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April 10, 1997

By Facsimile and Mail

John D. Patrone
Commissioner
Community Antenna Television Commission
133 Portland Street
Boston,
Massachusetts 02114-1779

RE: **Application of Continental Cablevision**
For A Rate Increase

Dear Commissioner Patrone:

At your request, I am enclosing a list of rate-related issues that I raised at the March 27, 1997 pre-hearing conference in the above-referenced matter. I would appreciate it if you would send me copies of all other issue-lists submitted by other interested parties. Given that it is unclear exactly how and when the Cable Commission will proceed on this matter, I would also appreciate being kept informed of your plans, with copies sent directly to the Issuing Authorities listed below.

In the meantime, please let me know if you have any questions about the enclosed list.

Very Truly Yours,

Peter J. Epstein

Peter J. Epstein

PJE/tmm
Enclosure

cc: The Town of Billerica (w/enc.)
The Town of Burlington (w/enc.)
The City of Cambridge (w/enc.)
The Town of Natick (w/enc.)
The Town of Wilmington (w/enc.)

COMMONWEALTH OF MASSACHUSETTS

CABLE TELEVISION COMMISSION

In Re	)
	)
Application of	)
Continental Cablevision	)
For A Rate Increase	)

RATE-RELATED ISSUES RAISED AT THE PRE-HEARING CONFERENCE BY THE TOWNS OF BILLERICA, BURLINGTON, NATICK AND WILMINGTON AND THE CITY OF CAMBRIDGE

At the March 27, 1997 pre-hearing conference in the above-referenced matter, the Cable Commission requested that the participating parties summarize the rate-related issues that were raised for consideration by the Community Antenna Television Commission (the "Cable Commission") in upcoming hearings on Continental Cablevision's ("Continental") application(s) for rate increases. At the pre-hearing conference, the Cable Commission and participating parties focused essentially on the issue of what costs could be externalized and passed-through by Continental to cable subscribers {1}. Given the fact that the practice of pass-through(s) of costs to subscribers by Continental is becoming more prevalent in the Commonwealth and the fact that the FCC rate regulations are not specific on many of these matters, the Cable Commission was asked to review and interprete a number of these outstanding issues. The Towns of Billerica, Burlington, Natick and Wilmington and the City of Cambridge, by their outside counsel, hereby submit the following list of such issues:

{1} While the rates of Continental are the focus of this proceeding, the parties understood that many other cable operators in the Commonwealth also externalize, pass-through and/or line-item costs. Therefore, the instant proceeding will likely have relevance for those cable operators as well as Continental.

First, the Cable Commission should "interprete" the terms: (i) externalized costs; (ii) passed-through costs; and (iii) line-itemed costs.

Second, exactly what costs are subject to externalization, pass-through and/or line-iteming (collectively "pass-through" hereafter)?

Third, what is the "threshold" *date* for Continental to pass-through costs?

Fourth, what is the "threshold" *basis* for Continental to pass-through costs?

Fifth, are passed-through costs limited only to renewal license costs?

Sixth, how is Continental to treat *existing* cable license costs? That is, costs that are part of an existing license but that may have been negotiated ten (10) years ago, prior to the advent of rate regulation.

Seventh, if Continental is still amortizing local programming equipment, studio and/or Institutional Network costs on the effective date of a renewal license, can such amortized costs "offset" any new pass-through costs? If so, exactly how?

Eighth, how are interest costs related to pass-through costs to be treated? That is, what is the maximum interest that Continental can charge? In addition, exactly what methodology is to be used to compute such costs over a license term? Ie-when does interest start, etc?

Ninth, in some municipalities, Continental takes the position that annual funding for access support (5% for example) is not passed-through even though such an amount appears explicitly as a separate line-item on subscriber bills. Continental believes that such annual funding, even if in the same amount, under a renewal license would constitute a net increase. What is the correct interpretation of this type of situation? How could such "level funding" constitute a net increase?

Tenth, if there is no increase in license costs in a renewal license, can there ever be passed-through costs? If so, exactly what costs and how are such costs computed?

Eleventh, if there is a decrease in license costs in a renewal license, isn't there a requirement that such a decrease in costs be passed-through to subscribers? If so, exactly *how* are such decreased costs to be computed? *At what point* would such decreases be passed-through to subscribers? How is an Issuing Authority to readily understand whether or not such decreases are called-for? What remedy does an Issuing Authority have if such decreases are not forthcoming?

Twelfth, how do Issuing Authorities ensure that they can effectively monitor how pass-through costs are computed and subsequently line-itemed on subscriber bills? For example, if a municipality negotiates certain license provisions based upon its understanding of the potential pass-through costs of such provisions, how does that municipality effectively monitor and "enforce" such costs? What happens in the event that such pass-through costs exceed the costs that were negotiated?

Thirteenth, given the importance of potential pass-through costs, how would the Commission advise municipalities and Continental to proceed in order to understand, compute and reach agreement on such costs?

Fourteenth, in the event that a municipality negotiates for license provisions that are *less* than those in a current license agreement, how can the municipality ensure that subscribers will get a decrease in rates as a result? Does the Commission have a mechanism to monitor such a situation? If not, what party is responsible for ensuring that such decreases inure to the benefit of subscribers?

Fifteenth, if Continental makes voluntary payments (Ie-where there is no license provision), are such payments in any way subject to pass-through?

Sixteenth, in the event that Continental voluntarily exceeds explicit license spending requirements, is Continental limited to passing-through only the license requirements, or can Continental also pass-through its voluntary payments in excess of such requirements? If Continental is deemed to be allowed to pass-through such voluntary increases, what is the statutory and/or regulatory basis for this?

Seventeenth, if Continental has certain license-required costs (Ie-PEG Access, I-Net, etc.) that Continental itself can also use for depreciation and/or for other business-related write-off purposes, shouldn't such depreciation and/or other business-related write-offs offset any potential pass-through costs? If so, precisely how would this occur? If not, why not?

Eighteenth, if Continental is allowed to pass-through all license required costs, what is the offset for any "saved" costs? That is, if Continental is not required to provide a local headend or business office, etc., what is the offset? If there is no offset, why not?

Nineteenth, if Continental is allowed to use its cable system for so-called "enhanced services" (Ie-other than Cable Services) and receives revenues and tax benefits as a result, is there any offset against potential pass-through costs to cable subscribers as a result, or other benefit to cable subscribers?

Twentieth, if a municipality and Continental agree on pass-through cost issues during license negotiations, is there any reason why such agreements should not be included in the license agreement? If so, how should such agreements be treated? For example, can the parties agree on specific pass-through cost limits, etc.? If not, why not?

Twenty-first, the issue of pass-through costs is increasingly having a chilling effect on license negotiations between municipalities and Continental. While understanding that Continental has the right to pass-through certain costs, municipalities believe that Continental should nonetheless provide some services and facilities as its cost of doing business in the community, without simply passing-through all such costs, including interest, etc. This is particularly the case where Continental has been providing such services in the past, and given the fact (as discussed above) that Continental itself derives certain benefits from such services and facilities. What steps will the Commission take to clarify and remedy this issue?

14.

CITY OF CAMBRIDGE
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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

April 28, 1997

To the Honorable, the City Council:

In response to Awaiting Report #4 regarding the possible elimination of two public service channels, and Awaiting Report #5 regarding the rate request by Continental Cablevision, below please find a status report on both items:

(1) The Cable TV and Communications Committee of the City Council requested that I report on any conversations with Continental regarding the possible elimination of two public service channels.

On November 26, 1996, Deputy City Solicitor Don Drisdell and I met with officials of Continental Cablevision, at their request. Continental Officials presented their proposal to provide high speed Internet access plans for Cambridge customers, and the necessity to "reclaim" one CCTV access channel and one School channel. Continental requested that I, as the franchising authority, approve this change in its license in order to provide this service. I informed Continental that I would not agree to a change in the license without a public process, including a meeting with the City Council Cable TV and Communications Committee. I also asked Continental to engage in discussions directly with CCTV and the School Department. I have not met with Continental since that time.

Continental Cablevision is currently in discussions with CCTV where CCTV would agree to carry the International Channel on one CCTV channel, and subject to my approval, CCTV would receive Internet access for its facility and financial remuneration. Similarly, Continental has been in contact with the School Department on the elimination of one channel in exchange for financial remuneration.

(2) The Cable TV and Communications Committee also requested that the rate request filed by Continental with the FCC be reviewed.

The City has recently contracted for outside legal assistance to advise and represent the City at hearings before the State Cable Commission and other governmental agencies on cable and telecommunications issues. New regulations of the State Cable Commission require that Cities and Towns move formally to intervene to be a Party in the hearing proceedings; this allows the City greater flexibility at these hearings. We have intervened in the current rate proceedings before the State Cable Commission. A pre-hearing conference on Continental's rate request was held on March 27, 1997. The City was represented at this hearing, and at the request of the Cable commission, subsequently submitted a list of rate-related issues to be addressed (submission attached). It is unclear exactly how the Commission will proceed on this matter, however, the City will monitor the situation.

As a result of changes in the Federal Telecommunications Act and the creation of the Social Contract (a contract between Continental Cablevision and the FCC regarding regulation of its rates, among other things), nearly all authority regulating rates resides with the Federal Government. The FCC regulates all cable rates except for basic service rates, which are regulated by the State Cable Commission. Cambridge can act by intervening as a Party in the state rate regulation proceedings, which we have done, and by that process can have limited input at the Commission to assure the factual accuracy of Continental's submissions.

In this complex and changing telecommunications landscape, I feel it is imperative that acquire technical expertise to assist the City in making decisions in these areas. Funds were included in my FY98 Submitted Budget for this purpose, as well as to assist the City as it begins its refranchising process. I will keep the City Council apprised of developments, as they occur.

Very truly yours,

Robert W. Healy
City Manager

Attachment: 4/10/97 Epstein Memorandum.

Consent Agenda #14 5-223

Relative to Awaiting Report Items' Number Four and Five, regarding possible elimination of two public service channels and rate request by Continental Cablevision.

In City Council April 28, 1997

Referred to the Cable TV and Communications Committee

Copy sent
4-30-97
Amc