



COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF  
TELECOMMUNICATIONS & ENERGY  
Cable Television Division**

CTV 03-3

Investigation by the Cable Television Division of the Department of Telecommunications and  
Energy on its Own Motion to Review the Form 100

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NOTICE OF PROPOSED LICENSE APPLICATION  
AND REQUEST FOR FURTHER COMMENT

I. INTRODUCTION

The Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy issued an Order Opening a Notice of Inquiry to Review the Form 100, the License Application (“NOI”). In the NOI, the Cable Division sought comment as to whether the License Application in its current form meets the needs of municipalities and cable operators in fulfilling their responsibilities under General Laws c. 166A, §§ 4, 13, and 47 U.S.C. §§ 541, 546. NOI at 1. We noted that the License Application should provide an Issuing Authority with information to evaluate the applicant’s qualifications and make a reasoned decision as to whether the applicant can meet the needs of the community. Id. at 2. However, we also recognized that the need of the Issuing Authority to obtain information must be balanced with the regulatory burden imposed on applicants. Id. We invited interested persons to comment as to the appropriate balance of the two equally important interests.<sup>1</sup>

In the NOI, the Cable Division suggested that the renewal process outlined in federal law as well as the supplemental requirements found in Massachusetts law and regulations do not provide sufficient guidance to cable operators and municipalities undertaking the licensing process. Id. at 3. We cited as evidence the fact that increasingly parties are not completing the renewal process within the three-year time period set forth in federal law. Id. As a result, there may be cable operators currently providing service in the Commonwealth without a cable license and, thus, in violation of both federal and state law. Id. Based on these concerns, we determined that it was appropriate to review the current licensing process beginning with the License Application. Id.

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<sup>1</sup> Initial comments were filed with the Cable Division on behalf of the Issuing Authority for the City of Lowell (“Lowell”), the Cable Advisory Committee for the Town of North Brookfield (“North Brookfield”), the Issuing Authorities for the Towns of Canton and Winchester (“Canton/Winchester”), the Issuing Authority and Cable TV Advisory Committee for the Town of Lancaster (“Lancaster”), the Communications Advisory Committee for the Town of Lexington (“Lexington”) (collectively referred to as “Municipal Commenters”). Initial comments were also filed by Adelpia Communications Corporation (“Adelpia”), Charter Communications Entertainment I, LLC (“Charter”), Comcast Cable Communications, Inc. (“Comcast”), and RCN (collectively referred to as “Operator Commenters”). Reply comments were filed with the Cable Division on behalf of Charter and Comcast. In addition, Charter filed two draft License Applications, the first with its initial comments and the second with its reply comments, and Comcast filed a draft License Application with its initial comments.

As originally drafted in 1973, the License Application provided the Issuing Authority with information regarding an applicant's proposed construction schedule as well as information as to its legal, financial, and technical ability to successfully complete the build and provide cable service to the community. 207 C.M.R. § 7.01 (1973). The dynamics of the licensing process have evolved in many respects since that time. Changes in the legal framework governing licensing, in the nature of the industry and municipal involvement, have had a significant affect on the licensing process.

With regard to the legal framework, enactment of the Cable Communications Policy Act of 1984 ("1984 Cable Act") set forth a comprehensive plan for regulation of cable systems on the federal and state level. See 47 U.S.C. § 521 et seq. The 1984 Cable Act outlined criteria to be used in choosing an applicant for an initial license as well as guidelines to be followed in granting renewal licenses. See 47 U.S.C. §§ 541, 546. Following enactment of the 1984 Cable Act, state renewal regulations were modified to create consistency with the federal renewal statute. See Report and Order, CATV R-19 (1990).

The early scenario also does not reflect the current trend toward system consolidation by multiple system operators ("MSOs"). These MSOs are publicly-traded corporations that in some instances have financial interests outside of cable television systems. Further, the vast majority of renewal licenses in Massachusetts are now held by the largest MSO in the country (i.e., Comcast) and except for four municipal operators (Braintree Electric Light Department, Norwood Light Broadband, Russell Cable Television, and Shrewsbury Community Television), the remaining licenses are currently held by other large MSOs.<sup>2</sup>

Finally, Issuing Authorities have developed an expertise in cable issues. In the 1970's, Mayors, City Managers, and Boards of Selectmen took on the new role of Issuing Authorities and a new challenge of determining the most appropriate entrant to their community of this new technology. These early Issuing Authorities were also burdened with regulatory uncertainty as federal and state laws and regulations were formulated and amended during this time period. Over the years, Cable Advisory Committees ("CACs") have become involved in the licensing process and have lightened some of the burden placed on Issuing Authorities. In the current environment, although designated Issuing Authorities, CAC members, and cable operators may periodically change, there is an established convention of cable licensing fostered by a continuing relationship among the parties. The relationship between the Issuing Authority and cable operator does not cease upon the execution of the initial or renewal license. Cable operators continually provide Issuing Authorities with information during the term of the

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<sup>2</sup> There are currently six MSOs operating in Massachusetts: Adelphia Communications Corporation, Charter Communications Entertainment I, L.L.C., Comcast Cable Communications, Inc., Cox Com, Inc., RCN, and Time Warner Cable.

license.<sup>3</sup> Often, Issuing Authorities and cable operators arrange periodic meetings to review compliance issues and memorialize that schedule in the license agreement. Even in initial licensing, the grant of the license is typically for a second cable operator or overbuilder to enter the community and as such the Issuing Authority and CAC have been through the licensing process previously.<sup>4</sup>

Given the numerous changes in the cable industry as well as the experience of Issuing Authorities, it appears that the License Application, in its current form, no longer strikes the appropriate balance between the need of the municipality for information and the regulatory burden borne by the operators.<sup>5</sup> This Order addresses not only what changes are appropriate for the License Application, but also takes a broader look at the significance of the License Application in the licensing process in general.

## II. DISCUSSION AND ANALYSIS

### A. The Purpose of the License Application

Operator Commenters recommend that the License Application be updated to reflect changes in the industry as well as in the regulatory framework (see generally Adelphia Initial Comments at 1-2; Charter Initial Comments at 1-10; Comcast Initial Comments at 1-7; RCN Initial Comments at 1-2). While Municipal Commenters express general concerns that removal of any questions from the License Application will detract from an Issuing Authority's ability to make an informed decision, they stress that the License Application could be modified to better serve them (Canton/Winchester Initial Comments at 2; Lancaster Initial Comments at 3-6;

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<sup>3</sup> At a minimum, cable operators are required to provide specific information to each municipality on an annual basis, e.g., billing and termination filings, Form 500. See e.g., 207 C.M.R. §§ 3.03(3), 10.01(2).

<sup>4</sup> The Cable Division does not intend to exclude from consideration communities currently lacking cable services, such as those in the western part of the Commonwealth. However, those communities may benefit from the wealth of information available from Massachusetts communities that have previously undertaken the licensing process.

<sup>5</sup> Regulatory burden refers to the costs imposed by the regulatory framework, including costs to comply with regulations and respond to requests for information from government entities as well as more indirect costs that may result from inefficiencies and economic disincentives. While government regulations are intended to protect essential public health, safety, environmental and welfare functions, subscribers ultimately bear the costs of any excessive regulatory burden. As such, it is a well-established principle that regulations that result in little or no benefit should be eliminated. See Commonwealth of Massachusetts, Executive Order 384 (1996).

Lexington Initial Comments at 1-2; Lowell Initial Comments at 1; North Brookfield Initial Comments at 1). Based on these comments, we find that modification of the current License Application, known as the Form 100, is appropriate at this time.

In determining what changes to the License Application are necessary and appropriate, we must identify the form's fundamental purpose. In its reply comments, Comcast posits that the application form is "a tool designed to provide basic information in accordance with the statute and a platform to *commence* detailed renewal negotiations" (emphasis in original) (Comcast Reply Comments at 4). Other commenters assert that rather than streamline the form, even additional requirements for information should be imposed (Canton/Winchester Initial Comments at 2; Lancaster Initial Comments at 3-6; Lowell Initial Comments at 1).

We have stated that, in our view, when parties are proceeding under the formal renewal process set forth in federal law, the License Application serves as the formal renewal proposal and thus triggers the four-month review period. Advisory Opinion, CTV 01-5 (2001) at 7; see 47 U.S.C. § 546. During this four-month review period, the Issuing Authority and cable operator finalize negotiations and the Issuing Authority makes its final determination as to whether to grant or deny the license. Id. Alternatively, where parties are negotiating informally, as allowed under federal law, the License Application serves as the "proposal" provided for by such law but the four-month review period is not triggered. See 47 U.S.C. § 546(h). In either case, the License Application provides information on which the Issuing Authority may base its decision to grant or deny an initial license or renewal license.

Upon initial consideration, nothing in the comments persuades us to interpret the License Application as anything but a proposal. Further, Comcast's position that the License Application should provide Issuing Authorities with "baseline ownership, financial and technical information" seems inconsistent with Comcast's Recommended Best Practices (see generally Comcast Reply Comments). There, Comcast urges that the License Application be submitted only after all ascertainment is complete (id. at 2). The Company further suggests that the information contained on the Application "be based on a community ascertainment study and be designed to determine community-specific needs and interests" (id.). It is unclear why the proposal should be provided only after ascertainment is complete if it provides only "baseline" ownership information.

Finally, we note that prior to its current incarnation, the License Application was included in our regulations at 207 C.M.R. § 7.01. The regulations stated "[i]n renewal proceedings conducted pursuant to 47 U.S.C. §§ 546(b) or 546(h), a renewal proposal shall include, but not be limited to, a completed Commission Form 100." See 207 C.M.R. § 8.02. While this regulation was rescinded in 1996, it was not because it was found to be an improper interpretation of Massachusetts or federal law but as a result of Executive Order 384, which directed all state agencies to simplify their regulations. See Report and Order, CATV R-25

(1996) at 1, citing Executive Order 384. The rationale underlying the regulation remains valid regardless of whether the License Application is included in our regulations or as a distinct document. Therefore, in suggesting changes to the current License Application, we seek to implement its purpose: to serve as the cable operator's proposal, providing the Issuing Authority with relevant information on which it may base its decision to issue an initial license or to renew or deny a renewal license.

In the following section, we highlight proposed changes to the License Application.<sup>6</sup> The Cable Division recognizes our supervisory role with respect to cable licensing and that cable operators and Issuing Authorities would be directly affected by any change to the License Application. Accordingly, we will adopt changes only after interested persons have had an opportunity to comment on the proposed License Application. Moreover, the Cable Division will consider further comment on the appropriate use of the License Application as it relates to federal law, and specifically, whether it constitutes the renewal proposal such that the changes proposed herein are appropriate.

B. Description of Proposed Changes

1. Application for Initial License v. Renewal License

The Cable Division, in its NOI, put forth the possibility of creating two License Applications, one for use in initial licensing and the second for use in renewal licensing. NOI at 4. Municipal and Operator Commenters generally agree with the concept of creating two separate forms (Canton/Winchester Initial Comments at 3; Adelpia Initial Comments at 2; Charter Initial Comments at 1-2; Comcast Initial Comments at 2-4; RCN Initial Comments at 2). Operator Commenters specifically assert that the creation of two forms is appropriate because, according to them, Section 13 is controlling and allows an applicant seeking a renewal license to provide less information than an applicant seeking an initial license (Charter Initial Comments at 3, citing G.L. c. 166A, § 13; Comcast Reply Comments at 2).

The Cable Division suggests that since the cable operator and municipality have an existing contractual relationship under which cable service is rendered in that community, the information required of an applicant for a renewal license may be less extensive than that required of an applicant for an initial license. However, current legislation is not supportive. Notwithstanding the operators' analysis of Section 13 as the "controlling statute," the more

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<sup>6</sup> Interested persons should compare the current License Application and the proposed License Application for a complete breakdown of the revisions. Both Forms 100 are available in Microsoft Word format at [www.state.ma.us/dpu/catv](http://www.state.ma.us/dpu/catv). Electronic and paper versions are also available from the Cable Division at 617-305-3580, 1-888-622-2588, or [cable.inquiry@state.ma.us](mailto:cable.inquiry@state.ma.us).

extensive requirements of Section 4 also apply to one who seeks a renewal license. See G.L. c. 166A, §§ 4, 13. Moreover, the “substantial latitude to develop a truly useful, workable renewal form,” Charter claims the Legislature granted the Cable Division is granted in Section 4, not Section 13 (Charter Initial Comments at 3).

Reconciliation of these statutory provisions may be unnecessary as we propose a form intended to be used in both initial and renewal settings. Our proposed License Application recognizes that concerns of an Issuing Authority will differ depending on whether it is reviewing a proposal for an initial or renewal license. In addition to general concerns as to whether an applicant has the financial, technical, and legal ability to provide cable services, the focus for an initial license is on an applicant’s ability to construct a cable system in a reasonable period of time. 47 U.S.C. § 541(a)(4); G.L. c. 166A, § 4. For a renewal license, the focus is whether the incumbent cable operator’s renewal proposal is reasonable to meet future cable-related community needs and interests taking into account the costs of meeting such needs and interests. 47 U.S.C. § 546(c)(1)(D); 207 C.M.R. § 3.06. In order to accommodate these differing concerns, we propose modifying the License Application so that the information solicited pertains to the type of license sought. See e.g., Questions 11, 12, 16, 21 of Proposed License Application.

## 2. The Application’s Consistency With Current Law

In the NOI, we noted that the current License Application is outdated in some respects. NOI at 2. While some questioned this proposition, the majority agreed (see e.g., Canton/Winchester Initial Comments at 3; Charter Initial Comments at 5). Charter noted that one example is the License Application’s section regarding transfer or assignment of control of a license (Charter Initial Comments at 8; see Questions 36-44 of Current License Application). Charter further notes that the License Application is not used by an applicant seeking approval to assume control or ownership of a license through a transfer (Charter Initial Comments at 8; see also Adelphia Initial Comments at 1). Indeed, the Cable Division, under Section 7, has determined that a cable operator must use Federal Communications Commission Form 394, rather than the License Application, when seeking approval to transfer a license. Report and Order, CATV R-24 at ¶ 34 (1995); see G.L. c. 166A, § 7. In order to ensure the License Application’s consistency with current law and regulations, in our proposed License Application, we have removed all reference to license transfers.

Another example is the current License Application’s requirement regarding re-certification. See Page 1 of Current License Application. Cable operators providing service in 1971 were required to re-certify their licenses and demonstrate compliance with the newly-enacted Chapter 166A, specifically by filing a License Application prescribed by the Cable Division. See St. 1971, c. 1103, § 1 (1971). Since, under state law, initial licenses may not exceed fifteen years, there are no licenses in effect that predate implementation of Chapter 166A of the General Laws or the License Application. See G.L. c. 166A, § 3.

Hence, in our proposed License Application, we have removed all reference to re-certification of licenses.

Operator Commenters further recommend that since certain items are precluded from an Issuing Authority's control pursuant to federal law, the items should be excluded from the License Application as inconsistent with federal law (RCN Initial Comments at 1; Charter Reply Comments at 8-9; Comcast Reply Comments at 3). For example, Operator Commenters assert that information regarding non-cable services is not relevant to the licensing negotiations (*id.*). Municipal Commenters, on the other hand, note that having such information available will assist them in responding to questions raised by community members (Lancaster Initial Comments at 4; Lexington Initial Comments at 1). One commenter notes that a disclaimer could be provided to clarify that such information is provided for informational purposes only (Lancaster Initial Comments at 4).

While an Issuing Authority may not base a denial of a renewal license on the cable operator's provision of, or failure to provide, telephone or high-speed internet service, it is reasonable that an Issuing Authority seeks to understand the extent of services that will be provided over the rights-of-way. The inclusion of information regarding services outside of the scope of renewal negotiations will enable Issuing Authorities to better inform its community members. Moreover, while it is indisputable that regulation of cable rates through license negotiation is beyond a municipality's authority, it is reasonable that local officials be advised as to the rates charged in the community in order to assist its constituents. Further, the information is readily accessible by cable operators as it is generally filed with another regulatory agency or likely gathered for internal marketing purposes. Thus, while federal law precludes the regulation of such services by municipal governments, the benefit to municipalities of soliciting the information on the application outweighs the burden placed on cable operators to produce the information. Therefore, on our proposed form, we have retained questions regarding additional services and cable television rates. However, we have rephrased the questions to highlight that the services and rates are not subject to regulation or negotiation. See Questions 16, 17 of Proposed License Application. Further, a cable operator need only provide the information in a form already created, *e.g.*, sample rate card.

In revising the question regarding additional services, we note that some of the services listed on the current form, such as offering facsimiles via a television, have not come to fruition. See Question 12 of Current License Application. Other listed services, such as providing movies and sporting events via cable television, have become so commonplace as to make the inclusion in the License Application slightly absurd. *Id.* To accommodate the need for municipalities to have access to information regarding additional services and in light of continuing advances in technology, we propose removing the checklist and requiring the applicant to list the services it intends to offer. See Question 17 of Proposed License Application.

### 3. Customer Service

Municipal Commenters posit that a customer service plan provides a key indication of the applicant's view towards the local community and recommend that additional information as to the proposed customer service plan be solicited in the License Application (Lexington Initial Comments at 1; see also Lancaster Initial Comments at 4). These Municipal Commenters note that the current License Application limits information to subscriber complaints while municipalities seek information addressing more general customer service policies, such as policies relating to changes in service and subscriber address changes (Lexington Initial Comments at 1; Lancaster Initial Comments at 4). Operator Commenters argue that customer service policy information should be deleted from the form in its entirety since it is already provided to Issuing Authorities on an annual basis through the Billing & Termination Filings and Subscriber Privacy Notices (Adelphia Initial Comments at 1; Charter Initial Comments at 6; Charter Reply Comments at 5, 9).

Customer service standards are set forth under both federal and state law and regulations, and compliance is monitored by the Cable Division. 47 U.S.C. §§ 551, 552; 47 C.F.R. § 76.1 et seq.; 207 C.M.R. § 10.00 et seq. While we agree with the Municipal Commenters that a cable operator's customer service policies are a key indication of how successfully that operator will meet the needs of the community upon license renewal, there is no practical need to require such information on the License Application since the municipality is already in possession of that information. In addition to providing documentation to the Cable Division to demonstrate compliance with the customer service standards, each cable operator is required to file its customer service policies with the Issuing Authority on an annual basis. See 207 C.M.R. § 10.01. The cable operator must also file any amendment to those policies with the Issuing Authority and the Cable Division. Id. These filings provide the information highlighted as important by Municipal Commenters.

Nevertheless, we recognize that the Issuing Authority or CAC member negotiating the license terms may not be able to readily locate the Issuing Authority's copy of the annual or amended filing. In addition, because cable operators currently compile and provide the requested information on an annual basis, we suggest that it may not be overly burdensome to require the cable operator to provide the information again with the License Application. Thus, in balancing the competing interests, we propose broadening the License Application to gather information concerning general customer service policies. We propose adding a reference to the License Application to require applicants for renewal licenses to file a copy of the most recent Billing & Termination Filing and Subscriber Privacy Notice. Compare Question 16 of Current License Application with Question 11 of Proposed License Application.

### 4. Technical Information

Operator Commenters recommend that the technical system design information required on the License Application be modified (Adelphia Initial Comments at 2; Charter Initial Comments at 6; Comcast Initial Comments at 4-5; RCN Initial Comments at 1; see Questions 21-27 of Current License Application). Specifically, Operator Commenters note that certain questions regarding system design and architecture are outdated given technological advances (Adelphia Initial Comments at 2; Charter Initial Comments at 6; Comcast Initial Comments at 4-5). Operator Commenters also express a concern that releasing specific technical information could pose a potential security risk as well as be competitively harmful (Comcast Initial Comments at 5; Charter Reply Comments at 4).

Municipal Commenters, however, note that it is important for Issuing Authorities to have access to the appropriate technical information and specifically express a need to be provided a system map (Lancaster Initial Comments at 5; Lowell Initial Comments at 1; North Brookfield Initial Comments at 1). For example, one commenter highlights the need to determine, during the term of the license, that the actual coverage matches the proposed service area (North Brookfield Initial Comments at 1).

An Issuing Authority, in granting an applicant a license for the municipality, is undertaking the duty of managing the rights-of-way. Therefore, it is appropriate to maintain technical questions and, specifically, provide access to a system map. Having access to a system map would provide municipalities with the means to ensure the existence of appropriate coverage. However, we agree with Operator Commenters that some of the architecture information is no longer applicable given technological advances (see Comcast Initial Comments at 5; see also Charter Reply Comments at 4). In addition, a more complete system map may be reviewed by the Issuing Authority under the appropriate confidentiality guidelines (see Comcast Initial Comments at 5; see also Charter Reply Comments at 4). In balancing the comments, we propose retaining the bulk of the technical questions. See Questions 18-26 of Proposed License Application. However, on our proposed License Application, we have removed the checklist of the general system design and instead require that the applicant provide a strand or street map that contains non-proprietary information. Compare Question 22 of Current License Application with Question 23 of Proposed License Application.

## 5. Financial Information

Operator Commenters assert that the majority of the financial information required by the current License Application is available in an applicant's annual report or audited financial statement (Adelphia Initial Comments at 2; Charter Initial Comments at 6-7; Comcast Initial Comments at 6). Operator Commenters recommend removal of certain pro forma information as being competitively sensitive and anachronistic (Charter Initial Comments at 9; RCN Initial Comments at 2). Charter asserts that especially in the case of a renewal license, there is no need for speculative financial reporting such as that contained in the current License Application (Charter Initial Comments at 9).

Municipal Commenters, in general, recommend retaining all of the financial questions contained in the current License Application and also present additional questions to implement in the financial section (Lancaster Initial Comments at 5-6; Lexington Initial Comments at 2; Lowell Initial Comments at 1; North Brookfield Initial Comments at 1). Examples of requested items include projections of annual revenues from non-cable services, disclosure of ownership interests in programming services, advertising revenue information, impact of cable operator-owned programming on franchise fees, and disclosure of all profit margins (Lancaster Initial Comments at 5-6; Lexington Initial Comments at 2; Lowell Initial Comments at 1; North Brookfield Initial Comments at 1).

Massachusetts law requires that information such as the identity of principals and ultimate beneficial owners be disclosed. G.L. c. 166A, §§ 4, 13. Under both federal law and Massachusetts regulations, the applicant must demonstrate that it has the financial qualifications to provide cable services to the community. 47 U.S.C. § 546(c)(1)(C); 207 C.M.R. § 3.06. Since many systems are now operated by well-established MSOs, the analysis differs significantly from that required when cable operators were first licensed. For example, a review of our case files from the early period of cable television regulation finds numerous instances of new entrants making promises to municipalities only to be unable to fulfill those promises due to monetary concerns, *i.e.*, inability to obtain investment capital or bank loans. See e.g., CATV A-2 (1973); CATV A-8 (1977). While recent events have shown that MSOs are not immune to financial difficulties, these difficulties typically are on a vastly different scale. For example, the requirement that applicants produce pro forma information may no longer be relevant for established MSOs. Pro formas are simplistic forward-looking financial projections. The U.S. Securities and Exchange Commission stated in a December 2001 warning to investors that pro formas may not convey a true and accurate picture of a company's financial well-being. See Securities and Exchange Commission: Cautionary Advice Regarding the Use of "Pro Forma" Financial Information in Earnings Releases, Release Nos. 33-8039, 34-45124, FR-59. Moreover, the well-established MSO is already providing services and demonstrating its financial qualifications.

While we question whether the information sought by Municipal Commenters is appropriate in the licensing process, such information is generally available in an annual report or audited financial statement.<sup>7</sup> In the interest of ensuring that municipalities have access to relevant information while not overly burdening cable operators, we propose that the applicant provide an annual report or an audited financial statement. See Question 27 of Proposed

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<sup>7</sup> For example, profit and loss margins generally may be calculated from the information provided in an annual report or audited financial statement. These documents will also contain information regarding the applicant's overall business, including non-cable services.

License Application. Requiring the applicant to provide an annual report or audited financial statement, both of which are governed by generally accepted accounting principles, should provide Issuing Authorities with adequate information as to the applicant's financial qualifications upon which it can draw conclusions regarding a company's financial health. The Cable Division considers this audited financial information more useful than financial projections that are by no means accurate nor reflective of the financial impact of events not directly related to the entity's day-to-day cable television operations. Because we do not want to create barriers for new entrants offering cable services, we have retained pro formas for use by individuals or newly-formed entities that do not have an annual report or audited financial statement.

#### 6. Local Programming Services

With respect to community-based programming, *e.g.*, public, educational, and governmental ("PEG") access channels and local origination, Operator Commenters recommend that the License Application be revised to require only general information (Charter Initial Comments at 6; Comcast Initial Comments at 6; RCN Initial Comments at 1). The draft form proposed by Comcast contains general questions as to the availability and support of PEG access programming and removes all reference to local origination (Comcast Form 100R at 11, 12). Charter, on the other hand, includes open-ended questions in its initial proposed form seeking a description of the proposed PEG and local origination systems (Charter Form 100B at 10, 11). In Charter's form accompanying its reply comments, all reference to local origination is removed (Charter Revised Form 100B at 11). One Municipal Commenter highlighted a desire to obtain additional information regarding both PEG access and local origination such as channel capacity, the condition of the equipment and facilities, and operating and capital funds (Canton/Winchester Initial Comments at 1-2).

Under federal law, an Issuing Authority may consider whether the applicant's proposal related to PEG access channel capability, facilities, and financial support is adequate to meet the community's specific needs. 47 U.S.C. § 541(a)(4). Federal law does not specifically reference local origination. However, some cable operators providing service in Massachusetts have historically provided community-based programming via local origination or a hybrid of local origination and PEG access. In addition, those applicants who are not providing some form of local origination may simply state "not applicable" on the License Application. As a community should understand the nature of the community-based programming that is proposed, particularly if there is a change from what is currently provided, we find that it is appropriate to require an applicant to supply information as to its proposed community-based programming, whether it be PEG access, local origination, or a hybrid of the two. See Questions 14, 15 of Proposed License Application.

#### 7. License Status and Compliance

One factor of great interest to Issuing Authorities in the early days of cable licensing was whether the applicant had applied and been granted a cable television license in any other community and more importantly, whether the applicant had successfully built out the cable system such that it was currently operational. See Questions 29, 30 of Current License Application. This is still relevant in the context of initial licensing where the applicant is new to the cable television industry. However, given that the majority of applicants in today's environment are well-established MSOs, the Cable Division suggests that it may be beneficial for Issuing Authorities to obtain information regarding an applicant's compliance record in other jurisdictions. To this end, we propose retaining the question involving the status of licenses or applications for completion by new entrants and adding a question regarding compliance actions for all applicants. See Questions 6, 7 of Proposed License Application. In soliciting comments on these proposed questions, we seek to better understand the value to municipalities of including such information as well as any resulting burden placed on cable operators.

### III. A BROADER LOOK AT THE LICENSING PROCESS

In the above discussion, we based our proposed changes to the License Application on the proposition that the License Applications is a part of the renewal proposal outlined in federal law, whether the parties are following the formal process of 626(a) or negotiating informally under 626(h). See generally 47 U.S.C. § 546. As a proposal, the filing or receipt of the License Application is a significant event. Under the formal process, the significance is clear: it is the formal proposal that triggers the four-month review period. As Comcast represented, many consider the Form 100 of relatively minor use and significance (Comcast Initial Comments at 2). Based on our observations of the licensing in Massachusetts today, this perception, should it exist, is born out of confusion. The confusion issue seems to arise with the filing of the License Application in the course of informal negotiations.<sup>8</sup> In particular, when the License Application is submitted as something other than a formal proposal, parties have no guidelines as to what actions are required and, as a result, take no action.

Even for those parties proceeding under the federal formal renewal process, there is some confusion as to when certain actions must be undertaken and when the process ends. For example, under the formal renewal process, the Issuing Authority must commence ascertainment within a specific time; however, there is no time frame provided in federal law as to when ascertainment must be completed. See 47 U.S.C. § 546(a). In addition, while there is a requirement that the Issuing Authority make a decision to renew or preliminarily deny a license within four months after receipt of the formal renewal proposal, federal law does not provide a date certain by which the formal renewal proposal must be submitted.

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<sup>8</sup> These negotiations have become known as the "informal process," a misnomer since there is actually no process at all outlined in federal law. See 47 U.S.C. § 546(h).

See 47 U.S.C. § 546(c). There is only a requirement that the formal renewal proposal be submitted either upon request by the Issuing Authority or upon completion of ascertainment. See 47 U.S.C. § 546(b).

As further demonstration of the confusion surrounding the overall licensing scheme, we note that a cable operator, after invoking its rights under the formal renewal process by submitting a written renewal request to the Issuing Authority, will submit the License Application as an “informal proposal” under Section 546(h).<sup>9</sup> If informal negotiations break down, the cable operator will submit a formal renewal proposal. This can create a conflict with Massachusetts law and regulations, especially where the formal renewal proposal is submitted with only a few weeks or days remaining prior to expiration of the current ten-year license. In these instances, it is impossible to allow a four-month review and not exceed the ten-year limit on a term of a license.<sup>10</sup> See e.g., G.L. c. 166A, § 3, 13; 207 C.M.R. § 3.07 (license may not exceed certain lengths and where extension of license is possible, amendment process must be undertaken.)

Recognizing the uncertainty inherent in federal law, the confusion as to the integration of federal and state law, and the various ways in which Issuing Authorities and cable operators proceed when faced with the pending expiration of a license, several commenters proposed that the Cable Division set forth a time line or some other set of procedural guidelines to govern the renewal process (Canton/Winchester Initial Comments at 2; North Brookfield Initial Comments at 1; Comcast Initial Comments at 1-2, 7-9; Charter Reply Comments at 11). While Operator Commenters propose the creation of guidelines to be used during informal negotiations, it is not clear from the comments provided by Municipal Commenters whether they are seeking guidelines for informal negotiations, for the federal formal renewal process, or both (Canton/Winchester Initial Comments at 2; North Brookfield Initial Comments at 1; Comcast Initial Comments at 1-2, 7-9; Charter Reply Comments at 11). Specifically, Municipal Commenters highlighted the need for a deadline by which the License Application must be filed (Canton/Winchester Initial Comments at 2; North Brookfield Initial Comments at 1). Cable Operators, on the other hand, focused on a need to have a date certain for completion of ascertainment (Comcast Initial Comments at 1-2, 7-9; Charter Reply Comments at 11).

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<sup>9</sup> Under the formal renewal process, a cable operator is protected against an unfair denial or renewal by the issuing authority. 47 U.S.C. § 521(5); TCI of South Carolina, Inc. v. Bennettsville, South Carolina, 331 PLI/Pat 217, 307 (D.S.C. 1990) (citing H.R. Rep. No. 934, 98<sup>th</sup> Cong., 2d Sess. 72).

<sup>10</sup> At least one cable operator maintains that the submission of a formal renewal proposal automatically extends the term of the license four months, *i.e.*, the time provided under federal law for an Issuing Authority to review the proposal.

In determining what changes may be necessary to the licensing processes conducted in Massachusetts, we draw not only on the comments received in the proceeding but also on our general experience overseeing licensing. At a minimum, we suggest to alleviate the most basic confusion, we include on the License Application a check off box to indicate whether the form is being filed as a formal proposal under Section 626(b) or as a document to be discussed in informal negotiations guided by Section 626(h). 47 U.S.C. §§ 546(b) and 546(h). We, however, agree with the comments that broader changes may be required. We note that some commenters do not consider this issue adequately noticed (Canton/Winchester Initial Comments at 3). Therefore, while we intend to consider broader changes to how licensing is conducted in Massachusetts, we will allow additional comment.

To the extent interested persons propose guidelines for informal negotiations, the Cable Division raise several issues for comment. First, Comcast submits that the Cable Division has the authority to implement such guidelines pursuant to G.L. c. 166A, § 2 (Comcast Initial Comments at 7, n. 2). Comments should address whether there is any bar under federal law to the implementation of such guidelines. Second, Comcast proposes the adoption of “Recommended Best Practices Informal Renewal Guidelines” (*id.* at 7). Comments should address whether guidelines that are advisory and, thus, unenforceable in nature would best serve the public interest in ensuring timely renewal or whether more formal regulatory measures are required.<sup>11</sup> Third, we note that in agreeing to proceed informally, municipalities often will provide documentation that they are “reserving their rights” under the formal renewal process. Comments, particularly those of Issuing Authorities, should address what rights are being reserved and if, by following guidelines during informal renewal negotiations, Issuing Authorities might jeopardize those rights. Specifically, comments should address whether any guidelines established for informal negotiations should include a provision as to when parties must return to the formal process in order that a formal denial of license renewal is attainable.

Any guidelines or regulations ultimately implemented by the Cable Division must be grounded in federal and state law and regulations and thus we ask that commenters provide legal citation on any recommendations. While some municipalities not represented by counsel may be unable to provide legal analysis, we welcome their comments as they provide insight into the actual workings of the renewal process.

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<sup>11</sup> Comments suggesting formal regulations should address the Cable Division’s authority to promulgate such regulations with an emphasis on the requirements of Executive Order 384, and present proposed regulations. We note that any such regulations could be promulgated only after all the procedural requirements of G.L. c. 30A have been satisfied.

#### IV. SOLICITATION OF COMMENTS

The Cable Division will accept written comments no later than 5:00 p.m. on Thursday, June 10, 2004, for initial comments and Wednesday, June 30, 2004, for reply comments. Commenters should, where possible, provide both initial comments and reply comments in electronic format using one of the following methods: (1) by e-mail attachment to [cable.inquiry@state.ma.us](mailto:cable.inquiry@state.ma.us); or (2) on a 3.5" disk, IBM-compatible format. The text of the e-mail or the disk label must specify: (1) the docket number of the proceeding (CTV 03-3); (2) the name of the person, municipality, or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, e-mail address, if available, and telephone number of a person to contact in the event of questions about the filing. Electronic text responses should be written in either Word Perfect (naming the document with a ".wpd" suffix), in Microsoft Word (naming the document with a ".doc" suffix), or as an Adobe Acrobat file (naming the document with a ".pdf" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel.

For persons unable to file in electronic format, comments and reply comments should be filed with Clerk, Cable Television Division, One South Station, Boston, Massachusetts, 02110. Both initial comments and reply comments submitted in electronic format will be posted on the Cable Division's website at [www.state.ma.us/dpu/catv](http://www.state.ma.us/dpu/catv), and will be available for public inspection at the Cable Division's offices during business hours. Paper copies will also be made available upon request at a cost of 20 cents per page.

By Order of the  
Department of Telecommunications and Energy  
Cable Television Division

/s/ Alicia C. Matthews  
Alicia C. Matthews  
Director

Issued: May 11, 2004

#### EXHIBIT A

G.L. c. 166A, § 4 Application for License; Contents.

No such license or renewal thereof shall be issued except upon written application to the appropriate issuing authority on an application form prescribed by the division. Such form shall contain such information as the division may prescribe as to the citizenship and character of the applicant, and the financial, technical and other qualifications of the applicant to operate

the system; complete information as to its principals and ultimate beneficial owners, including, in the case of corporations, all stockholders, both nominal and beneficial, owning one percent or more of the issued and outstanding stock, and, in the case of unincorporated associations, all members and ultimate beneficial owners, however designated; complete information on the extent and quality of service, number of channels, hours of operation, variety of programs, local coverage, safety measures, installation and subscription fees; and such other information as the division may deem appropriate or necessary. Such application shall be signed by the applicant or by a duly authorized representative, evidence of whose authority shall be submitted with the application. Each applicant shall make full disclosure of the true ownership of the applicant and of the equipment to be employed in rendering service and of the source of funds for the purchase, lease, rental and installation of such equipment. Each applicant shall set forth as completely as possible the equipment to be employed, the routes of the wires and cables, the area or areas to be served, the approximate starting and completion dates of construction of the system and the date service will actually be available to the areas named. Additional areas to be served may be added by amendment to the license from time to time pursuant to regulations promulgated by the division.

G.L. c. 166A, § 13 Renewal of License.

Any license issued hereunder may be renewed after hearing by the issuing authority for additional periods each not to exceed ten years. An application for renewal shall be on forms to be prescribed by the division. Such forms shall set forth such facts as the division may prescribe as to the citizenship and character of the applicant for renewal, and its financial, technical, and other qualifications to operate the system, and complete information as to its principals and ultimate beneficial owners, including in the case of corporations, all stockholders both nominal and beneficial owning one per cent or more of the issued and outstanding stock, and in the case of unincorporated associations, all members and ultimate beneficial owners however designated, in order that the applicant for renewal shall make full disclosure as to its true ownership and as to the source of funds to be used for operation of the system.