



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Thomas W. Bernard

BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED AND EMAIL: anna.lucey@charter.com

September 5, 2018

Anna P. Lucey
Director, Government Affairs
Charter Communications
301 Barber Avenue
Worcester, MA 01606

Dear Ms. Lucey:

This letter serves two purposes.

First, it provides formal notice on behalf of the City of North Adams, Massachusetts (the issuing authority) that Charter Communications (the licensee) is in breach of several terms of the city's cable television renewal license, granted to Time Warner Cable Northeast LLC in 2014, and assumed by Charter Communications as part of the company's acquisition of Time Warner assets in North Adams. The specific breach conditions concern items stipulated in Article 6 of the license (Public, Educational, and Government Access Channels, Annual Support and Capital Funding) as delineated in Part 1 below.

Second, it provides formal notice of information requested from the licensee pursuant to several provisions of the license, specifically, Section 7.4 (Recomputation), Section 8.5 (Franchise Related Costs – Externalizing, Line Items and Pass-Through), Section 13.4 (Subscriber Complaint Log), Section 13.6 (Outage Log), and Section 13.8 (Quality of Service).

PART 1: SUMMARY OF BREACH CONDITIONS

Breach Condition 1: Violation of Section 6.1(b) – 30 days advance, written notice to the Issuing Authority and the Access Corporation

This section of the license states that The Licensee shall not move or otherwise relocate the channel locations of the three (3) PEG Access Channels without thirty (30) days advance, written notice to the Issuing Authority and the Access Corporation.

Violation: The issuing authority received less than 30 days advance, written notice of the PEG channel relocation from the licensee. In addition, the access corporation, Northern Berkshire Community Television Corporation (NBCTC), never received advance, written notice of the PEG access channel relocation from the licensee.

Remedy: As provided by the license, the licensee shall reimburse the access corporation the maximum amount (\$2,000) allowed under the license “for its reasonable expenses incurred as a result of said relocation.” In addition, in lieu of moving the PEG access channels back to the locations from which they were moved, Charter may, in its discretion, forward a letter to the City (to the attention of the Office of the Mayor as issuing authority) affirming that it will, going forward, meet this license obligation to the access corporation and the city.

Breach Condition 2: Violation of Section 6.2(b) – Installation of fiber lines

This section of the license states that *By the Transition Date, the Licensee shall install fiber between each of the PEG Access Origination Sites listed in Exhibit 6.2A and the new PEG Access Studio to be located at 69 Union Street, North Adams, for the further transmission of PEG Access Programming to Subscribers as set out in this Section 6.2.*

(NOTE: The locations for this fiber link in North Adams are, and remain, City Hall; Drury High School; and the NBCTC studio at 69 Union Street.)

Violation: Section 6.2(a) states that “The Transition Date shall be on or before June 30, 2015.” As NBCTC did not open for business at the 69 Union Street location until March 16, 2016, the issuing authority considers this the transition date for the purposes of this violation. To date, 903 days since the transition date, the licensee has failed to install fiber between two of the city’s PEG access origination sites and the PEG access studio. This failure is despite repeated requests on the part of staff from the access corporation for the licensee to honor their obligation under the license, and repeated unfulfilled assurances on the part of the licensee that they intended to do so. As a result, the access corporation has not been able to fully offer and present services that are dependent upon the contractually promised infrastructure from the licensee. Among the countless lost opportunities for the community as a result of this failure are those connected with the North Adams Public Schools, including live educational programming that went both unaired and, if cablecast, the signal and programming was of significantly diminished quality. The government access programming from City Hall was also of significantly diminished quality, both because of the lack of the fiber connection, as well as because the access corporation was unable to monitor the signal (forward feed) at City Hall. Additionally, expenses in the amount of \$20,956.54 were incurred to date by access corporation to both test and make workable (when possible) the return signal from Drury High School and North Adams City Hall, as set out in Attachment A hereto.

Remedy: The licensee should reimburse the access corporation in the amount of \$20,956.54 for the costs incurred to date by the access corporation to both test and make workable (when possible) the return signals from Drury High School and North Adams City Hall.

In addition, the licensee should provide compensation, to be used for PEG access purposes, to the North Adams Public Schools and the City of North Adams as a result of these violations. By this letter, I offer the licensee the opportunity to demonstrate a sense of and commitment to corporate responsibility. Accordingly, I make the following recommendation with respect to the amount of compensation for the losses incurred by the North Adams Public School, the City of North Adams, and the individuals and others

served by both; that licensee provide compensation in an amount equal to one (1) share of Charter stock as of the date of this letter (September 5, 2018) per fiber line for each day that the fiber line has not been (and is not) built since said transition date.

PART 2: INFORMATION REQUESTED FROM LICENSEE

Section 7.4 – Recomputation

*This section of the license states that **Tender or acceptance of any payment, including an interest payment, shall not be construed as an accord that the amount paid is correct, nor shall such acceptance of payment be construed as a release of any claim that the City may have for additional sums including interest payable under this Renewal License. If, after audit and recomputation, an additional fee is owed to the City, such fee shall be paid within thirty (30) days after such audit and recomputation. If the Issuing Authority has reason to believe that any such payment(s) are incorrect, the Licensee shall have thirty (30) days after a request from the Issuing Authority to provide the City with additional information documenting and verifying the accuracy of any such payment(s). In the event that the Issuing Authority does not believe that such documentation supports the accuracy of such payment(s), the Issuing Authority may conduct an audit of such payment(s).***

The licensee has on numerous occasions, even after multiple requests, failed to provide a “statement... listing the categories and associated revenue compromising the total of all gross annual revenues of the licensee during the preceding payment period” with respect to the PEG access support, pursuant to Section 6.3(c) of the Renewal License. (Similar documentation should have been made to the city, but was not, with respect to the Municipal Access and Technology Fund payments, pursuant to Section 6.8 of the Renewal License.) Additionally, PEG access support payment amounts have been inconsistent and in the few instances where clear underpayments have been followed-up by the licensee after multiple outreach attempts by the access corporation, the licensee has done so either without any documentation of the basis for such payment(s) or with estimates only.

Information requested: As issuing authority I request that within 30 days of the date of this letter (that is, on or before October 5, 2018), the licensee will provide information “documenting and verifying the accuracy” of PEG access support payments and Municipal Access and Technology payments, from October 1, 2014 (the first date of the renewal term) to the date of this letter (September 5, 2018). Further action, including an audit, may be considered following review of the subject information and documentation.

Section 8.5 – Franchise Related Costs – Externalizing, Line Items and Pass-Through

*This section of the license states that **The Licensee reserves its rights under federal law and FCC rules and regulations to pass through and itemize certain external costs of franchise requirements, in accordance with said law, rules and regulations. If requested to do so by the Issuing Authority, the Licensee shall provide a detailed written explanation of any such costs, in sufficient detail to enable the Issuing Authority to understand the costs and how they have been allocated, passed-through, line-itemed or otherwise incorporated in charges to Subscribers. Unless agreed to otherwise, the Licensing Authority shall provide said written explanation of***

costs to the Issuing Authority, in writing, within thirty (30) days of a written request to do so by the Issuing Authority.

Information requested: As issuing authority I request that within 30 days of the date of this letter (that is, on or before October 5, 2018), the licensee will provide a written explanation of all external costs of franchise requirements, in sufficient detail to enable the issuing authority to understand the costs and how they have been allocated, passed-through, line-itemed or otherwise incorporated in charges to subscribers.

Section 13.4 – Subscriber Complaint Log

This section of the license states that

(a) The Licensee shall keep a record or log of all written Complaints received regarding quality of service, equipment malfunctions, billing procedures, employee relations with Subscribers and similar matters. Such records shall be maintained by the Licensee for a period of two (2) years. For the purposes of this Section 13.4, a Complaint shall mean any verbal or written inquiry, allegation or assertion made by a Person which requires subsequent corrective action to the System or any portion thereof, or any subsequent investigation, research and/or a service call to be undertaken by the Licensee, its employees or agents.

(b) Such record(s) shall contain the following information for each Complaint received:

(i) Date, time and nature of the Complaint;

(ii) Investigation of the Complaint; and

(iii) Manner and time of resolution of the Complaint.

(iv) If the Complaint regards equipment malfunction or the quality of reception, the Licensee shall file a report indicating the corrective steps it has taken, with the nature of the problem stated.

(v) The Licensee shall make available to the Issuing Authority records of such Complaints, as allowed by applicable law.

Information requested: As issuing authority I request that within 30 days of the date of this letter (that is, on or before October 5, 2018), the licensee make available to the issuing authority records (as allowed by applicable law) of all complaints received by the licensee for the two-year period from August 31, 2016 until August 31, 2018. Please inform the cable access corporation if the licensee needs a copy of the recording of the May 21, 2018, performance hearing in order to include the subscriber complaints voiced at that meeting in order to comply fully with this request.

Section 13.6 – Outage Log

This section of the license states that *The Licensee shall maintain an outage log showing the date, approximate time, duration, type and probable cause of all Headend, Trunk and/or Distribution line service failures due to causes other than routine testing or maintenance at*

reasonable times. Said logs shall be available in the City to the Issuing Authority, or its designee, and maintained by the Licensee for a period of not less than three (3) years.

Information requested: As issuing authority I request that within 30 days of the date of this letter (that is, on or before October 5, 2018), the licensee make available its outage log for the three-year period from October 1, 2015 until October 1, 2018.

Section 13.8 – Quality of Service

This section of the license states that

(a) Where there exists evidence which, in the reasonable judgment of the Issuing Authority, casts doubt upon whether the reliability or technical quality of Cable Service(s) meets the requirements of this Renewal License or otherwise may be required pursuant to applicable law or regulations, the Issuing Authority shall have the right and authority to require the Licensee to test, analyze and report on the performance of the Cable System. The Licensee shall fully cooperate with the Issuing Authority in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after written notice for the same.

(b) Said report shall include the following information:

- (1) the nature of the complaint or problem which precipitated the special tests;*
- (2) the System component tested;*
- (3) the equipment used and procedures employed in testing;*
- (4) the method, if any, in which such complaint or problem was resolved; and*
- (5) any other information pertinent to said tests and analysis which may be required.*

If the report demonstrates that Licensee is in compliance with the terms of the License, Licensing Authority shall bear the costs of the test.

(c) At the end of said thirty day (30) period, in the event that the Cable System fails to meet the FCC's technical standards, additional tests may be required by the Issuing Authority. Such tests shall be supervised by a professional engineer at terms satisfactory to both the Licensee and the Issuing Authority; provided, however, that the Licensee shall receive fourteen (14) days notice and a reasonable opportunity to cure. The Licensee shall pay for the costs of such engineer only if the tests performed show that the quality of Cable Service is below the FCC's Technical Standards.

Based upon testimony at the performance hearing of May 21, 2018, including testimony regarding: (i) pixilation of cable channels; and (ii) inability to receive NBCTC PEG access channels, as well as information separately provided by NBCTC that the aspect ratio of PEG access programming is at times being cablecast and seen in 4:3, rather than 16:9 the issuing authority has sufficient concerns to make this request. (Please note that Section 6.2(f) of the license requires that *[t]he Licensee shall monitor the PEG access channels for signal quality and maintain said channels standards and PEG access cablecasting commensurate those that apply to other cable system channels, provided, however, that the issuing authority hereby*

acknowledges that the licensee is not responsible for the technical quality of the actual PEG access programming.

Information requested: As issuing authority I request that within 30 days of the date of this letter (that is, on or before October 5, 2018), the licensee test, analyze and report on the performance of the cable system, and specifically on the following performance issues identified at the public hearing and by the access corporation.

CONCLUSION

Charter Communications has demonstrated a pattern of neglect and non-responsiveness to the issuing authority, its designees, the City, the access corporation, and subscribers. The licensee unfortunately and repeatedly taken a dismissive attitude toward its contractual obligations. The issuing authority therefore provides this formal notice of breach of the North Adams cable television renewal license, and requests information under the license in order to have information sufficient to determine whether the licensee is in breach of any additional obligations under this license.

The issuing authority's goal in this matter is to seek appropriate restitution for each breach condition as well as to promote full compliance with all terms of the cable television renewal license.

On behalf of the City of North Adams, the access corporation, and the subscribers served by Charter Communications I hereby demand that the company act promptly to resolve and redress the contract breaches and violations outlined in this letter, and provide to the issuing authority a corrective action plan that describes the steps the licensee will take to improve compliance with and responsiveness to their obligations under the cable television renewal license. Finally, please note that the City of North Adams specifically reserves the right to pursue any and all other breaches besides those enumerated above, and nothing herein shall be deemed a waiver of that right.

Sincerely,



Thomas W. Bernard
Mayor

cc: Attorney General Maura Healey
Commissioner Karen Charles Peterson, Massachusetts Department of Telecommunication and Cable
Greg Garabedian, Area Vice President, Charter Communications
Paul Abbott, Esq., Vice President of Local Government Affairs and Franchising, Charter Communications
David Fabiano, Executive Director, Northern Berkshire Community Television Corporation
Attorney William Solomon

ATTACHMENT A
Costs related to return line RF testing
Between March 16, 2016 and August 31, 2018

Location	Personnel	Mileage	Subtotal	# of tests	Total
Adams Town Hall	\$62.50	\$5.62	\$68.12	83	\$5,653.96
Clarksburg Town Hall	\$62.50	\$3.48	\$65.98	83	\$5,476.34
Drury High School	\$62.50	\$3.48	\$65.98	34	\$2,243.32
Hoosac Valley High School	\$62.50	\$8.03	\$70.53	30	\$2,115.90
North Adams City Hall	\$62.50	\$1.07	\$63.57	86	\$5,467.02
TOTAL					\$20,956.54