other than that everything else is franchise fees.

Peter Bresciano, so in other words for AT&T having wires cross over property we don't charge those people for that service?

John Bohenko responded we charge a 5% franchise fee.

Peter Bresciano stated but AT&T doesn't pay that, the residents of Portsmouth pay, so the only thing we get for our licensing of AT&T is what your getting at tonight or getting at as a Commission in a way of benefits, in the way of equipment, in the way of services, that's the only other thing we get. Maybe I am wrong but that does not come out of AT&T's profits. The equipment that is in this room, back in that studio was not given to the City of Portsmouth through the generosity of AT&T where that money to buy this equipment came out of their pockets. It came out of operating expenses, what they charge customers in a way of fees for cable TV and every time we renegotiate a contract and get more of these perks, it only stands to reason that what AT&T is going to do is increase the rates. It may not be on programming but it will be on something. The cable company has increased its charge to the customer twice each year from 1993 to 2002 and once in 2001. Each time AT& T increases its charges on anything, anything, the City gets a franchise fee on it. Back in 1997 it amounted to over \$177,000, just on franchise fees. He asked if the commission has any say as to what rate the franchise fee will be set at or what the franchise fee will be based on?

Attorney Ciandella answered that the federal law permits the franchising authority which is the Portsmouth City Council to propose a fee of up to 5% and it is a matter of negotiation what the franchise fee will be. It can be imposed upon gross revenue derived from cable service and what cable services are and are not is the subject of the laws

unsettled. The FCC had a ruling earlier this year that ruled that Broadband Internet services are not a cable, so prior to that ruling gross revenue was calculated in the City of Portsmouth, among other places, to include revenue derived from providing Broadband internet services. After that ruling AT&T unilaterally said that gross revenue does not include Broadband because of this preliminary declaratory ruling by the FCC.

Peter Bresciano went on to say that he felt the franchise fee should not apply to a cable box or clicker. I go out and rent a TV, I don't pay a franchise fee on that, but I do on the clicker and the cable box. If the Commission does not get involved in franchise fees, and I won't address this because I don't want to take up anymore of your time.

Louis Vinciguerra stated that he thinks that Mr. Bresciano is missing the fact that all the things people are asking for are perks and they are not all perks, we want to make sure that we have technology available so that those things can be available, obviously a lot of these things you'll have to pay for but to improve the whole cable system we want the technology for it. I think you have the misunderstanding that all these people are looking for nothing. Am I right? Well that appears what it sounds like when that gentlemen talked about not giving the businesses or the business net. Let the businesses set up their own business net and shouldn't be waiting for the City to set up something so that they can get on the business internet, they should already be doing it. If they are already doing it let them pay for it.

City Manager John Bohenko stated that it is important to put in perspective, I think our legal counsel did, but I think it is important to say that we asked people to come in and describe what things could actually make their operations better through the use of cable. The Commission and the City Council is committed to not adding any additional franchise fees to pay for things that you described. We feel that we have other areas that we want to negotiate but we can't. We are required by federal law this is just a step that we need to take if we are to proceed to look for other vendors because we are listening to all the concerns and part of the record that we have to establish as a Commission is a public record of needs of the community and to determine if our existing cable franchise is meeting those needs. So this is one step that we are taking. We have heard concerns of people and the idea that maybe we ought to look for another cable company. Well if we are going to do that our attorney has advised us that there are various steps that we need to do and that's ascertainment hearings and that's what we are doing tonight. That is not to say that we are going to go out there and take every one of these ideas and go to the negotiating table with them. We have to hear them, we have to have them for the record and that's what we are doing tonight.

Mr. Bresciano thanked Mr. Bohenko for that and said you also have to hear from people like me who say I don't want to pay for that kind of stuff. Enough is enough. If all of a sudden the Commission decides well we get this, this and this out of the cable company, I don't want to pay for all of that and also I understand the ramifications of trying to get another different cable company in here. I do not advocate that, it would be a nightmare for the new company and AT&T.

John Gregg stated that he was sensitive to what Mr. Bresciano is saying, the content as well as the spirit of your comments but with regard to whether we as taxpayers end up paying more for the camera there or not there are two parts to what can be received from AT&T or whoever the supplier is. Franchise fees being one and as you were saying earlier the other part being that the cable company may be willing to provide equipment or some other kinds of things in order to obtain the franchise. The cost of that comes from the company it does not come out of the franchise fee. A way of looking at it, I believe, is that it seems quite unlikely that the rate that is charged to all of us individuals it is quite unlikely that would go down if we didn't accept those things. So if the needs of the community were to have some technology for wires passing through the streets in order to provide access whether it is to schools or hospitals or businesses if that's important to the community and we didn't ask for it, it wouldn't hurt anybody but us in the short term because the rates would not come down that are set by AT&T.

Mr. Bresciano stated that on the flip side the rates may not go up either. When you speak of franchise fee don't involve AT&T, when you speak of franchise fee you have to deal with me, that I'm the one that pays the franchise fee, not AT&T.

City Manager John Bohenko stated following up on what John stated a second ago, it really deals with what we are going to be negotiating is not going to be anything that will increase franchise fees, that is clear. I think the City Council and the Commission agree. I think it's probably better to put in perspective that similar to us accepting a federal grant for some process in the City that we are going to have done because to assume that your taxes are going to go down on the federal level because we didn't accept that grant is just not realistic. What I think we have to look at is the overall corporation and if we can obtain certain benefits as a result of our extending this agreement, that is not going to affect the micro view of us because you are really looking at the macro company, the larger company, and so we hear you and we understand about the franchise fees, but the direct cost is like saying when you accept a grant from the federal government this will not affect you on your local taxes, but ultimately it does affect all people and their taxes, but if we didn't take that grant it wouldn't affect you individually and I think this is probably the way we could analyze that.

Mr. Bresciano stated that we all understand whether it be a grant from the federal government, a grant from the state government, it comes out of your pocket and it comes out of my pocket and anything we get from AT&T is not going to come out of your pocket it's going to come out of your pocket and my pocket, so I just want the Commission to think about the consumer out there that has to pay the bills and he is getting more and more bills and getting tired of paying them. Thank you.

Chairman Fisk stated he has a letter from Jim Noucas, 64 Thaxter Road in Portsmouth, I'd like to read for the record tonight.

"I hoped to appear this evening and address the Commission but unable to do so because of a family commitment. Nevertheless I wanted to share my thoughts with you

concerning the opportunity you have to help bring public access cable television to Portsmouth.

We live in a state that recently was ranked as one of the safest places to live in the entire country. The significant factor in arriving at that ranking was “community involvement”. As you are all aware, community involvement in the greater Portsmouth area is incredible and is widely supported by inclusive institutions. Public access cable television is an incredible opportunity to enhance community development and the overall sense of community throughout the greater Portsmouth area.

I am always surprised and impressed to hear how many people tune into the City Hall meetings broadcast on Channel 22. Imagine expanding that opportunity to other areas of local interest from the arts & culture to sports and local news; and beyond to community discussion groups and general community events.

Obviously we need better facilities to make this happen and I am aware that cable companies have helped create such facilities in the communities they service. Apparently our renovated high school will include some sort of studio facility. Why can't we negotiate the cable companies to help enhance that facility as they have done in other communities? What better base could there be for broadcasting community television than by involving students in meaningful programming about their community in addition to important city government and school information.

I believe a public access cable station can be run through a non-profit with appropriate community leadership and management and partnership with our city government and schools. The community of Salem and Salem High School are an excellent example of how this can work. I am sure there are other communities in New Hampshire and Massachusetts that would be worth looking at as well.

The opportunity to do something like this does not come along very often. With a television studio included as part of the renovated high school, our community is even more uniquely positioned to create an absolutely first class facility. Our students and citizens deserve nothing less. I sincerely hope you will have the time and opportunity to fully explore the possibility of bringing a public access cable channel to our community. Let me know if there is anything I can do to help. Sincerely, James J. Nocas, Jr.”

Chairman Fisk asked if there was anyone else who would like to speak tonight before we close the hearing? He stated he would like to add that the record will remain open for an additional period of sixty (60) days from here for written comments, so if you have any further thoughts, we'd be very happy to hear from you.

Louis Vinciguerra stated that he would never vote for anything that we pass through to the consumer. Either they are going to give it to us or they are not. I think most of us feel that same way.

Chairman Fisk asked if anyone else has any comments.
Thank you very much for being here tonight. Good night.

Respectfully submitted,

Gene Fisk, Chair