

Board of Trustees
Village of Tarrytown
Special Meeting No. 21
November 15, 2006 6:00 p.m.

PRESENT: Mayor Fixell, presiding; Trustees, Basher, Butler, Hoyt, McGee, Pollack, and Zollo; Village Administrator McCabe; Village Engineer McGarvey; Village Attorney Shumejda; and Village Clerk Booth

The meeting began with the Pledge to the Flag.

CONTINUATION OF A PUBLIC HEARING REGARDING A PROPOSED
FRANCHISE AGREEMENT BETWEEN THE VILLAGE OF TARRYTOWN
AND THE VERIZON, NEW YORK INC.

Trustee Basher moved, seconded by Trustee Zollo, and unanimously carried that the public hearing be opened.

Pamela Goldstein, a representative of Verizon presented to the Mayor and the Board of Trustees documents entered into the record by Verizon New York Inc.

Trustee Zollo moved, seconded by Trustee Basher, and unanimously carried that the public hearing be closed.

Trustee Basher moved, seconded by Trustee Hoyt, and unanimously carried that the following resolution be approved: Approved: 7-0

Whereas, the Village of Tarrytown (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 (the “Cable Laws”); and

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 proposed 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 Laws or to Title VI of the Communications Act; and

Whereas, the FTTP Network occupies Public Rights-of-Way (as defined in the proposed 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 proposed Verizon Franchise Agreement); and

Whereas, Verizon has submitted a written application for a cable television franchise to the Village on August 4, 2006 (the “Verizon Application”), which the Village has had an opportunity to thoroughly review; and

Whereas, negotiations between the Village and Verizon have resulted in a proposed agreement entitled “Cable Franchise Agreement by and between the Village of Tarrytown and Verizon New York Inc.”, which proposed agreement was filed with the Village on August 4, 2006 (“Verizon Franchise Agreement”); and

Whereas, on August 21, 2006, at a regularly scheduled meeting of the Village Board of Trustees (the “Village Board”) that was duly and reasonably advertised to the public, Verizon made a presentation to the Village Board in favor of the proposed 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, the public, and representatives of Cablevision, the existing franchisee, were given notice

and the opportunity to comment on Verizon's presentation and ask questions to be addressed by Verizon's representatives; and

Whereas, the public hearing was continued to the regularly scheduled and special meetings of the Village Board; 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; now, therefore, be it

Resolved, that the Village Board hereby establishes itself as the lead agency for the purpose of review of the proposed action under the provisions of the State Environmental Quality Review Act (SEQRA), and makes the following finding, and alternative determination with respect to the environmental impact of the proposed Verizon Franchise Agreement:

- a. In order to provide the equipment necessary to support its proposed Cable Franchise Service in the Village, Verizon will complete the installation of a fiber optic network, which work is already in progress. Even without the proposed use for Cable Television Transmissions, this ongoing network conversion would continue to occur so as to serve Verizon's existing telecommunications operations, although the pace of the conversion is expected to be accelerated if the pending application is approved.
- b. That the Village Board's execution of the proposed Franchise Agreement is a Type II Action under the State Environmental Quality Review Act (SEQRA). Specifically, this action is covered under 6 NYCRR §617.5(20): "routine or continuing agency administration and management, not including new programs or major reordering of priorities that may affect the environment". Accordingly, it has been pre-determined that adoption of the proposed Franchise Agreement will not result in a significant impact on the environment, and no further action is required relative to this matter under SEQRA.
- c. That notwithstanding that the Village Board's finding that the grant of a Cable Television Franchise is a Type II action not subject to the requirements of SEQRA, the Village Board is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed Verizon Franchise Agreement; and be it further

Resolved, that the Village approves the character of Verizon; and be it further

Resolved, that the Village concludes that Verizon is legally (under Public Service Commission Rules and other statutory requirements), technically, and financially qualified to meet the cable-related needs and interests of the Village, which needs and interests were ascertained by the Village; and be it further

Resolved, that the Village concludes that Verizon will be required to provide adequate public, educational, governmental access capacity, either through channels dedicated to same, or through interconnection between cable operators as permitted by law; and be it further

Resolved, that the Village concludes that Verizon will meet statutory and regulatory non-discrimination requirements; and be it further

Resolved, that the Village concludes, 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 concludes that although the terms of the proposed Verizon Franchise Agreement are not identical to those of the existing franchise agreement with Cablevision, that the terms of both agreements are reasonably comparable in their totality and contain no economic or regulatory burdens placed upon another cable television franchise operating in the same franchise area, therefore neither agreement provides either franchise with any unfair competitive advantage, or subjects either franchise to any unfair competitive disadvantage; and be it further;

Resolved, that the Village 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 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 clarification of the calculation of the first annual PEG Grant payment and the assurance that the Village of Tarrytown subscribers will be able to receive the Irvington educational access channel as stated in the letter dated November 12, 2006 addressed to the Honorable Drew Fixell, Mayor of the Village of Tarrytown from McFall Kerbey III of Telecommunications Insight Group shall be incorporated and made a part of the franchise agreement; and be it further

Resolved, that the proposed Verizon Franchise Agreement is hereby approved, and the Village Mayor is hereby authorized and directed to execute it and any other documents necessary to effectuate the granting of the franchise of behalf of the Village.

ADJOURNMENT

Mayor Fixell moved, seconded by Trustee Basher, and unanimously carried, that the meeting be adjourned at 6:20 p.m.

Carol A. Booth
Village Clerk