

**VILLAGE OF HASTINGS-ON-HUDSON, NEW YORK**  
**BOARD OF TRUSTEES**  
**PUBLIC HEARING**  
**MAY 29, 2007**

A Public Hearing was held by the Board of Trustees on Tuesday, May 29, 2007 at 8:40 p.m. in the Meeting Room, Municipal Building, 7 Maple Avenue.

**PRESENT:** Mayor Wm. Lee Kinnally, Jr., Trustee Peter Swiderski, Trustee Jeremiah Quinlan (8:50 p.m.), Trustee Diggitt McLaughlin, Trustee Danielle Goodman, Village Manager Francis A. Fobel, Village Attorney Brian Murphy, and Village Clerk Susan Maggiotto.

**CITIZENS:** Eighteen (18).

Mayor Kinnally declared the Board in session for the purpose of conducting a Public Hearing in accordance with the legal notice that appeared in the May 25, 2007 issue of *The Rivertowns Enterprise* for the purpose of renewing the application of Cablevision of Southern Westchester, Inc. for a cable television franchise.

**Mayor Kinnally:** This being a public hearing, people wishing to speak either in favor of, or in opposition to, the agreement come up, give your comments. But we will start with a brief presentation from Cablevision.

**Emilie Spaulding, Director of Government Relations, Cablevision:** We have had a nonexclusive franchise in the Village for almost ten years. During that time we have 2,829 households who subscribe to Cablevision. Currently they pay \$116,000 in franchise fees annually to the Village.

Looking forward to the new franchise, what are some of the benefits that the Village could anticipate? One of them is moving the franchise origination point, where the government channel is cablecast from the Village hall to the Community Center. Raf has already asked us if we would have our engineers assist in doing the interior work, which we have done. We have run the cables and put molding conduit up, and brought it up to the second floor. The second phase will be to cut the street, putting in conduit, bringing the fiber in, and then splicing it into the system inside. That will be the next step, and we are certainly pleased since we have the people who do this on a regular basis to participate in that.

One of the important things that was mentioned by Bob Perlstein and the committee is they would like for the Hastings school district to reach the people not only who live in Hastings, but also in unincorporated Greenburgh. That project is ready to be switched over as soon as the school district would like to have that programming. So we would not only have an origination point, which is where the cablecasts come from for the school district, but also it would reach all of Hastings and the part of Greenburgh that has the Hastings school district

but is in Greenburgh. We could test that now so that you can understand that that is ready, or we can wait until the school district would like to have that.

We certainly do understand competition and welcome it. Our triple play of three services, phone, Internet, and cable TV, has been very successful. Sixty percent of our customers take that service. So we think competition is a good thing. Our local programming is something that we are particularly proud of. We have News-12, of course, which is in the lowest level of service, the basic service, which is 22 channels. Also your government channel, the Future School Channel, and something we call local origination, which is programming that we produce. You may have seen the Mayor talking about the Village of Hastings on our *Meet the Leaders* program. That program we have just put on on-demand, so if you have the digital service and you go to free-on-demand/local on demand, and you look at Hudson Valley, then you can see all of the local programming that we have produced any time you want, two in the morning, and you can watch it over and over.

The other thing that we are doing as a community partner is, frequently we get requests to assist in some way. Just yesterday, Barbara Thompson of the Historical Society had requested a flat screen TV, which is sort of an anachronism at the Historical Society but that is what she wants. So we happened to have one that we keep in the closet to give away like that, so that was something that seemed to be a good match.

At this point we have been working very closely with the cable committee, and Bob, John Figliozzi, and Rafael on the document for probably over a year. We think we are right down to the finish line, and we would appreciate your helping us make it over the line and be completed with this so that we can start offering some of the services.

I forgot to mention the PEG fees we are going to pay. We have agreed to upfront payment, and then a yearly payment as well. In this way, there would be assurance that the Village would get a certain amount of money not only at the beginning to upgrade the equipment, but also every year for the ten-year life of the franchise they would have a specific amount that you were getting.

**Mayor Kinnally:** Any comments from the Board first on the franchise?

**Trustee Goodman:** Were we going to hear from our committee?

**Mayor Kinnally:** We are, but just in response to anything that Emilie said or any of the comments. Bob Perlstein is here, who is the chair of our cable committee.

**Robert Perlstein, Cable TV Committee Chair:** I have no issues with what Emilie just stated, but the Mayor felt that it would be helpful in terms of concluding the paperwork if I let you know what the outstanding issues are in that regard.

The first issue Emilie spoke to, which is the educational programming being transmitted to school district residents who live outside the Village boundaries: apparently, it is all set up. The committee believes, since this is a ten-year agreement, that we need a clause in the agreement that makes it an affirmative obligation, at least best efforts. To all of the points I am about to address we have compromises that we have developed that we haven't had a chance yet to present to Cablevision. But in terms of that programming issue, we feel that should be addressed in the contract, since it is a ten-year contract.

The second issue is the issue of preemption. If there is federal legislation which purports to relieve the cable companies of certain obligations, the question is what will be the effect on franchises which have already been granted. We have made certain requests essentially that Cablevision, and Verizon for that matter, will live up to their signed agreements, whatever the federal legislation is, at least through the term of those agreements.

We have a level playing field issue. John Figliozzi can speak to that better than I can, but basically level playing field means, as I understand it, that the Village has to treat all cable companies equally. It does not mean that each clause in the cable agreement for Verizon has to mirror the applicable clause in the Cablevision agreement, or even that there be a corresponding clause. You look at the agreements taken as a whole. Cablevision has asked that basically we refine that to say that each and every provision in the Cablevision agreement, each of their obligations, must be applied to any competitor. We would rather stay with a PSC definition.

I am going to skip over a few of these issues, which are technical. We have a bundled services issue and, again, John can speak to that more capably than I can. But my understanding is, what we really want to know is, when there are bundled services like Emilie spoke about, telephone, cable, and Internet, that we know how the charges are being imposed, how the discounts are allocated; that we have enough information to review the Cablevision accountings and charges to us. So we have asked for language that will make that clear.

The fifth issue is what service is going to be provided to the schools and the public buildings. Cablevision has offered their basic tier of services, which are basically the broadcast channels and the PEG channels, as I understand it. We have asked that certain other channels, such as C-Span and the New York State Legislative Channel be made available as well. Raf can speak to that more fully if you would like further detail on that.

We have an issue as to what books and records Cablevision will make available to us on an audit, and what, and how, we can copy that information, what we can copy, and what our obligation is to keep it confidential. Our goal is that the Village not undertake to make itself liable for huge costs of keeping something confidential which is really more Cablevision's problem. So we have language issues on that score. We have raised certain issues as to force majeure and insurance, but Cablevision has said that we will have the benefit of whatever the best clauses are there that they provide to any of the other municipalities.

The eighth point is the effect of a temporary operating authority on PEG collections and payments. Cablevision has for several years now been operating in the Village under a temporary operating authority. Their franchise has expired. So they are continuing to provide service to the Village, but they are not collecting or paying PEG monies, so that the Village channels are not being supported. Our request is that if, at the end of the term of a new franchise agreement, that Cablevision will continue to collect on some level and support the Village television operations.

The ninth point is an intellectual property point. We need to make clear that the program developed by Raf and his crew and everyone else in Hastings is Village property, and that we have certain rights to deal with it as we wish, and that Cablevision is limited to using that program for the Village franchise purposes. In other words, if there is a great show, which is not beyond the realm of possibility, and Paul Hammons is on the committee and who worked for NBC for many years can speak to that; if somehow we have the hit show, that is ours and Cablevision should not be able to show that in France. We should be able to show that in France.

Then there is a tax language issue. Again, John may be able to shed more light on this. There is a Section 626 issue as to whether Cablevision can offset franchise taxes it might otherwise pay the Village from taxes it pays for other operations. This is a big issue with Verizon; it is a smaller issue with Cablevision.

So that is a brief summary of where we are in the contract negotiations.

**John Figliozzi, Municipal Consultant, Public Service Commission:** I am with the Department of Public Service in Albany. I would certainly be happy to answer any technical questions you might have. But to involve myself, or the state for that matter, in negotiations taking place between the two parties in this form is probably not a wise thing for me to do. But if you have concerns about, for example, the Section 626 real property tax offset, and have questions about how the state rules deal with some of these particular issues, I would be more than happy to answer those questions at the appropriate time.

**Mayor Kinnally:** Just as a matter of information, John has been a resource to both the applicant and to the Village, providing not only information and assistance but bridging the gap and trying to narrow some of the differences that we have, but giving his input as far as what the PSC's position is and what the standard has been and how other communities have addressed this issue with other applicants, including Cablevision and some other venues. So his input has been of extreme benefit not only to us, but also to Cablevision and Verizon, because he has been working with us on both of the proposed franchise agreements.

**Trustee McLaughlin:** I have a question for Bob. Since this is a ten-year contract, this is a point that does not matter today, but may well matter within three years. Ginsburg Development will be returning soon to the Board to discuss its plans for the parcel on 9-A, which is in the Ardsley school district although it is in the Village of Hastings. Does this contract provide the capacity for those homeowners to be served with Ardsley cable in terms of the Ardsley schools?

**Mr. Perlstein:** The contract about which we are speaking with Cablevision does not address anything having to do with Ardsley. But it would be my assumption, and John can correct me, that those houses, whether or not they are in the Ardsley school district, if they are within the Village of Hastings-on-Hudson, will get all of the channels.

**Trustee McLaughlin:** Yes, but the thing is they are not in the Hastings school district so the availability of Hastings school broadcasting to those houses is not relevant to them. But if there are children there, they will go the Ardsley schools and their taxes will support the Ardsley schools.

**Mr. Perlstein:** That is, I think, an Ardsley issue. In the way that we are concerned that our school district residents get service, I think it would probably be up to those folks in the Village of Hastings, but in the Ardsley school district, to make a request to Cablevision that instead of getting, or in addition to getting, the Hastings educational channel they get the Ardsley educational channel. That would seem to make sense, but that is more of a decision, as I see it, for those particular residents.

**Mayor Kinnally:** And Ardsley.

**Trustee McLaughlin:** Is that not something we should be considering, though, because they will be coming to us once they live here?

**Mayor Kinnally:** Yes but it is a modification that would have to be made in the Ardsley agreement.

**Trustee McLaughlin:** In Ardsley's agreement, even though they are our residents.

**Mayor Kinnally:** Yes. Because it is a service from another community coming in here.

Any public comments on this either in favor of, or in opposition to, the proposed franchise agreement? Anything further from the Board?

**Trustee Goodman:** I wanted to say thank you to our committee. You are responsible for generating a non-property tax revenue stream, and your fellow citizens should be giving you a parade.

**Mayor Kinnally:** Thank you, Bob. They have labored long and hard on this, and it has been a double-barrel effort because it's both Verizon and Cablevision. As much jockeying as there is between the Village and the two proposed franchise suppliers, there is jockeying between Verizon and Cablevision which somewhat complicates it.

John, and Bob, I know you are going to be putting your heads together and also reaching out to Cablevision. I am not going to ask you when you will have an update, but when you do have that update if you could let us know and we will put this on the agenda.

I do not think we should close this hearing. If there are any modifications we will take them up on a continuation of this hearing. We will adjourn the hearing with the understanding that if anybody has any written comments to submit in connection with the proposed franchise agreement they can continue to do so, to submit those to the Village Manager or to the Village Clerk and they will be considered. At such time as there is more information or any modifications to it, it will come before the Board of Trustees. We will continue this hearing to consider those changes, and then we will close the hearing. At that time, as with Verizon, we are hoping to vote on a proposed franchise agreement. But we are not at that point with either of the suppliers at this point.

If there is nothing further coming from the Board of Trustees or from the public on this public hearing, I will entertain a motion to adjourn the hearing.

### **CLOSE OF PUBLIC HEARING**

On MOTION of Trustee Swiderski, SECONDED by Trustee McLaughlin with a voice vote of all in favor, Mayor Kinnally adjourned the Public Hearing at 9:10 p.m.