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## DESCRIPTION OF CABLE TELEVISION FRANCHISE RENEWAL NEGOTIATION PROJECT

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### I. Introduction

This describes how our Firm would design and undertake representation of your municipality in a cable franchise renewal negotiation. This reports in the next section the legal framework governing the renewal. A specific project description then follows. I have also attached a partial listing of the municipalities we have represented on cable television franchising matters. Finally, I have attached an article I wrote recently on this subject.

### II. Legal Framework

The franchise renewal process is governed by Section 626 of the Federal Cable Act. Broadly speaking, the franchising authority is to determine whether to grant a cable franchise renewal by identifying the future cable related community needs and interests of the municipality, and by reviewing the performance of the cable operator under the expiring cable franchise. More specifically, the Federal law states that the franchising authority must evaluate the renewal based on the following factors:

- whether the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- whether the quality of the operator service, including signal quality, response to consumer complaints, and billing practices, disregarding the mix, quality or level of cable services or other services provided over the system, has been reasonable in light of community needs;

- whether the cable operator has the financial, legal and technical ability to provide the services, facilities and equipment set worth in the operator's proposal;
- whether the cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the costs of meeting those needs and interests.

The Cable Act creates two paths by which a franchising authority may undertake a cable franchise renewal. One is the formal renewal process, which must be triggered by the cable operator during a six-month period beginning three years prior to the expiration of the franchise. The formal process requires that the municipality begin a public ascertainment process within six months of the notice provided by the cable operator. Under the formal process, the cable operator submits a single proposal and the municipality has four months to accept a proposal or issue a preliminary denial of the proposal. If the municipality issues a preliminary denial, a hearing must be conducted and a record developed evaluating the proposal of the cable operator, as measured by the four elements described above. If the proposal of the cable operator is denied following that hearing, the cable operator has a statutory right to appeal that denial to Federal Court.

The second path is known as the informal renewal process, and is a more iterative process. Under the Cable Act, there are only two requirements for the conduct of informal renewals: the cable operator must submit a proposal for renewal to begin the informal process, and the franchising authority must afford the public adequate notice and an opportunity to comment before granting or denying the franchise renewal. The informal process is, in practice, marked by a series of exchanges between the cable operator and the franchising authority. The Cable Act imposes no time limitations on how the informal process is to be executed.

### **III. Project Description**

A. Phase One: The first phase of the project includes the following elements:

- An analysis of the existing franchise agreement and development of a written compliance audit of that agreement to be served upon the cable operator.

- Presentations on cable law and the renewal process to the Franchise Authority (Board of Selectmen, City Council or Town Council) and the negotiating team designated by the municipality as directed by the municipality.
- Evaluation of the current cable operator and cable system, based on audit response.
- Development of a schedule and plan for execution of the entire renewal process and presentation of that plan to the negotiating team and/or Franchise Authority, as directed by the municipal administration.

B. Phase Two: The second phase of the project includes the following elements:

- Develop a specific ascertainment program which would feature rolling, targeted ascertainments of identified interested parties in the municipality as well as general public hearings.
- Execute that ascertainment process to establish a survey of community input on the future cable related needs of the municipality.
- Facilitate the public ascertainment hearings through appropriate public relations effort and Public, Educational and Governmental ("PEG") Programming.
- Development of an RFP soliciting competitive providers and evaluate responses to that RFP.

C. Phase Three: The third and final phase of the project includes the following elements:

- Development of a negotiation agenda which establishes the strategic objectives of the municipality by ranking what the municipality seeks to obtain in the cable franchise agreement based on the targeted and general ascertainment program described above.
- Conduct negotiations with cable operator.
- Draft franchise agreement.

- Present franchise agreement to negotiating team and upon recommendation of the negotiating team present recommended franchise agreement to the Franchising Authority.
- Administer contract implementation.
- This phase would also include any steps which would need to be taken to proceed on the formal renewal track under Section 626 of the Cable Act. This would include solicitation of a formal proposal, evaluation of that proposal, formulation of preliminary denial or acceptance of that proposal, organization and execution of the formal hearing process and defense of the municipality in any ensuing federal litigation.

#### **IV. Closing**

We would welcome the opportunity to work with your municipality, its administration, the Franchising Authority and its designated negotiating team on a cable television franchise renewal project. Please contact us for further information.

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Renewal.wpd

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