



CITY OF CAMBRIDGE

Office of the City Solicitor

City Hall

795 Massachusetts Avenue
Cambridge, Massachusetts 02139

Tel. (617) 349-4121

Fax. (617) 349-4307

Russell B. Higley
City Solicitor

Donald A. Drisdell
Deputy City Solicitor

Michael C. Costello
Assistant City Solicitor

Birge Albright
Legal Counsel

Gail S. Gabriel
Legal Counsel

Diane Wynshaw-Boris
Legal Counsel

Laura H. Yager
Legal Counsel

Linda A. Stamper
Legal Counsel

Arthur J. Goldberg
Legal Counsel

June 5, 1992

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: *Cable Television Guide--Awaiting Report Item #13*

Dear Mr. Healy:

About one year ago Continental Cablevision of Cambridge gave notice to their customers via a stuffer with the monthly bill that the monthly program guide was going to be discontinued. The cable company announced a substituted service whereby consumers can call a number in Pennsylvania and subscribe to a national guide for \$14 per year or they can get a discount subscription for TV Guide magazine for about \$35 per year. Neither option lists the programming for all of the local channels.

There are two questions submitted by the City Council regarding this issue:

1. Does Continental Cablevision's contract with the City of Cambridge permit discontinuance of the program guide?
2. Does Continental Cablevision's contract with the City of Cambridge mandate distribution of the guide?

In order to fully answer these questions it is necessary to look at the federal, state and

local laws that govern cable television and understand their interrelationship.

On the federal level, cable television is governed by the Cable Communications Policy Act of 1984 (known as the Cable Act). The purpose of the Cable Act was "to establish guidelines for the exercise of Federal, State and local authority with respect to the regulation of cable systems". On the state level, the Massachusetts Community Antenna Television Commission (known as the Cable Commission) oversees cable development and operation in the state. On the city level, the Office of Cable Television oversees the operation of the franchise issued by Cambridge to Continental Cable company.

In general, if a matter is covered by the federal Cable Act, state and city laws regarding the same matter are preempted. The Cable Act limits the power of state and local governments to regulate cable operators. Its purpose is to promote competition among cable companies and minimize unnecessary regulation.

Section 543 of the federal Cable Act takes away the rights of state and local authorities to regulate the rates for provision of services that cable company operators charge to subscribers. An Iowa case has held that a municipality cannot stop a rate increase even if it violates the terms of a license between a city and the operator (City of Dubuque v. Group W Cable Inc. No. C-85-1046 N.D. Iowa, February 25, 1987). In addition, a city and a cable operator cannot agree to waive the federal rule for rate provisions in their license. However, if a matter is not a rate for provision of service, the local authority may be able to regulate it.

The Massachusetts Cable Commission also prohibits local rate regulation (M.G.L.C166A S15; 207 CMR 6:51). Therefore, Cambridge's license with the cable

company cannot contradict explicit federal and state laws and regulations in this matter.

The Cable Act in Section 545(a)(1) allows cable company operators to drop or replace programming and other services so long as the modified service retains the same mix, quality and level of services required at the time the franchise was granted. The cable company has the right to go to court if the local authority makes a final decision to deny the modification.

With this in mind, it is likely that Continental Cablevision has taken the position that the program guide is a rate for provision of service and is therefore not subject to regulation by the City and that its plan for substituted program information meets the federal guidelines.

Even if this is correct, there are state regulations (207 CMR 10.02[5]) and city regulations in the license (Section 7.2) that govern notice requirements. It appears from the information received from the Office of Cable TV that all of the notice requirements for a rate change were followed by Continental Cablevision.

However, I believe that a strong argument can be made that the monthly cable program guide is not a rate for provision of service but a consumer protection issue. The Cable Act specifically empowers local authorities with the right to establish and enforce consumer protection and customer service requirements under its Section 552.

There is a case from Michigan that discusses what is a rate for provision of cable service and what is consumer protection. Comcast Cablevision of Sterling Heights, Inc., v. City of Sterling Heights 178 Mich.App.117, 443 N.W. 2d 440 (1989), on page 442 states:

" We do not believe that merely because a charge is involved for something

associated with cable service the charge becomes a 'rate for provision' of cable service. Nor do we believe that 'provision of cable services' encompasses anything or everything associated with those services."

Further analysis of the legislative history of the Cable Act, as found in H.R.Rep. No. 98-934, 98th Cong.,2d Sess., reprinted in 1984 U.S Code Cong. & Admin.News 4655, 4716, and quoted in the Sterling Heights case page 443, reveals a statement that describes customer service as follows:

"In general, customer service means the direct business relation between a cable operator and a subscriber. Customer service requirements include requirements related to interruption of service; disconnection; rebates and credits to consumers; deadlines to respond to consumer requests or complaints; the location of the cable operator's consumer service offices; and the provision to customers (or potential customers) of information on billing or services." [Emphasis added]

There are references to the need for and desirability of program guides for consumers in both the original franchise application and the current license that strengthen the argument that the guide is a consumer protection issue.

The basis of the current agreement between Continental Cable and the City of Cambridge is the original franchise application and the license with The American Cable Company. Continental Cablevision is the successor to The American Cable Company and agreed to accept all of the provisions of the original application and license. Both the original application and the license contain statements that indicate a commitment to provide a monthly printed program guide.

The original franchise application, page 139-11 contains the following promise of

service:

Program Information to Subscribers

Cable programming is so plentiful and so varied that subscribers must be provided complete and continuous information in order to thoroughly enjoy their service. American Cablesystems will make frequent use of bill stuffers to highlight up-coming programming. A 24-hour on-air program guide will be carried on "Neighborhood Net" which will indicate programming for a given day in several hour long blocks. In addition, a printed program guide will be available at a nominal cost. This guide will be free to customers purchasing two or more premium services.

In addition, the current license contains the following provision:

SECTION 6. SERVICE AND PROGRAMMING

6.8 Program Guide: Electronic and print program guides ^{provided} to subscribers shall include programming ^{cablecast by the CPAC, the} Cambridge Public Schools and ^{the City of Cambridge upon the request of the} appropriate authority.

A strong argument could be made to Continental Cablevision that the program guide is a customer service issue by asking them to look at page 2 of their own booklet entitled CUSTOMER SERVICE GUIDE which is distributed to all subscribers.

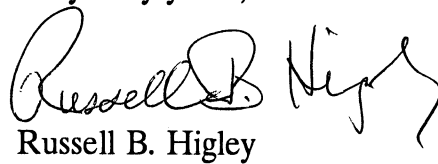
CABLE EXTRAS FOR ADDED CONVENIENCE

Program Guide: Plan your viewing and taping with the Continental Cablevision monthly guide to all cable has to offer.

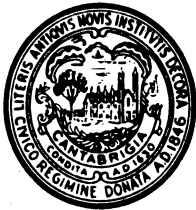
Therefore, in regard to the questions raised by the City Council I would answer that the distribution of a monthly printed program guide by Continental Cablevision is a consumer protection /customer service issue; that the federal Cable Act expressly reserves to the City the right to establish and enforce consumer protection/customer service issues;

that both the original application and the current license contain promises of the cable operator to print a monthly guide and that Continental Cablevision's own booklet refers to the printed program guide as a customer service. In my opinion the City of Cambridge has the authority to require Continental Cablevision to provide a monthly written program guide.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell B. Higley". The signature is fluid and cursive, with the first name "Russell" and last name "Higley" clearly distinguishable.

Russell B. Higley



CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
FAX. 349-4307

EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

June 8, 1992

To The Honorable, The City Council:

Please find attached a response to Awaiting Report Item No. 13, regarding an opinion on the discontinuation of the Cable Guide, received from Russell B. Higley, City Solicitor, relative to this issue.

Very truly yours,

Robert W. Healy
City Manager

RWH/mev
attachment

CONSENT AGENDA ITEM #7

S-461
Awaiting Report Item No. 13 regarding an
opinion on the discontinuation of the
Cable Guide.

In City Council,

June 8, 1992

Placed on file