

A special meeting of the Board of Aldermen was held Monday, August 29, 2005 at 7:00 p.m. in the Aldermanic Chamber.

President Brian S. McCarthy presided; City Clerk Paul R. Bergeron recorded.

President McCarthy

Before the Clerk reads the prayer I would like to recognize Alderman Bolton.

Alderman Bolton

Thank you Mr. President. Yesterday the city suffered a great and tragic loss. The former President of the Board of Education in Nashua, Julia Ward, passed away. It saddens all of those who knew her greatly. Her friends who I am proud to call myself among, will miss her. Those who never knew her will miss the great good that she did and would have undoubtedly have continued to do for our city. I would ask that we observe a moment of silence.

*The Board observed a moment of silence in memory of Julia Ward.*

Prayer was offered by City Clerk Paul R. Bergeron, Alderman Richard LaRose leading in the Pledge to the Flag.

President McCarthy

I would remind the members of the Board and of the public to please turn off cell phones and pagers, and to leave quietly if you must use them.

The roll call was taken with 12 members of the Board of Aldermen present; Aldermen Gage, MacLaughlin and Plamondon were recorded absent.

Corporation Counsel, David Connell, was also in attendance.

Alderman LaRose

Would you acknowledge that the Mayor is here, and maybe he should be invited to sit in a seat.

President McCarthy

I believe the Mayor has another appointment that he has to make.

President McCarthy announced that the purpose of the special meeting of the Board of Aldermen was to conduct the public hearing on Amended Resolution R-05-271

Public Hearing

**R-05-271**

**APPROVING A PROPOSED CABLE TELEVISION FRANCHISE AGREEMENT  
RENEWAL BETWEEN THE CITY OF NASHUA AND COMCAST**

*Mr. Hersh, Chairman of the Cable Television Advisory Board, provided the Board with a presentation on the Franchise Agreement.*

TESTIMONY IN FAVOR:

Fred Teeboom, 24 Cheyenne Drive

Michael Mansfield, Nashua Fire Rescue

Dennis Ryder, 17 Charles Street

Jim Pfeifer, Teacher, Nashua High School South

Dr. Joseph Sabato, Medical Director, Public Health & Community Services

Barbara Pressly, 11 Orchard Ave.

Paul Garant, Commissioner, Board of Fire Commissioners

TESTIMONY IN OPPOSITION:

Ken Gidge, 22 Haven Street

Bill Jennings, NH Coalition for Community Media

Gordon Jackson, 59 Cheyenne Drive

Joseph Larr, NH Coalition for Community Media, Manchester

James E. Miller, 5 Columbine Drive

Tim Glenday, 7 Lucier Street

Gordon Jackson, Manager, Channel 13

Ken Gidge, 22 Haven Street

Fred Teeboom, 24 Cheyenne Drive

TESTIMONY IN FAVOR:

Mark Sousa, Mayor's Office

Larry Hersh, Chairman, Cable Television Advisory Committee

TESTIMONY IN OPPOSITION:

Ken Gidge, 22 Haven Street

Timothy Glenday, 7 Lucier Street

UNFINISHED BUSINESS - RESOLUTIONS

**R-05-271**

Endorser: Mayor Bernard A. Streeter

**APPROVING A PROPOSED CABLE TELEVISION FRANCHISE AGREEMENT**

**RENEWAL**

**BETWEEN THE CITY OF NASHUA AND COMCAST**

Given its third reading;

**MOTION BY ALDERMAN SHAW FOR FINAL PASSAGE OF R-05-271**

ON THE QUESTION

Alderman Bolton

I have a question if anyone can answer it. It concerns the interpretation of the previous agreements to the effect that the municipal government channel could not broadcast political forums, candidate debates, etc., which always struck me as utter silliness that something so essential and so integral to the municipal government could not be broadcast on a municipal

government channel. What in this agreement deals with that issue that apparently was interpreted to prevent such forums in the past?

Larry Hersh

It is my understanding that those forums are not prohibited; that what happened was a specific case where it was to be moderated by a commercial party that wanted their advertising in front of the podium and that was what the city counsel determined not to be appropriate for the government channel.

Alderman Bolton

That was not my recollection of the event. Is it or is it not dealt with specifically that those things are allowed?

Larry Hersh

I do not know of any reason at all why those things cannot be allowed. If anything it can be an administrative decision, but there is no reason that I have read in anything that would prohibit you from – that is a government function, but it was only when, in my understanding there was a particular case where there was some commercial aspect to that as the moderator – not necessarily commercial but it was a civic organization that required their advertising in front or announced in the beginning that this was put on by so and so and whatever and that is what the legal counsel said was not suitable for the government access channel.

Alderman Bolton

So if the Chamber of Commerce is going to organize a candidate's debate and they put their Chamber of Commerce banner across the front of the table where the candidates sit, that would not be allowed on...

Larry Hersh

That was the ruling that Corporation Counsel gave at that time yes.

Alderman Bolton

Am I understanding that was based upon not any federal law or anything else that was based on the wording of the agreement with the franchise holder?

Larry Hersh

There is nothing in this agreement that would state anything like that.

Alderman Bolton

So from now on it will be allowed even if the Chamber of Commerce wants to hang its banner?

Larry Hersh

I think that I would ask Corporation Counsel to tell us what they would or would not allow. My understanding is there is nothing that would prohibit that forum from being shown.

Alderman Bolton

I was a candidate in this forum that was disallowed and I will tell you there was no commercial aspect to it at all. What there was was an incumbent candidate that was afraid to debate but ... do we have a way to get that opinion from someone who understands what the situation is?

President McCarthy

We can probably request it. I don't think we have a way to get it while we sit here.

Alderman Bolton

Thank you.

Alderman Deane

I had a couple of questions for Mr. Hersh. There were a couple of comments made earlier – there was a remark made pertaining to a phone vote on this contract out of CTAB. Could you comment on that? How actively involved has the Cable Television Advisory Board membership been with this contract?

Larry Hersh

There were a number of members of CTAB that were involved starting in 2001 with the acquisition of the information from the city departments. Basically we compiled that into a report, which was reviewed and approved by the committee back in 2001. CTAB was also basically it was my understanding and I would have to go and check the record that when we finished the requirements document that we had that was voted on at that time. After that it was handed over to the negotiating team and we had a broad negotiating team in the beginning to make sure that we got our position down and then there was a very small team that actually went through the details of getting again what we had determined from the needs from the public hearings and the questionnaire and the other input to what we actually wanted out of this contract. That small team was in the end primarily our special legal council, some of the city's legal counsel, the Mayor's Office through Mark Sousa and myself. CTAB never voted on the contract, but it was

deemed to be that the contract when it was negotiated was to come before this Board as opposed to the CTAB board.

Alderman Deane

Did the CTAB membership review this contract?

Larry Hersh

Before this was presented to the Board of Aldermen at the CTAB meeting prior to that both the presentation that I made that night and the contract itself in terms of a soft copy to all members was done before that CTAB meeting, and we asked that any questions anybody had to review them at that point so yes it was reviewed before CTAB.

Alderman Deane

What was the feeling of the CTAB membership? I went on line for minutes and I couldn't find any pertaining to this.

Larry Hersh

There were no – the minutes aren't detailed minutes either.

Alderman Deane

There are three documents on there. One is from July of '05, June of '04, and then there is an agenda from '04. I was trying to catch up ...

Larry Hersh

All of that is available ...

Alderman Deane

I was trying to get up to date because we haven't had any – this has been a major project and we haven't had any updates from our ...

Larry Hersh

The last update given to the Board of Aldermen I believe was in October or November. At that time, I presented where we were in the negotiating process in a non-public session to make sure that we still had concurrence that was the direction that this Board wanted to go in, and that there was agreement on what we were asking for. That was done in October or November. I am not sure of the exact date. From there it has been – now we are looking at the details and

believe me Comcast is not an easy negotiator. We had our specialty lawyer and Comcast and they managed to argue about quite a number of things some of which we agreed and some of which we didn't. That process of getting down to the finer points – the major points that we wanted – things like the channels those types of things went very quickly. It was some of the other small details like how far back we can go on an audit and a few other things that took a long time.

Alderman Deane

Were the CTAB members that weren't involved in the negotiating team were they kept apprised of the ongoing negotiations as you started hammering things out with Comcast?

Larry Hersh

No it was – at that point in time it was kept within that small group that was really doing the negotiations. There is nothing in here in my belief that was not done through the requirements gathering process and that we didn't present numerous times to the public and numerous times to this Board. I don't think that you will find that there are any little twister things in there that – we tried to use our special council to make sure that we weren't making any major mistakes and I think that worked out very well.

Alderman Deane

I do personally after hearing quite a bit of the testimony from some of the folks here think that some of this language needs to be reviewed. Mr. Miller talked about the standard and basic cable – if you were to put that in – that is not really spelled out clearly in there.

Larry Hersh

I believe that the way the contract is written and I do firmly believe this David and having gone through that contract every line that yes there may be a little bit of an inconsistency between how it is described on the web and how it is defined in that contract, but there isn't a penny of that fee that we will miss on that. I honestly believe that. I will get verification that – the way that this went and the form that they have and the discussions that we have had I don't believe that is a loophole.

Alderman Deane

The remark that the gentleman from Manchester made about the additional 1% that they end up giving away to other communities because we don't get it – could you kind of chime in on that a little bit?

Larry Hersh

I had a lot of problems with that – that is one of the comments I had a lot of problems with – any of you that see your cable bill know that at the bottom line the franchise fee is done on the total of the cable bill – after they set their prices. That said, not every community pays the same for the same level of service. Comcast does have some variability in there. I am not sure how the pricing has gone and quite honestly they were not terribly cooperative when we asked for some help on that.

Alderman Deane

I realize there was a negotiation process that was used through this contract, but we have an Aldermanic Liaison member to CTAB, which is Alderman Johnson. This has been going on for two years and it is quite a document – I would kind of hoped that in that two year timeframe we would have gotten some updates on the – how you were doing with this renewal.

Larry Hersh

When we started the negotiating process the liaison was Alderman McCarthy and he kind of stayed on as the – and he was kept loosely informed. I wouldn't say that of every negotiating session, but on a periodic basis. I don't think Alderman Johnson actually ever got involved in this process.

Alderman Deane

That is what the liaison does though. They are to bring back information to the rest of the Board of items that are taking place in sub-committees or projects – that is why they are appointed as liaisons. It is unfortunate because this is quite an extensive document. I can't support passing this. I still think this needs to be looked at somewhat. Thank you very much for your time.

Larry Hersh

There is just one thing I would like you to consider. I understand if you don't pass it tonight and that is certainly your prerogative. If we go back to renegotiate this contract I doubt very much we will have an educational channel for next year. The timing is such that this is not an easy process if we open this back up again. There were many things that were done that were last minute things they would agree to that if it opened up neither side would agree to seeing major changes. This would be a whole new negotiation.

Alderman Johnson

I would have loved to have come back to the Board, but Mr. Hersh is right I was never part of the negotiating part of the contract. It started with Alderman McCarthy. When I came on the board I was never asked to become part of it so I can't report something back that wasn't given to the members of CTAB who weren't part of the negotiating. If I were I would have been more than

happy to have brought back that information to the Board. Unfortunately like I said I wasn't privy to the information so if I am not I can't bring anything back. Thank you Mr. President.

President McCarthy

By way of explanation, I had been involved at the time that we changed terms. We were in the process of selecting the attorney and giving him his initial instructions, and I continued to participate through that. I have not been a part of that negotiating team for at least 20 months or so.

Larry Hersh

In the end it was just the three...

Alderman Deane

Two year term though correct?

President McCarthy

But it basically went to a point where it was in the negotiations and it may just be that no one from the board was participating actively in those.

Larry Hersh

I think part of the problem is that the negotiations took a very long period of time. I think coming into the negotiations everybody was pretty well set on what we were asking for and what we were going to do. I think it is just that 2003 seems like a long time ago and it is, but most of the work was just getting down and dirty and rolling up your sleeves and negotiating the details of the contract. I don't think that again in October/November I tried to update the Board on where we stood and the fact that we still had some issues outstanding but that we were pretty far along as far as our main requirements and from there it was really working out the details. I didn't see a big audience being very useful in that part of it because a lot of it was legal ease and some of the things in that regard. If that is a mistake of mine I apologize, but I thought that was the best way to do it.

Alderman Lozeau

The public was afforded the opportunity for public input during negotiations of the contract?

Larry Hersh

Yes twice in 2001 and once in 2003.

Alderman Lozeau

Did you get much public input at that time?

Larry Hersh

Not a lot. We also had the questionnaire, which we sent to a quarter of the registered voters.

Alderman Lozeau

The need or the want for public access channel has been brought up throughout tonight's discussion. Was that brought up in the negotiations to have a public access channel?

Larry Hersh

Yes it was brought up, and for a long time we had as an optional fourth channel of having a if citizen referendum or something with some criteria that we would have that and that is one of the things that we gave up near the end if you will in one of the tradeoffs with some of the other things that we were looking for. That was more of an administrative decision.

Alderman Lozeau

Is there any reason that a public access channel can't be shared with an education or a government channel?

Larry Hersh

I am not sure. There have been some issues in the past about setting a precedent relative to government access, which is much stricter than educational access is. If you set a precedent of opening it up to a broader audience then that opens it up to a much wider participation. I don't know whether the terms of the contract because public access is not specified whether that would be something that we could take for example part of the government channel and do.

Alderman Lozeau

Do you feel it would be a big deal to amend this contract by adding a public access channel and how would that ...

Larry Hersh

If you were to add a fourth channel that would be a big deal.

Alderman Lozeau

Thank you.

President McCarthy

Attorney Connell could you join us?

David Connell

I have been upstairs working with one eye on the screen getting ready to come down for the second meeting. I didn't want to sit in on the first meeting, this meeting, to give you the impression that I am well versed on this because I am not. As you know you have hired Attorney Epstein out of Boston. Attorney Clarke has been the cable specialist in the office since before I got here. I did catch one thing that I thought needed to be addressed and that was Alderman Bolton's question. The opinion, which I think was originally formulated by Attorney Clarke and has been applied more often than not by her, was that the channel – channel 16 is for governmental programming. There is some phrase somewhere in the contract. Now I don't think that phrase necessarily turns up in the new contract and I can't tell you whether the team intended to preserve the same meaning or change it to a broader meaning, but the analysis is is this the city government putting the program on or is it somebody else be it the state government, a non-profit, a community group, and if it is the later then the opinion was that the agreement did not intend that to be broadcast. There has been no effort to suppress any particular event or any category of events it is just that is it the Chamber of Commerce putting it on, if it is a political party putting it on that is not governmental program. Unfortunately that is where my information ends. I don't know whether that is intended to be loosened by this agreement or not.

Alderman Rootovich

To Mr. Hersh – do we have to add language in this contract if we were to decide to take one of our municipal channels and have that part public access?

Larry Hersh

I am not sure. I don't know.

Alderman Rootovich

Since that seems to be the major sticking point with so many in the audience as well as myself, I would ask to amend the motion to hold in committee until Mr. Hersh can get an answer for us before we vote on this.

**AMENDED MOTION BY ALDERMAN ROOTOVICH TO HOLD**

## ON THE QUESTION

### Alderman Tollner

I had some similar questions. I think some of the speakers brought up some amendments. We didn't get your opinion on amending Section 7.1, section A. I guess I would have the same question. The concern I think that you brought up was if we had three channels could we access or utilize one of those channels to have public access and I think you will hopefully go and find out. I guess I would ask the reverse question – if we designated one of those channels of the three as public access could we then in turn use it – it seems to me it might be easier for us to use it for educational purposes or other uses. I think another suggestion, which seemed reasonable and I don't know whether we can do it or not, would have preemptive clause on it where if there was an emergency situation within the city – everything would be preempted if it were a major situation – we have heard a lot of different things tonight and I come from the school where I take half of it as probably fact and the other half is totally misinformation, but I do think that this is a very important contract. It is ten years that we are signing on for. At the same time I respect all of the work and the due diligence.

If the public is watching this and they don't think that there was an opportunity for the public to comment they have had a number of avenues to provide public comment not only this past year but over the last three years. Before we put a nail in it, some legitimate questions and concerns have been brought up, and I think it is our responsibility to make sure that we get the answers to some of those questions.

I know that we have asked for an extension before. I would hope that – you had made a comment earlier that if we held this and it went beyond the 31<sup>st</sup> of August, which is really two days from now, that we would jeopardize it or we may have to start from scratch and negotiate all over again. I guess if we get the answers to these questions I would hope that it wouldn't jeopardize it. You mentioned something about if we don't come to an agreement before the 31<sup>st</sup> it would jeopardize the educational portion of this.

### Larry Hersh

It depends on what kind of changes were made.

### Alderman Tollner

If they are minor changes we have discussed maybe we can come to an arrangement where we can ask for not a two month extension or if it is 2 months that you have to ask for and you don't have a choice maybe we can come up with an agreement within the next couple of weeks. This is an agreement that we will be signing on for ten years.

### Larry Hersh

There were a lot of questions raised and some things that quite honestly I find hard to fathom. There were some legitimate things raised as well. If I could get a short list of what those questions are I could see how quickly I could get back those responses.

Alderman Tollner

I truly appreciate that this is kind of Monday morning quarterbacking after all of the work that you have done, but I think it is something that we should pay attention to. Thank you.

Alderman Deane

Alderman Tollner I don't really consider it Monday morning quarterbacking. We had no – other than this piece of legislation there was no – it wasn't brought back to us in any form but this. My question to you Mr. President is if we were to refer this to a committee which one would it be?

President McCarthy

That is a good question. I think that when we have had issues regarding the cable franchise before we have referred them to PEDC because of its technology role.

Alderman Deane

I really think that a lot of what was brought up tonight – there were a lot of good points brought up tonight, and I really think that this needs to be looked at and should be looked at at committee level. I think somebody is going to have to get a hold of the tapes and go through and start picking things out. I have written down a lot of things that I can help you with, and I don't know what others have written down, but I really think it should be referred to PEDC if that is the committee you think it should be going to.

Alderman Lozeau

I was just curious as to whether we still had Attorney Epstein on retainage.

President McCarthy

We have Attorney Epstein under contract. We have approximately \$5,000 left in the account.

Larry Hersh

A little less than that. We don't have a lot of money left in the account.

Alderman Lozeau

I am just wondering if it would be appropriate for him to come in at least one more time.

President McCarthy

It might be.

Alderman Shaw

I am assuming we also will need to at some point in the process if there are any changes to be made we will have to refer the contract back to Finance. That is how it got to us again at the full Board level. It was at Finance to be passed and it was only by the action of I believe of the Finance Committee to send it to this Board for a hearing and action. In whatever the appropriate fashion is I believe it should go back to Finance as far as the contract goes.

Alderman LaRose

Mr. Hersh we have negotiated three channels with Comcast. Does it matter to Comcast what we use those three channels for?

Larry Hersh

I am not sure. I will ask that question.

*President McCarthy stepped down and Vice-President Tollner presided.*

Alderman McCarthy

I just want to make the Board aware that I think the issue goes well beyond what is in the cable contract that we are discussing and Alderman LaRose just touched on the issue, which is I suspect Comcast doesn't care what is on the three channels once they have given them to us. We give them a signal and they deliver it to the customers. It doesn't affect their business one way or the other what the content of that is for the most part. The question comes down to what it takes to get the signal to Comcast and what that is going to cost us. I think that was treated in some of the comments in a way that made it seem like less of an issue than it actually is. The programming has got to be produced and yes this is a studio; we have a camera, we have everything we need here, we have a videographer whom we pay, we have the building open because we pay to keep the lights on, we pay to have custodians here to take care of it, we pay to have the custodians here to lock it up. This facility costs the taxpayers money every time it is used to do that and there is virtually no way around that. That camera that sits up there costs us thousands of dollars and frankly I think we want someone to be next to it who is designated as being responsible for its safe return to the closet where it belongs. We have a TV studio that we are building at the High School that is now complete and usable – same thing. First of all we hope that studio is in use all of the time for our educational programs. If it is not I am going to be unhappy with the gentleman in the back of the room. If it is ... **tape flipped** ... people would be

there to monitor it and to do the work. Yeah there is money in the franchise fee to put to that. That money comes directly out of the cable bill. I didn't make the initial votes to put the 3% into the general fund – it has been that way since apparently the Sullivan administration. Nonetheless it is there. The last thing that we did when we passed the budget this year was to cut money out of the police and fire and public works budgets. If you take that franchise money and put it towards the establishment of a public access channel and what it costs to do that taxes will go up because it will not be offset by that 3%. You can either let taxes go up, you can increase the franchise fee, which comes directly off the cable bill, and frankly to me that is getting into an area that I am not sure we need to be in from a policy standpoint.

If programming is popular it can get on television the way everything else does because there are people who are willing to put it on because they believe their advertising would be seen by the hundreds of people who really want to watch it or the thousands of people. If they are not then what I am doing if I go ahead with that and make the franchise fee pay for that is I am demanding the citizens of this city who may or may not want to watch that programming are forced to pay for its production through the franchise fee, and I am just not sure that is the right thing to do.

Larry Hersh

With regard to the data input that we gathered – I think we heard some good reasons for having a public access channel tonight and I don't deny that, but in three public hearings and the questionnaire that we did and many reviews with this Board and reviews with the departments and the administration, there has never been a compelling number of people that have asked for it. Tonight you have heard from a handful and they were very vocal and some of them had some very, very good point, but we went into this negotiation with an idea that was not important to this city because that is what you told us. To change that now is very late in the game. Granted you can do that, but there is a cost to do that, and I just think you need to be aware of that.

*Vice-President Tollner stepped down and President McCarthy presided.*

Alderman Rootovich

May I ask Mr. Hersh what notification was given to the public about those public hearings and when were those public hearings held and in what facility?

Larry Hersh

Every public hearing was held in this Chamber. I don't know the exact dates. There were 2 in 2001 and 1 in 2003. I could probably look them up for you.

Alderman Rootovich

Early Friday mornings like you normally have them?

Larry Hersh

They were assigned to certain Aldermanic committees and were done at an Aldermanic meeting. There was plenty notice given.

Alderman Shaw

You said that late in the negotiation process or somewhat late in it we did give up the public access channel. You spoke about it I think in terms of that was because of an administrative decision. I want to clarify if you mean in terms of administrating the operation of the public access channel or if that was from the city administration directive that they did not want to support a public access channel.

Larry Hersh

I think it was one of the things that if I were to state it – it was partly due to the funding aspect of the public access channel because we didn't feel we had the funds to do that. The other part of it was that because of the input we got we used that as one of those carrots of things that you throw into the negotiations that is something that you can tradeoff in the end because you know an extra channel is worth a lot to them. That was something that we felt all along that – in fact the way it was in there to begin with was a conditional one because again there hadn't been the interest in it up until tonight actually. We said that if it were to pass by either a 2/3 of the Board of Aldermen or a Citizen Referendum that we would get a fourth channel and in the end we gave that back to get some of the other things we got in the contract.

President McCarthy

The motion we have before us is to hold R-05-271. Is there any discussion of that motion? Is there a desire on the part of the Board to amend that to be to send it back to a committee?

**AMENDED MOTION BY ALDERMAN DEANE TO REFER R-05-271 TO THE PLANNING & ECONOMIC DEVELOPMENT COMMITTEE**

ON THE QUESTION

Alderman LaRose

Does the hold motion take precedence over the amended motion?

President McCarthy

I don't remember.

Alderman Dion

Mr. Chairman I believe the motion to hold has precedence over the amended motion.

Alderman Bolton

What we call a motion to hold is really a motion to table, and yes it would have precedence.

**MOTION TO HOLD WITHDRAWN**

President McCarthy

The motion before us is to refer to the Planning & Economic Development Committee. Is there any further discussion?

**MOTION CARRIED**

Resolution R-05-271 referred to the Planning & Economic Development Committee

ADJOURNMENT

**MOTION BY ALDERMAN LAROSE THAT THE AUGUST 29, 2005, SPECIAL MEETING OF THE BOARD OF ALDERMEN BE ADJOURNED**

**MOTION CARRIED**

The meeting was declared adjourned at 10:13 p.m.

Attest:

Paul R. Bergeron, City Clerk