

MINUTES OF A PUBLIC HEARING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF
MAMARONECK HELD ON MONDAY, NOVEMBER 13, 2007 AT 7:30 P.M. IN THE COURTROOM AT
VILLAGE HALL, MAMARONECK, NEW YORK

PRESENT: Mayor Philip Trifiletti (arrived late)

Trustees Thomas A. Murphy
Toni Pergola Ryan
John M. Hofstetter
Anthony Fava

Village Manager Leonard M. Verrastro

Deputy Village Attorney Joseph Messina

Police Chief Edward Flynn

Clerk-Treasurer Agostino A. Fusco

ABSENT: None

PUBLIC HEARING ON CABLE FRANCHISE APPLICATION AND PROPOSED FRANCHISE
AGREEMENT WITH VERIZON, NEW YORK

On motion of Trustee Murphy, seconded by Trustee Ryan:

RESOLVED that the Public Hearing on the Cable Franchise Application and Proposed Franchise Agreement with Verizon, New York is hereby opened.

Ayes: Fava, Hofstetter, Ryan, Murphy

Nays: None

Absent: Trifiletti

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held by the Board of Trustees of the Village of Mamaroneck on the 13th day of November, 2007, at 7:30 p.m. or as soon thereafter as all parties can be heard, at the municipal building located at 169 Mt. Pleasant Avenue, Mamaroneck New York, to consider whether the Village should grant a nonexclusive franchise to construct, install, maintain extend and operate a cable system in the Village ("Franchise Agreement") to Verizon New York, Inc. under the terms and conditions negotiated by the Larchmont-Mamaroneck Cable TV Board of Control and set forth in a Cable Franchise Agreement.

PLEASE TAKE FURTHER NOTICE that a copy of the Proposed Franchise Application and Franchise Agreement are on file with the Clerk-Treasurer of the Village of Mamaroneck, and shall be available for review during normal business hours at the office of the Clerk, whose address is:

Village Offices at the Regatta
123 Mamaroneck Avenue
Mamaroneck, NY 10543

PLEASE TAKE FURTHER NOTICE that at said public hearing, all persons interested will be given an opportunity to be heard.

BY ORDER OF THE BOARD OF TRUSTEES OF THE VILLAGE OF MAMARONECK, NEW YORK.

Agostino A. Fusco,
Clerk-Treasurer

Dated: October 29, 2007

(Mayor Trifiletti arrived)

Mr. Jim Millstein, Trustee of the Village of Larchmont appeared as Chair of the Larchmont-Mamaroneck Cable Board of Control to give an overview of the Agreement. The three committee members, Village of Mamaroneck Trustee Tom Murphy, Town of Mamaroneck Trustee David Fishman and he, along with Village Manager Leonard Verrastro have been negotiating this agreement with Verizon, New York. They have also been negotiating with Cablevision on what they hope will be a renewed Agreement. Trustee Millstein stated that the Town of Mamaroneck had approved the Agreement last week and the Village of Larchmont will be voting on it tomorrow evening. As a matter of law, each of the three committees needs to approve their contract with Verizon and as a matter of administration, the three committees together worked on and finalized the points of the Agreement that allow the Cable Board to administer the Agreement. The contracts are identical for each of the municipalities. The term of the Contract is for 15 years and there will be a franchise fee paid by Verizon, similar to what is being done with Cablevision, which is 5% of annual revenues and also a “PEG Grant” to support the capital needs of LMC-TV. All franchise fees and PEG Grants go to support our public cable television operation, LMC-TV. A study was done to determine what the capital needs of LMC-TV will be in this new century and that study was used to develop the PEG Grant portion of the Agreement, which is \$1,110,000 payable over 15 years; \$200,000 payable within 30 days of the signing and then \$65,000 per year over the remaining 14 years. The premise of this Grant is that Cablevision match it within 120 days. If Cablevision fails to match it, then the PEG Grant would change to \$445,000 payable in four installments; \$200,000 within 30 days of the effective date, \$95,000 on the first and second anniversaries of the effective date, \$55,000 on the third anniversary of the effective date plus \$0.75/sub/month for the first ten years and \$1/sub/month for the last five years. Cablevision has indicated an inclination to go with the fixed amount and not the sub/month version of the PEG Grant. Either way, the Board believes this is a very generous Grant and will meet the needs of LMC-TV. Trustee Millstein then reported on the Build-out. 77% of the residents of the community today are already wired for service, which includes virtually all single family homes. Multi-dwelling units require landlord or managing agent consent as do condominium developments, which Verizon is actively pursuing. Verizon is required to be at 81% after six months, 84% after 12 months, 87% after 18 months, 90% after 24 months, 92% after 30 months, 94% after 36 months, 95% after 42 months, 97% after 48 months, 99% after 54 months and 100% after 60 months. An essential element of this Agreement is PEG Channels. Verizon will carry the existing three channels and if Cablevision offers a fourth channel, Verizon will as well, triggered by demonstration of need. In addition Verizon will match the Free Drops that Cablevision is now providing (schools, municipal buildings, etc.), plus an additional 10 locations among the three municipalities for the life of the Agreement. LMC-TV now broadcasts from six locations. Each of those studios feeds to a central location at the Town Center and then broadcasts out to subscribers. As this system was built by Cablevision, Verizon has agreed to provide new lines wiring half of those locations, leaving Cablevision with three locations.

Trustee Millstein informed the Board that under state law, providers have a right to offset their Franchise Fees against their property taxes. Verizon has agreed to waive the right to offset its Franchise Fees against its local property taxes, subject to Cablevision’s agreement to do the same. If Cablevision fails to agree, Verizon has agreed not to take an offset in any year greater than the offset taken by Cablevision. He hopes that Cablevision will waive its right to offset their Franchise Fees as they have done all of the past years of their contract. Trustee Millstein also reported that the Cable Board has the right to audit Verizon’s performance every three years. Also, there are standard policies and provision of Insurance and Indemnification in the

Agreement and finally there will be two types of default enforcements. Verizon will be given a 60-day cure period after notice on non-monetary defaults and a 30 day cure period after notice on monetary defaults. They must maintain bond or other form of security at all times in the amount of \$60,000 which can be drawn on for monetary defaults and liquidated damages and a municipality may revoke the Franchise if there is material uncured breach after notice and hearing.

Trustee Murphy informed residents that if they reside in a single family home, they can get Verizon cable services as soon as they would like, however, if they reside in a multi family dwelling, they will need to go through their landlord or managing agent. He also reported that there is no “red-lining” going on. All areas are built out to the same extent.

Mr. Mack Kirby appeared on behalf of Verizon. He addressed the issue of the property tax off-set. The wire centers are housed in Verizon properties, however, poles and lines are in the municipalities’ rights-of-way. The issue is the offsetting of property taxes for the equipment in the rights-of-way against a special franchise tax, so that they are not being doubly taxed. Verizon has recognized that offsetting these property taxes against Franchise Fees can have a substantial impact on the municipalities and they have agreed not to offset these taxes. If Cablevision does not agree to this and the property taxes are off-set, it would affect all three municipalities equally as it would affect the franchise fees that are being paid to LMC-TV.

Trustee Murphy thanked Trustee Millstein for all of his hard work and expertise.

Mr. Joe Castellani, resident of the Village, also an employee of Verizon appeared. Mr. Castellani expressed his support for Verizon and believes that competition in the marketplace is a good thing for the residents. He is asking the Board to vote in favor of this Agreement.

Mr. Tom Dunn, resident of the Town of Mamaroneck and also an employee of Verizon appeared. He complimented the entire Cable TV Board as this Agreement took over nine months to finalize. He introduced other members of Verizon, which were present.

Trustee Murphy asked Mr. Kirby to explain what happens if this Agreement gets voted on favorably. Mr. Kirby stated that it is a two step process, the first being the approval by the Board. The second step is submitting the Agreement to the New York Public Service Commission. They have the ability to approve the Agreement, modify or deny it. The Commission is next meeting on December 12th. This meeting and public comment period needs to be noticed 12 days prior to the meeting. The public comments are compiled by the staff and then a recommendation is handed up to the Commissioners. Typically they are looking for 30 days to do this. Verizon would like to be on the agenda for their December 12th meeting, so that if a confirmation is given, they can begin to offer their service to the residents.

Deputy Village Attorney Messina asked if the Public Service Commission modified the Agreement, would it have to come before this Board again for approval. Mr. Kirby noted that comments on their recent Franchise Agreements have been minimal. However, when they did have comments, they exercised their right to change the contract and there was no remand to the municipal Boards. There was discussion on how the service would be rolled out. This would be done by television advertisement, direct mail and telephone calls to existing Verizon telephone customers. Trustee Ryan asked if Verizon plans to offer a local news channel. Mr. Dunn said that a local news station is being actively pursued.

Mr. Micheal Witch, past member of the Community Cable Coalition appeared to inquire if there will be new and different services outside of what Cablevision offers. He also asked if they will group the three LMC-TV channels. Mr. Kirby stated that yes, they would be grouped. He also stated that their channels are grouped by genre, which makes finding programming easier. Verizon has greater capacity as their fiber optic cable goes straight to the home. That means that there will be much more capacity, depending on what the marketplace demands. There will be more capability for HD Channels.

Mr. Robert Hock, Director of Governmental Affairs in Westchester County for Cablevision appeared before the Board. Mr. Hock identified two items of concern for review. Cablevision is currently in negotiations with the Cable TV Board and he believes there will be a contract relatively soon. He discussed the PEG Grant and the option of it being \$1,110,000 payable over the time of the Agreement. He feels that setting a time table of 120 days is coercive as Cablevision is still in the process of negotiation and should these negotiations take longer than the 120 days, the municipalities can be penalized if they are forced to go with the per subscriber method for PEG Grant. He also stated that Cablevision will not agree to the per subscriber method for determining the PEG Grant and that would force municipalities to lose a portion of the PEG Grant money from Verizon as there is no alternative to this option. He suggests either waiting to vote on both Franchise Agreements or to have Verizon change this in their Agreement. His second point of concern is the issue of the build out and how multi-family dwellings can harm the Village of Mamaroneck as they have many more multi-family dwellings and how exactly the build out will be accomplished over the five years. He believes there are provisions in the Agreement regarding multi-family dwellings that are non-issues. However, as these dwellings are more difficult to wire, he believes that Verizon will reap the benefit of building out and offering service to all single family dwellings before beginning to build out multi-family dwellings. He noted that when Cablevision was granted a Franchise Agreement with the Borough of the Bronx, they were obligated to wire the most difficult buildings first. Trustee Murphy addressed the concern of build out. His fears regarding this were alleviated by the explanations he received from Verizon. He again stated that if there are residents in multi-family dwellings that want Verizon cable service they need to advocate this with their landlord or managing agent. Mr. Hock is confident that an Agreement with Cablevision will be finalized soon.

Mr. Millstein again addressed the Board and stated that the negotiation with Cablevision were at a standstill until the Agreement with Verizon was done. Since this time, things with Cablevision are moving much more quickly. He believes that the Verizon Agreement is a better agreement than what Cablevision inherited from the past cable provider and he believes the only point of the Agreement they do not like is the per subscriber PEG Grant proposal. As they have 120 days to conclude negotiations – the “ball is in their court”. He also stated that the PEG Grants are not at all in jeopardy unless the Cable TV Board allows Cablevision to renegotiate their agreement with less PEG Grant money, which will not happen. In regard to the build outs he believes that this will not be an issue as they are already 77% built out and are ready to be a competitor across the entire community.

Sonny Goldberg appeared as past President of LMC-TV and also was a member of the Community Cable Coalition before LMC-TV. She thanked the Cable TV Board for their bringing competition to the marketplace. She thanked Jim Millstein for all of his work as well as Trustee Murphy and Mr. Verrastro. As this Village has recently suffered a very bad flood, she hopes that Verizon’s repair capability is up to par and

regarding the remote facilities, she hopes that there could be a remote at Harbor Island and also one at the Hommocks School. She also thanked Eric Lewis, Executive Director of LMC-TV for all of his great work.

Robert Junior appeared. He is a resident of the Village and retired Verizon employee. He is currently employed as a field operations technician for an internet company. He is a FIOS subscriber now and he urges the Board to accept Verizon’s Agreement as his service is much better and clearer than ever before as the fiber optic comes right into his home.

Eric Lewis, Director of LMC-TV appeared to urge the Board to vote in favor of the Agreement as he believes competition is good for the community. He thanked the Cable TV Board for their work. He believes this Agreement well supports Community TV. Much of what they broadcast will soon be available on the internet. He again urged the Board to vote in favor of this Agreement.

Chris Cutter with the Communications Workers of America appeared to urge the Board to vote in favor of this Agreement. He also addressed the issue of the build out and the possible difficulty in building out multi-family dwellings. He believes this is not true and it would only behoove Verizon to get into multi-family dwellings as soon as possible, as it is good business to get as many customers as possible as quickly as possible. Speaking as a technician, when they get into a facility, they are in there to make it work and get it done as quickly as possible.

Mr. Leonard Verrastro, as Administrator for the TV Cable Board of Control, stated that he gets several calls per week inquiring as to when there will be an alternate provider to Cablevision. He believes the residents are looking for competition in the marketplace. He also thanked Mr. Millstein and urged the Board to vote favorably.

On motion of Trustee Ryan, seconded by Trustee Hofstetter:

RESOLVED that the Public Hearing on the Cable Franchise Application and Proposed Franchise Agreement with Verizon, New York is hereby closed.

Ayes: Fava, Hofstetter, Ryan, Murphy, Trifiletti

Nays: None

On motion of Trustee Murphy, seconded by Trustee Ryan:

WHEREAS, the Village of Mamaroneck (the “Village”) is a franchising authority in accordance with Title VI of the Communications Act of 1934 (the “Communications Act”), and is authorized to grant one or more cable television franchises pursuant to Article 11 of the New York State Public Service Law, and Title 16, Chapter VIII, Parts 890.60 through 890.6 through 899, of the Official Compilation of Codes, Rules and Regulations of the State of New York (the “Cable Laws”);

WHEREAS, VERIZON NEW YORK INC. (“Verizon”) is upgrading its existing telecommunications and information services network through the installation of what Verizon refers to as “Fiber to the Premises Telecommunication Network (the “FTTP Network”) within the Village and elsewhere, which existing network transmits Non-Cable Services (as defined in the Verizon Franchise Agreement) pursuant to the authority granted by Section 27 of the New York Transportation Corporations Law, and Title II of the Telecommunications Act, which Non-Cable Services are not subject to the Cable Law or to Title VI of the Communications Act;

WHEREAS, the FTTP Network occupies public rights-of-way (as defined in the Verizon Franchise Agreement) within the Village, and Verizon desires to use portions of the FTTP Network now or hereinafter installed within the Village to provide cable service (as defined in the Verizon Franchise Agreement);

WHEREAS, Verizon has submitted a written application for a cable television franchise to the Village on October 26, 2007 (the “Verizon Application”), which the Village has had an opportunity to review;

WHEREAS, due negotiations between the Village (conducted through the tri-municipal cable television board of control as the authorized representative of the consortium comprised of the Town and the Villages of Larchmont and Mamaroneck) and Verizon have resulted in a proposed agreement entitled “Cable Franchise Agreement between the Villages of Larchmont and Mamaroneck and the Town of Mamaroneck, New York and Verizon New York Inc.” (“Verizon Franchise Agreement”);

WHEREAS, on this day November 13, 2007 at a regularly scheduled Board of Trustees meeting the Village held a public hearing on the Verizon Application and the Verizon Franchise Agreement at which Verizon made a presentation to the Village Board in favor of the Verizon Franchise Agreement, including an outline of the cable television services proposed to be provided to the Village pursuant thereto, and members of the Village Board of Trustees and the public were given notice and opportunity to comment on Verizon’s presentations and ask questions to be addressed by Verizon’s representatives; and

WHEREAS, the Village has identified the cable-related needs and interests of the residents of the Village and has exercised due diligence in considering the technical ability, financial conditions, character and legal qualifications of Verizon to meet such needs and interests; and

NOW, THEREFORE, BE IT RESOLVED, that the Village of Mamaroneck Board of Trustees finds that it approves the character of Verizon; and be it

FURTHER RESOLVED, that the Village Board of Trustees finds that Verizon is legally (pursuant to NY Public Service Commission Rules and other statutory requirements), technically, and financially and otherwise qualified to meet the cable-related needs and interests of the Village and that Verizon will meet all statutory and regulatory non-discrimination requirements; and be it

FURTHER RESOLVED, that the Village Board of Trustees finds, based on the presentation by Verizon, that the cable service offered by Verizon will include competitive offerings with its existing competition; and be it

FURTHER RESOLVED, that the Village Board of Trustees determines that it serves the public interest to award Verizon a franchise to own, construct, operate and maintain a cable system along the public rights-of-way within the Village, in order to provide cable service; and be it

FURTHER RESOLVED, that the Village Board of Trustees authorizes the award of a non-exclusive franchise to Verizon to own, construct, operate and maintain a cable system along the public rights-of-way within the Village, in order to provide cable service, which authorization is made in accordance with the applicable provisions of Title VI of the Communications Act and the Cable Laws; and be it

FURTHER RESOLVED, that the Board of Trustees of the Village of Mamaroneck authorizes Village Manager, Leonard M. Verrastro of the Village to enter into the Verizon Franchise Agreement, and to execute any other documents necessary to effectuate the granting of the franchise on behalf of the Village of Mamaroneck.

Ayes: Fava, Hofstetter, Ryan, Murphy, Trifiletti

Nays: None

RESPECTFULLY SUBMITTED BY:

AGOSTINO A. FUSCO, CLERK-TREASURER