

Summary of Proposed Franchise Agreement: Town of Bedford and Verizon

Dear Residents:

The Bedford Town Board will be holding a public hearing on a proposed cable franchise agreement to bring cable television competition to our community. Verizon is seeking a franchise from the town to compete with the town's only other franchisee, Cablevision. The hearing will be held on Tuesday, November 24th at 7:30 PM at Town Hall, 321 Bedford Road, Bedford Hills NY. Your attendance, thoughts and participation would be both welcomed and appreciated. If you are unable to physically attend the hearing, please do not hesitate to convey same to me electronically at Supervisor@BedfordNY.Info to express your views on the proposed franchise and on the concept of cable competition. I will insure that your written comments become part of the official record.

The Town Board and Cable Committee have long advocated for improved cable television service within the community. After having solicited cable competition for the past three years, I am excited that we are now rapidly approaching the culmination of the process. It is through cable competition that we believe the residents of Bedford will enjoy more options, improved service and better pricing among a host of other benefits. While the formal application and entire proposed franchise agreement are available for inspection at Town Hall and on the town's official website, a summary of the proposed franchise agreement is set forth below.

The public hearing for November 24th, 2009 at 7:30 is a special meeting and will be the sole item on that evening's agenda. I look forward to seeing you.

LEE V.A. ROBERTS
BEDFORD TOWN SUPERVISOR

Background

A couple of years ago, the town began receiving periodic inquiries from residents about Verizon's FIOS system and whether Bedford had received any applications for a cable franchise agreement. While other communities in Westchester were being approached, there were no applications or inquiries forthcoming to the Town of Bedford. Accordingly, we decided to take the first step and reached out a few years ago to the external affairs officer of Verizon New York, John Butler, with the hope of jump starting the negotiations on a cable franchise agreement. Approximately, one and a half years ago, the Town created a Cable Franchise Committee to explore the cable related needs of the community and begin reviewing a proposal from Verizon.

Process

It should be stressed that this franchising process is ***not a competitive bid process***. Competing providers are dealt with on a one-to-one basis and, assuming they each meet the reasonable requirements of the municipality and applicable federal and state standards, ***each can reasonably expect to receive a franchise to operate***.

Under the Public Service Regulations (Sec. 895.3), ***no municipality may award or renew a franchise which contains economic or regulatory burdens which when taken as a whole are greater or lesser than those burdens placed upon another cable television franchisee operating in the same franchise area***. Moreover, a municipality may not unreasonably refuse to award an additional

competitive franchise. Faced with the mandate of creating a level playing field for competitors within the franchise area, it is obviously preferable to coordinate the respective negotiations at the same time when possible (i.e. Verizon new franchise with the renewal of the existing franchise with Cablevision). Regrettably, that was not a viable option for the town as there are several years remaining on Cablevision's existing ten (10) year franchise. In weighing the benefits of moving forward with Verizon against the drawbacks of waiting four (4) years for the incumbent's franchise to come due, the Town Board and Cable Committee deemed it advisable to move forward with negotiations.

Fortunately, as a result of those negotiations, the Town of Bedford is now on the verge of a new competitive marketplace for cable television service within the community, with the public hearing on November 24th being a central component of the process. If approved by the town, Verizon would then be required to file an application for a certificate of confirmation with the PSC within sixty (60) days. Upon issuance of an order granting the certificate, Verizon may then begin to provide cable service to the community.

Term

This agreement provides for a ten (10) year non-exclusive franchise grant together with the right to occupy the public rights-of-way.

Service Obligations

Verizon is required by law to provide cable television service to all Town residents within five years. The only exceptions to this commitment are where there is a finding of economic infeasibility or lack of adequate density. Based upon the representations of Verizon's engineering department, there are few, if any, portions of the Town that do not meet the density requirements set forth in Article 3 of the proposed agreement. As represented in Exhibit B to the proposed agreement, construction of the Verizon FTTP Network has been completed to approximately seventy (70%) percent of the current households in the town, and Verizon has provided an anticipated build out schedule with full completion being required within the aforementioned five (5) year period.

Verizon is required to comply with all Federal and New York State laws and regulations pertaining to cable television service including the handling of requests for service, complaints and trouble calls, subscriber billing, termination of service for non-payment, system installation and repairs, subscriber credits and fee waivers, protection of subscriber privacy, technical performance and safety of the technical plant. While provisions exist within federal and state rules and the proposed agreement, it is expected that the imperatives of a competitive marketplace also will ensure the provision of superior customer service. Nonetheless, there is a procedure specified in the proposed agreement to effectively address deficiencies in this regard short of revocation of the franchise.

Verizon must maintain its system using materials of good and durable quality and all work performed with respect to the system must be done in a safe, thorough and reliable manner. Verizon must comply with all local laws governing the right-of-way and the municipalities retain all rights regarding police powers. Verizon must comply with federal and state Emergency Alert System requirements.

Franchise Fees

Verizon is required to annually pay, on a quarterly basis, a franchise fee of five percent (5%) based on 'gross revenues', as such term is defined in section 1.16 of the agreement. Verizon shall also be

required to submit a brief report detailing the computation of such fee. This is the same fee paid by Cablevision.

The Town shall also be entitled to access to all the books and records of the franchisee for a period of six (6) years after such documentation is generated for the purpose of examination and audit.

Public, Educational and Government Access

Under the proposed agreement, Verizon agrees to make available three full time, dedicated Public, Educational and Government Access (PEG) channels on its cable system to be transmitted as part of its basic broadcast offering. Additionally, under the proposed franchise agreement, Verizon has agreed to the following:

- a) Within one hundred eighty (180) days of the effective date of the agreement, Verizon shall install an Educational Access Interconnection at the Fox Lane Campus. This interconnection will enable the distribution of live broadcasts from the school facility in the same fashion that Cablevision programming has been broadcasted.
- b) Should the Town secure an irrevocable commitment by an amendment or renewal to the incumbent cable provider's agreement (i.e. Cablevision) to provide a Government Access Interconnection at Town Hall, Verizon agrees to similarly provide a free interconnection at Town Hall within one hundred eighty (180) days of such commitment, thereby enabling live broadcasting from Town Hall.

Subject to the provision of suitable space, access, power supply and video/audio signals by the School District and/or Town, Verizon shall be obligated to provide, install and maintain in good working order the equipment necessary for transmitting the Access signals at no expense to the Town.

There is no provision for the payment of any initial or annual PEG Grants to assist the Town with the capital costs associated with PEG access. Internal changes within Verizon have altered the landscape by which it negotiates with communities in the mid-state region. As you may have observed in recent news articles, Verizon is wrapping up its negotiations in this region and moving on to other areas of the state and other areas of the country. While this aspect is somewhat disappointing, we feel quite fortunate that the Town has been able to secure provisions for the more important components regarding interconnection sites and live dissemination of information for the residents of Bedford and other communities within the Bedford Central School District. Ultimately, the Town Board and Cable Committee have regarded the PEG money as a secondary issue since the cost would actually be imposed on the residents in the form of a pass-through on their monthly statements.

Miscellaneous Provisions

The proposed agreement requires Verizon to repair or replace any municipal property damaged or destroyed in connection with its provision of cable service. Verizon will be required to restore such property to its pre-existing condition within a reasonable period of time. A similar, but more explicit, condition is included for the restoration of private property.

Consistent with recent PSC orders, the proposed agreement provides that upon delivery of cable service, Verizon's FTTP network becomes a "mixed use" facility subject to the PSC's minimum cable television franchise standards and the police power of the municipality but that the municipality is not

granted any broader authority over the construction, placement and operation of the mixed use facilities as a consequence of Verizon's providing the municipality with cable service.

Free basic cable service will be provided to each public library and educational institution chartered or licensed by the state education department or Board of Regents, as well as other buildings used for municipal purposes.

Verizon agrees that it will not apply any franchise fee payments as an offset against the special franchise tax provided for in New York State Real Property Tax Law §626 temporarily so long as other franchisees are not conferred any more favorable treatment.

There are insurance and indemnification requirements running to the benefit of the municipality.

The municipality retains the right to approve or deny transfers, consistent with the limitations imposed by federal law.

Verizon is prohibited from abandoning service, in whole or in part, without the written consent of the municipality.

Equal employment opportunity practices also are ensured under the proposed agreement.