



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

I. INTRODUCTION

The Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy is responsible for overseeing the licensing process in Massachusetts. See G.L. c. 166A, § 2. As part of our mandate, the Cable Division must prescribe the License Application that each cable operator must file with a community in which it seeks to offer cable service. Id. at §§ 4, 13; 207 C.M.R. § 2.03(1). On August 11, 2003, the Cable Division issued 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 is serving its purpose or whether revisions are appropriate. NOI at 6. We noted that the cable television industry has evolved such that updating the License Application may be warranted. Id. at 2. We also invited proposals to increase the efficiency of the licensing process. Id. at 4.

Based on the comments we received, the Cable Division drafted a revised License Application incorporating many of the suggestions submitted. As a means of soliciting comments on our proposed revisions, we issued a Notice of Proposed License Application and Request for Further Comment (“RFC”). In the RFC, we also highlighted several suggestions offered regarding improving the efficiency of the licensing process. For example, in the RFC, we discussed the nature and purpose of the application, the procedural differences between the formal process and informal negotiations, and the prospective value of guidelines to structure informal negotiations. While we did not necessarily agree with all of the suggestions, we included suggestions that would further the dialogue and therefore assist in reaching a fair resolution. As a result, our record is substantial.¹

The comments provided may be categorized generally into two positions, each representing an interest in the license negotiation process: cable operators and municipal representatives. Clearly, cable operators have a vested interest in the process since no operator may provide service in a community without a license. G.L. c. 166A, § 3. Even in the face of massive system consolidations on a national level, cable operators’ business remains in many respects local. Meanwhile, under Massachusetts law, local municipal officials are responsible for negotiating licenses and are deemed Issuing Authorities. Id. at §§ 1(f), 3, 4. Issuing Authorities and their cable advisory committees have practical experience in negotiating a license and ensuring that the process results in satisfying community needs.

¹ A complete list of persons who provided initial and reply comments to the NOI and/or RFC is compiled in an Appendix. We have marked numerically, for identification purposes, each filing. Citation to a filing will be by comment number, e.g., CMT-1.

In this Order, we evaluate each of these interests and the specific comments of individual participants.² We prescribe a revised License Application for use by all involved in the licensing process beginning on January 1, 2005. This Order also addresses several substantive issues raised in the course of this proceeding in an effort to ensure that all participants in the process may be able to proceed efficiently and successfully.

II. THE LICENSE APPLICATION: PROCEDURAL ISSUES

A. Introduction

Pursuant to our enabling legislation, the Cable Division is responsible for overseeing the licensing process in Massachusetts, a duty which includes ensuring compliance with all applicable laws and regulations as well as the due protection of the interests involved. G.L. c. 166A. The Cable Division has traditionally executed our role conservatively, establishing ourselves as a useful resource of information to those involved in the process. We have been extremely cautious so as not to interfere with the negotiations between a cable operator and the Issuing Authority. This approach had been justified not only because it was the clearest way to protect our appellate authority, but also in recognition that the Issuing Authority has a better understanding of its community's needs and interests and, in theory, would be better able to protect those interests.

As we referenced in the NOI, several developments have occurred recently that have caused the Cable Division to re-evaluate this approach. First, in the summer of 2003, the Cable Division participated in a Special Legislative Commission established under Section 238 of Chapter 184 of the Acts of 2002. The Special Commission was charged in part with conducting a study relative to the adequacy and effectiveness of existing licensing of cable television operations in the Commonwealth. The Special Commission recognized that the Cable Division provides valuable assistance to Issuing Authorities. Special Commission Report at 17. However, during the course of this study, and in particular during the public hearings, the Cable Division became aware that our efforts to educate and inform municipal representatives with respect to their rights and obligations under federal and state licensing law were failing. For example, one municipal representative expressed concern regarding the license term

² We note that several commenters suggested that a "working group" be formed and assigned the task of recommending a resolution of these issues. As evidenced by the range of municipal comments we received, there is no workable group that could adequately represent the specific views of each of the 308 communities currently involved in cable licensing. In addition, participation would further constrain already stretched resources of municipal volunteers, while it would simply be another task for employees of cable operators. Conversely, by soliciting written comments, individual voices are heard and every interested person has an equal opportunity to participate.

requirement, interpreting Chapter 166A, Section 13, as requiring a minimum term of ten years rather than a maximum term of ten years. Hearing held by Special Commission on June 10, 2003, Citizens of the Commonwealth Testimony, Holland Cable Commission. Many municipal representatives not only did not fully understand the licensing process, but also did not know of the resources available to them to better navigate the process.

Another significant development is the marked increase in the number of communities in which a cable operator is providing service without a valid license.³ Issuing Authorities and cable operators are increasingly unable to resolve renewal license negotiations within the three-year window set forth in federal law. NOI at 3, citing 47 U.S.C. § 546.⁴ We noted that operating a cable system without a license is a violation of state and federal law; however, we recognized that ordering the cable operator to terminate all subscribers' service in that community was not in the best interest of subscribers. Id.; 47 U.S.C. § 541(b)(1); G.L. c. 166A, § 3. Nevertheless, this trend cannot continue. Beyond the obvious liability and insurance issues, subscribers may be harmed by the municipality's inability to enforce various performance and consumer protection standards. Without a valid contract in place, there is nothing by which performance may be measured. We are aware that at least one cable operator maintains that the contract terms remain valid even after the contract has expired. While this may provide municipalities with a sense of security, the position has not been tested and it remains to be seen whether the cable operator would maintain the position when confronted with a claim of breach of contract.

There is no consensus as to what might account for the increase in the number of expired licenses. In general, cable operators argued that the delays are due to the failure of municipalities to undertake and complete ascertainment in a timely manner (CMT-8, at 9;

³ According to our records, in 2000, of the 8 licenses scheduled to expire, 5 licenses did in fact expire prior to final action of the Issuing Authority on a renewal proposal. In 2001, of the 32 licenses scheduled to expire, 19 licenses expired without final action. While in 2002, the percentage of expired licenses remained at approximately 60%, with 19 of 31 licenses expiring without final action, there was a marked increase to 83% in 2003, with 25 of the 30 licenses expiring without final action. To date, we record 35 licenses with expiration dates during 2004. Twenty-one of these licenses have expired without final action by the Issuing Authority.

⁴ The largest contingent of municipal commenters assert that the Cable Division is interfering with parties' entering into short-term extensions when confronted with imminent license expiration (CMT-28, at 8). While it is possible to extend a license through the amendment process, Massachusetts law sets maximum lengths for initial and renewal licenses of fifteen and ten years, respectively. G.L. c. 166A, §§ 3(d), 13. The Cable Division will not endorse actions taken in direct violation of law.

CMT-22, at 3; CMT-30, at 6-7; CMT-31, at 17). Municipal commenters generally asserted that negotiations are delayed due to an increasingly aggressive stance taken by cable operators (CMT-12, at 2; CMT-29, at 3). Moreover, given recent municipal budget issues and the variety of municipal issues requiring attention, resources are strained such that Issuing Authorities might not be able to match the dedicated resources of the cable operator. One commenter noted that the License Application ideally serves to level the playing field between volunteers negotiating on behalf of a local municipality and staff negotiating on behalf of a large multi-system operator by creating a set standard of information (CMT-17, at 1).

In this Section, we provide municipalities with the necessary guidance to complete the license renewal process in a timely manner and in the best interests of the subscribers. We first clarify the licensing process not only to ensure that parties renew licenses where appropriate, but also to ensure that each party's rights are protected in the event that a municipality determines that denial is warranted. In Section III, below, we address the additional changes we determine are required to the License Application. The substantive changes to the License Application we adopt below are designed to "level the playing field" between the parties in interest by creating a uniform submission, while allowing for supplementation as necessary.

B. Jurisdiction

This proceeding involves a review of the specific language contained in the License Application as well as the nature and role of the License Application in the renewal process. Municipal commenters asserted that the Cable Division had not provided appropriate notice as to the latter issue, even as it relates to the appropriate time for filing of the License Application (CMT-1, at 3; CMT-12, at 1; CMT-18, at 5; CMT-26, at 2; CMT-28, at 6). Some commenters contended that the Cable Division was attempting to implement changes to its regulations without proper notice, while other commenters asserted that the docket title alone was inadequate to alert persons that commenters would propose filing dates related to the License Application (CMT-12, at 1; CMT-18, at 5; CMT-26, at 2; CMT-28, at 6). Moreover, some contended that even with adequate notice, the Cable Division lacked authority to shape the licensing process (CMT-28, at 5; see also CMT-12, at 1). These commenters argued that Issuing Authorities are responsible for interpreting federal law as it pertains to any renewal timetable (CMT-28, at 5).

As we have stated, the Cable Division is required under our enabling legislation to prescribe the License Application. See G.L. c. 166A, §§ 4, 13. As an administrative agency, the Cable Division may set forth policy statements or guidelines in furtherance of the purposes of our enabling act. Northbridge v. Town of Natick, 394 Mass. 70, 76 (1985), citing G.L. c. 30A, § 8. We are not promulgating or revising regulations, we are providing interpretation of existing law and regulations to better serve those involved in licensing matters.

Interpretation of existing statutes or regulations differs from the promulgation or revision of a regulation. See G.L. c. 30A, §§ 2, 3 (administrative agencies must comply with notice requirements when adopting regulations, e.g. publishing notice 21 days prior to the action). In this instance, the discussion of procedural matters constitutes guidance for which there is no requirement for notice or public participation. See Id. at § 8. Nevertheless, throughout this proceeding, the Cable Division took extraordinary steps to solicit input from as many municipalities as possible, including several mass mailings, website postings, and individual mailings.⁵ Indeed, in order to ensure that all affected persons would have an opportunity to voice their opinions, the Cable Division provided personal notice to interested persons, which is far in excess of the public notice requirements for implementation of regulations. Therefore, we consider any assertions as to insufficient notice to be without merit.

We further note that certain commenters that asserted the Cable Division provided insufficient notice as to implementation of procedural guidelines actually recommended in their NOI comments that the Cable Division establish time frames so that the License Application would be filed in the appropriate manner. These municipal commenters specifically stated “the Towns hereby suggest that the Cable Division require the renewal applicants to submit the License Application to the Issuing Authority by a date certain” (CMT-1, at 2). These municipal commenters also asked whether the Cable Division has “formulated ideas for requiring more timely submission of the License Application to Issuing Authorities” (CMT-1, at 3). Another municipality also provided time frames for submission of the License Application under various scenarios and recommended that cable operators be required to inform Issuing Authorities of the time frames in order to assist smaller communities in staying on track during the license renewal process (CMT-5, at 1). Given the comments received from both municipal commenters and cable operators, we find it appropriate, necessary and within our authority to include guidance as to broader issues related to the License Application.

⁵ On August 11, 2003, we sent the NOI by first class mail to all Massachusetts Issuing Authorities and CACs, our interested persons list, and all cable operators providing service in the Commonwealth (together “CTV 03-3 Service List”). On May 11, 2004, we provided the RFC by first class mail to the CTV 03-3 Service List. After receiving verbal requests from municipalities to extend the time for filing comments on the RFC, we issued a Notice of Extension for Filing Initial and Reply Comments (“Extension Notice”), which allowed an additional fifteen days. We sent the Extension Notice by first class mail to the CTV 03-3 Service List. We also alerted all of the municipalities that provided comments on the NOI via telephone, facsimile, and email, and we sent the Extension Notice via email to municipal attorneys that provided comments. Information related to the docket was posted to our website on an on-going basis.

C. Discussion and Analysis

1. Nature and Role of License Application

Over the course of this proceeding, there has been much debate on the nature and role of the License Application. The comments varied depending on whether the application pertained to an initial license or a renewal license. Within the renewal license context, comments varied based on whether the parties would follow the formal process or negotiate informally. Upon reviewing the comments received in response to the NOI and the RFC, we note that the most dramatic variance of views concern the nature and role of the License Application when parties choose to negotiate a renewal license informally, thus further highlighting the need for clarification.⁶

In the NOI and RFC, we referred to the License Application as “the proposal.” NOI at 3; RFC at 4, citing Advisory Opinion, CTV 01-5, at 7; see also 47 U.S.C. §§ 546(b), 546(h). Both municipalities and cable operators took exception to this reference. Nevertheless, the Cable Division has long interpreted the License Application as the only component of the license proposal mandated by Massachusetts law and regulations. Massachusetts was a front runner in establishing a regulatory framework for cable television, with the Legislature adopting pertinent law in 1975. This framework was implemented nine years prior to the adoption of the Cable Communications Policy Act of 1984 (“1984 Cable Act”), which set forth a comprehensive plan for regulation of cable television at the federal and state level. With the passage of the 1984 Cable Act, it was necessary to ensure that Massachusetts law and regulations appropriately reflected the newly-enacted federal law. Prior to the 1984 Cable Act, Massachusetts law had required that the cable operator provide an application outlining its proposal to offer cable television services. To create consistency with federal law, the Cable Division revised its regulations to recognize that the application provided under Massachusetts law would be a required element of the proposal. Report and Order, CATV R-19 (1990).⁷

In addition, as noted by one cable operator, the denial of a License Application triggers the due process protections provided by federal and state law (CMT-30, at 4-5, citing 47 U.S.C. § 546(f); G.L. c. 166A, § 14). Massachusetts law provides steps to be

⁶ We do not discuss the initial licensing process in detail as the rules set forth by federal and Massachusetts law and regulations are comprehensive.

⁷ As noted in the RFC, the regulation was rescinded in 1996, not because it was an improper interpretation of Massachusetts or federal law but as a result of an executive order requiring all state agencies to simplify their regulations. RFC at 4-5, citing Report and Order, CATV R-25 (1996) at 1; see also Executive Order 384.

followed in the case of a denial of a renewal proposal and states in pertinent part: “any applicant for a license or renewal of a license who is aggrieved by a denial of its *application* by the issuing authority . . . may appeal therefrom to the division.” G.L. c. 166A, § 14 (emphasis added). Because Massachusetts law and regulations are required to be consistent with federal law, the terms “application” and “proposal” are synonymous in this context.

Significantly, under our interpretation, the License Application may be a component of the proposal. Cable operators stressed that the License Application should be considered only an element of the proposal, expressing concern that Issuing Authorities might otherwise ignore accompanying draft licenses or other documentation (CMT-21, at 2, 5; CMT-31, at 3; CMT-32, at 4). Municipalities expressed similar concerns, noting that Issuing Authorities are permitted by federal law to solicit community-specific information (CMT-14, at 2-3, citing 47 U.S.C. § 546(b)(2); CMT-28, at 5-6, citing 47 U.S.C. § 546(b)).

Federal law permits the Issuing Authority to determine what information it requires from the cable operator in order to make its decision to grant or deny a renewal license. 47 U.S.C. § 546(b)(2). However, the Legislature recognized that not all communities have the time, energy, or monies to devise their own application to be used by the cable operator, and it therefore determined that the Cable Division should prescribe an application for use by all communities. G.L. c. 166A, §§ 4, 13. As formerly codified in our regulations, the License Application represents the minimum documentation that must be presented to the Issuing Authority. As noted by one municipality, the License Application helps to level the playing field by creating a set standard of information that cable operators must provide (CMT-17, at 1). In considering the License Application as the proposal, we in no way limit the rights of the Issuing Authority to request additional, relevant information, nor of the cable operator to be protected from an unfair denial. To ensure that municipalities are aware of the ability to seek community-specific information, we specifically state that the Issuing Authority may ask an applicant for additional, relevant information. See License Application at 2, Para. A. Moreover, we specifically state that when the License Application is accompanied by other documentation, the whole package of documentation is to be considered “the proposal.”

We now turn to the issue of the “formal versus informal proposal.” Under federal law, submission of a proposal in the formal renewal process triggers a four-month review period. 47 U.S.C. §§ 546(b); 546(c)(1). Meanwhile, during informal negotiations, a cable operator may provide a proposal to the municipality at any time without imposing any obligation on the municipality. 47 U.S.C. § 546(h). Municipalities expressed concern that the License Application not be deemed the “formal proposal” simply because the cable operator decides to treat it as such (CMT-18, at 6-7). Some commenters claimed that it is useful in some instances to obtain an incomplete version of the License Application early in the process since the information provided on the License Application may assist them in formulating appropriate ascertainment steps (see CMT-21, at 3; see also CMT-18, at 3-4).

Federal law should alleviate the municipalities' concern. Only if a cable operator has invoked its rights under the formal renewal process and the municipality has completed ascertainment, may the proposal be deemed the "formal proposal," thus triggering the municipality's obligation to review the proposal within four months. 47 U.S.C. §§ 546(b)(1); 546(c)(1). The latter requirement acknowledges that by waiting until the completion of ascertainment, the cable operator will be able to use the ascertainment results to formulate its proposal and appropriately address community-specific needs and interests (see CMT-22, at 2-3; CMT-30, at 5). If a community has not completed ascertainment, a submission of a License Application cannot be considered a proposal under the formal process. Thus, under federal law, the nature of the proposal is in the Issuing Authority's control as a "formal proposal" is dependent on the completion of ascertainment. 47 U.S.C. § 546(b).⁸

Some municipalities correctly noted that in initial licensing, a License Application may not be modified except through a specific amendment process (CMT-28, at 5, citing 207 C.M.R. § 3.03(3)). These commenters implied that the same requirements apply to renewal license situations (CMT-28, at 5). The nature of the License Application in the renewal context is distinct from its nature in the initial licensing process. 47 U.S.C. §§ 541, 546; G.L. c. 166A, §§ 4, 13; 207 C.M.R. § 3.00, *et seq.* In initial licensing, the Massachusetts Legislature and the Cable Division envisioned competing operators and thus promulgated regulations to avoid any unfair maneuvering by a cable operator. This is not a concern in the renewal process and, as a result, an operator may revise its proposal during the course of negotiations.

Accordingly, we clarify that the License Application is a required element of the proposal. Upon receipt, an Issuing Authority may request additional, relevant information. In anticipation of the Issuing Authority's needs, a cable operator may, but is not required to, include additional documentation, such as a draft license agreement. While the proposal may be revised as a result of negotiations, if the parties are following the formal renewal procedures and ascertainment is complete, the Issuing Authority must determine whether to accept or preliminarily deny the proposal within four months of receipt. See 47 U.S.C. § 546.

2. License Renewal Guidelines

Cable operators requested that we implement non-binding guidelines for use in informal negotiations in order to provide structure to an "otherwise chaotic informal renewal process" (CMT-32, at 3; see also CMT-20, at 2; CMT-21, at 3, 17-20). Municipalities asserted that the Cable Division should refrain from placing any boundaries on informal negotiations (CMT-12, at 1; CMT-14, at 5; CMT-18, at 6). While initially suggesting certain guidelines,

⁸ We retain the "check-off box" on the License Application as an administrative convenience.

municipalities later specifically contended that mandating guidelines for use in informal negotiations would thwart Congress' intent of providing maximum flexibility in negotiating a renewal license (CMT-1, at 2; CMT-14, at 5).

In the Cable Act, Congress did not set forth any informal process. Instead, Congress determined that Issuing Authorities and cable operators that are able to negotiate an agreement outside of the formal renewal process should be allowed to do so in a manner that best fits the parties' needs. See 47 U.S.C. 546(h) ("a cable operator may submit a proposal for the renewal of a franchise pursuant to this subsection at any time, and a franchising authority may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time"). That is, where a municipality has a good working relationship with a cable operator and there are no compliance issues, the parties should not be forced to resort to the formal renewal process. See e.g., Daniel L. Brenner, et al., Cable Television and Other Nonbroadcast Video: Law and Policy (2003) at § 8:2 (formal renewal process must be followed only if there are significant renewal issues or if there is to be a formal denial of a renewal); see also Air Force Instruction 64-101, Cable Television Systems on Air Force Bases (1998), <http://afpubs.hq.af.mil>. If, however, there are license compliance issues or ongoing unresolved issues between the municipality and the cable operator, the parties would be best served by following the formal renewal process in order to ensure that each party's rights are protected.

It is not surprising that Congress did not promulgate procedural safeguards for informal negotiation as that method was to be used for uncontested matters. Union CATV, Inc. v. City of Sturgis, Kentucky, 107 F.3d 434 (6th Cir. 1997). Licensing in Massachusetts has taken an unexpected path. Most cable operators and Issuing Authorities routinely enter into informal negotiations, while "reserving their rights" under the formal process. At least one cable operator explained that the informal process is important because it is less expensive and more efficient than the formal process (CMT-8, at 2). Nevertheless, when informal negotiations fail, cable operators invoke the procedural safeguards of the formal process. As we have observed, however, there is often insufficient time before the license expires to allow the parties to meet all of the requirements under the formal process.

According to one cable operator, "[t]he prudent course for parties with apparently intractable disputes would be to invoke the formal process sufficiently in advance of the license termination date to complete proceedings and secure a decision" (CMT-21, at 21). We agree. We are not prepared to require that the formal process be used for all contested matters, particularly in light of comments that the process often creates an adversarial relationship between the parties (see CMT-8, at 2). While we support the use of informal negotiations, we recognize that parties will continue to revert to the formal process when these negotiations fail. We therefore determine that additional guidance regarding informal negotiations is required to ensure that a party's actions during informal negotiations do not jeopardize its rights under the formal process.

The Cable Division firmly suggests that the key to any successful renewal process, whether success is measured by reaching a mutually beneficial agreement or by issuing a denial of license that is upheld on appeal, is ascertainment. Ascertainment allows a municipality to identify the future needs and interests of the community and also provides the municipality with documentation of whether the cable operator is complying with the current license. Ascertainment may involve direct communications with the cable operator, such as touring the cable operator's technical facility. More importantly, ascertainment should obtain information from community members. For example, a municipality could conduct a municipality-wide survey, hold a public meeting, or meet with community organizations to determine their future needs. In addition, since the municipality seeks to ensure that the cable operator is in compliance with the current license, the municipality will often review the cable operator's customer service forms (Form 500) as well as any municipal complaint records.

Under federal law, Issuing Authorities following the formal renewal process are specifically required to conduct ascertainment. 47 U.S.C. § 546(a)(1). While there is no comparable requirement to conduct ascertainment when negotiating informally,⁹ the need to do so is equally important. The importance of ascertainment cannot be overstated. A cable operator's service should meet the community's interests and needs whether the license under which it is provided is a product of the formal process or informal negotiations. Moreover, it is unlikely that an Issuing Authority decision to deny a license renewal will stand without appropriate ascertainment to support it.¹⁰

Ascertainment can be a time-consuming and lengthy process. This is especially the case where the municipal group consists of volunteers who are not able to devote their full energies to the task. Cable operators sought to limit ascertainment to an 18-month period prior to license expiration (CMT-8, at 8; CMT-10, at 11; CMT-32, at 5). Comcast also contended that under this 18-month scenario, ascertainment should be deemed complete such that the License Application could be filed (CMT-22, at 4). Municipalities took exception to the cable operators' recommendations, viewing the 18-month cut-off as limiting a municipality's right to conduct appropriate ascertainment (CMT-23, at 1; CMT-24, at 1; CMT-25, at 1; CMT-12, at 1; CMT-18, at 2, 6; CMT-29, at 1-2). Municipalities also contended that it is

⁹ Issuing Authorities are required to hold a duly-noticed public hearing to provide the public with the opportunity to voice their opinions. 47 U.S.C. § 546(h); G.L. c. 166A, § 13; 207 C.M.R. § 3.05(3).

¹⁰ Three out of the four grounds for denial reference either the cable operator's compliance record or the community's needs and interests. 47 U.S.C. §§ 546(c)(1); 546(d).

inappropriate to deem ascertainment completed, and that ascertainment may only be terminated with affirmative, meaningful municipal consent (CMT-28, at 4).

There is no regulation that explicitly provides for the termination of ascertainment. However, as a practical matter, the ascertainment period may not be indefinite, particularly where a party has reserved its rights under the formal process. In reviewing the requirements of the formal process, where ascertainment is specifically required, we may deduce the appropriate period for ascertainment. Depending on the steps taken to commence the formal renewal process, ascertainment must begin between 36 and 24 months prior to the license expiration date. 47 U.S.C. § 546(a). The cable operator must provide the formal renewal proposal (*i.e.*, License Application and any accompanying documentation) upon completion of ascertainment either upon request by the Issuing Authority or at its own discretion. Upon receipt of the proposal, the municipality must determine whether to approve or preliminarily deny the proposal within four months. We have previously stated that given this four-month review period, the cable operator must provide its proposal to the Issuing Authority no later than four months prior to the expiration of the license. Advisory Opinion, CTV 01-5, at 6-7. In addition, the cable operator should use the information gathered during ascertainment to formulate the formal renewal proposal and therefore should be permitted a period of time prior to the four-month period to formulate the proposal. Given that ascertainment must be completed prior to the filing of the formal renewal proposal, and the formal renewal proposal must be filed no later than four months prior to license expiration, ascertainment must be completed in advance of the four-month period. Therefore, we find it reasonable to recommend that a municipality complete ascertainment twelve months, but not later than six months, prior to the license expiration. We recommend this approach to those municipalities who choose to proceed informally, particularly where a party has “reserved its rights” under the formal process. If the ascertainment period were indefinite, a municipality could limit the cable operator’s right to avail itself of the formal process by delaying ascertainment until just before the license expires. The municipality might similarly be harmed by such a delay in that it would have less of an opportunity to review a formal proposal.¹¹ By this approach, should informal negotiations fail, neither party’s right to avail itself of the formal process would be impeded.

¹¹ We are aware that several cable operators have represented to Issuing Authorities that the four-month review period may be extended beyond the license expiration date. These cable operators specifically maintain that where a license term would expire in a matter of weeks, upon the cable operator’s submission of its formal proposal, the license is automatically extended for a four-month period. However, there is no provision in federal law for an extension of the formal renewal process. See 47 U.S.C. § 546; see also n. 4, above.

Upon completion of ascertainment, Massachusetts regulations require that the Issuing Authority notify the cable operator in writing. 207 C.M.R. § 3.05(4). There is no requirement under either state or federal law that requires an Issuing Authority to provide the results of its ascertainment to the cable operator. Adelphia asks that the municipality be required to provide its ascertainment results along with the notification of the completion of ascertainment (CMT-20, at 4). The municipality may use the results of its ascertainment as the basis for its request for proposals pursuant to 47 U.S.C. § 546(b). If a municipality does not issue a request for proposals, the cable operator must submit a proposal. Given that the cable operator is to formulate its proposal taking into consideration the needs and interests of the community, it is only logical that the Issuing Authority should provide its results to the cable operator. See 47 U.S.C. § 546(c)(1)(D). To ensure that the cable operator's proposal accurately reflects the community's needs and interests, the Issuing Authority should provide its ascertainment results, upon completion, to the cable operator.

Comcast suggested that in adopting a recommended approach to licensing, the Cable Division determine that a failure to comply with the guidelines, such as not completing ascertainment in the recommended timeframe or failing to provide ascertainment results, be considered evidence of bad faith (CMT-22, at 5). This we will not do. As noted by commenters, the overwhelming majority of municipalities exercise extraordinary good faith and a significant spirit of compromise in conducting the renewal process (CMT-28, at 4). There could be several reasons justifying a municipality's failure to complete ascertainment or provide the results thereof. Nevertheless, such failures would also be factors to be considered on appeal. These are questions of fact properly determined in an administrative proceeding pursuant to General Laws Chapters 30A, and 166A, Section 14.

3. Conclusion

Municipalities have the right to a cable television system that is responsive to the needs and interests of the local community. At the same time, federal law ensures that a cable operator that has invested in a cable television infrastructure in a community will be protected against any unfair denial of a renewal license. Thus, federal law limits the grounds on which an Issuing Authority may deny a cable operator's proposal for license renewal. 47 U.S.C. § 546(c)(1); 47 U.S.C. § 546(d). As a result, there is a presumption of renewal. The Cable Division has long maintained that an understanding of the law and regulations applicable to the licensing of cable operators empower an Issuing Authority to best serve its community's needs. We have identified two areas where confusion on the part of Issuing Authorities, as well as cable operators, has compromised the Issuing Authority's ability to carry out its statutory duty: the nature and role of the License Application and the appropriate schedule for ascertainment. The interpretation of federal and state law and regulations we provide herein offer both Issuing Authorities and cable operators direction on the most prudent manner in which to proceed so that each party's rights and interests are protected. Our recommended approach to licensing will not further limit an Issuing Authority's review of a

license proposal, but instead will strengthen the Issuing Authority's position so that it may appropriately deny or grant the renewal license.

As we noted at the outset, we have traditionally executed our supervisory role conservatively. It is clear we must strengthen our efforts. Our municipal liaison will continue to meet with municipalities and explain applicable law and regulations, as well as the clarifications provided in this Order. We will not only continue to issue periodic reminder letters to municipalities, but will also randomly require status reports from both parties. Of course, we will not interfere with on-going, timely negotiations. Rather, our efforts will be designed to ensure that parties stay on the appropriate procedural course to ensure a timely resolution of the process.

III. THE LICENSE APPLICATION: THE REVISED FORM

Based on comments received in response to the NOI, the Cable Division drafted a License Application incorporating those suggestions that we determined appropriately balanced the Issuing Authority's need for information with the regulatory burden of compliance placed on the cable operator. RFC at 3, 5. After reviewing the proposed License Application, both municipalities and cable operators suggested that further modification of the License Application was warranted. We adopt revisions to our proposal based on these comments.

A. General License Information

1. Term of License

The License Application includes a requirement that the cable operator indicate the number of years for which an initial or renewal license is requested. License Application at Question 4. Municipalities sought to expand the question to require the cable operator to explain in detail the rationale for requesting a specific number of years and to provide explicit factual and financial documentation in support (CMT-14, at 4). Cable operators specifically objected to inclusion of such information and asserted that there was no need to justify a proposed term that fell within the statutory period provided under Massachusetts law (CMT-31, at 13; CMT-32, at 5). Cable operators further noted that the franchise term has a direct bearing on the recoupment of capital costs, and that ultimately the term of the license is more appropriately a subject of negotiation (CMT-31, at 13; CMT-32, at 5-6).

As an initial matter, we reasonably presume that all cable operators will request an initial term of 15 years or a license renewal term of ten years. We base our presumption on the fact that such terms are the statutory maximum (G.L. c. 166A, § 3(d), 13), and allow for the most tempered recovery of capital investment, which benefits subscribers by maintaining lower rates (see CMT-31, at 13; CMT-32, at 5-6). In fact, cable operators intimated that in all instances, a ten-year renewal license will be requested (CMT-31, at 13; CMT-32, at 5-6).

Therefore, the real issue is whether a cable operator should be required to provide financial documentation to support this request. As much of the financial documentation that would support a proposed license term would relate to the amount of investment in a particular community, a cable operator may reasonably seek to prevent this information from public disclosure. It is also reasonable, however, that this information be provided where necessary on request since the license term may be a strong point of negotiation for the Issuing Authority. Therefore, we will not require as a matter of course that an applicant submit documentation in support of the proposed license term, but we reiterate that a cable operator may be required to provide additional, relevant information concerning the proposed license term.

2. License Compliance

In the RFC, we noted that at the advent of cable licensing, Issuing Authorities needed to determine whether the applicant had successfully built and maintained a cable system in any other community. RFC at 12. We noted in today's environment, such information is no longer particularly useful. Id. As an alternative, we suggested it may be more beneficial to solicit information as to an applicant's compliance record in other jurisdictions, and as such we included a proposed question in our draft License Application. Id.; Proposed License Application at Question 7. Municipalities did not comment on the benefit of such information and instead asked that additional information be included as to whether the applicant is in compliance with the terms of the current license in that community (CMT-14, at 4). Cable operators generally asserted that in the context of license renewals where the parties have the benefit of actual license compliance experience, such information is of little value (CMT-20, at 5-7; CMT-22, at 6). One cable operator specifically argued that, if included, any legal proceedings reported in the License Application be limited to those arising in Massachusetts (CMT-22, at 6).

The Issuing Authority is responsible for ensuring that a cable operator comply with all license requirements, and it is incumbent upon it to identify areas of non-compliance throughout the term of the license. Hence, the Issuing Authority should be aware, or will become aware during ascertainment, of any on-going compliance issues. It is unreasonable to require a cable operator to affirmatively inform a community that it is, in the Issuing Authority's view, in noncompliance.

Nonetheless, cable operators provide service on a nationwide basis, and it is possible that company trends or policy changes first become manifest in other franchise areas. Therefore, we determine that disclosure of legitimate findings of breach or final denials of license renewals is informative and could be invaluable to the licensing process. For example, a municipality might discover that a cable operator was recently involved in a specific type of breach and thus, in negotiating the license, the municipality would ensure that the appropriate performance bonds related to that issue were included. In the License Application, we require an applicant to disclose whether it has been a party to any fully adjudicated license-related legal

action. License Application at Question 7. The term “fully adjudicated proceeding” denotes one that has been finally decided in a judicial or administrative proceeding. We specifically state, however, that information on an applicant's legal proceedings in another jurisdiction cannot serve as a community's basis for a license denial. If an Issuing Authority were to deny a license renewal based on a cable operator's failure to comply with license terms, the Issuing Authority must refer to its own actual license compliance experience under the existing contract. See 47 U.S.C. § 546(c)(1)(A).

B. Rates and Services

1. Broadcast and Cable Service Offerings

In our proposed License Application, we included a requirement for renewal licenses that the applicant provide, as an attachment, current channel line-ups for all service tiers. Proposed License Application at Question 12. Charter suggested that we delete this requirement. Instead, Charter suggested a requirement that the applicant state whether its proposed offerings will differ from those currently offered (CMT-21, at 10).

Charter's proposal closely parallels our consumer protections concerning notice of programming services. Our regulations require that a notice of a substantial change in the number or type of programming service list the old and new programming services provided. 207 C.M.R. § 10.02(2). The onus is on the cable operator to compare and analyze the two offerings and present a comprehensive explanation. Charter's proposal similarly places the burden on the cable operator to analyze the difference, if any, in the proposed and current offerings. Compliance with Charter's proposed requirement will afford Issuing Authorities far greater assistance than receiving copies of the current channel line-up card, particularly since the Issuing Authority will likely receive two or perhaps three copies of the current channel line-up during the three-year renewal period pursuant to 207 C.M.R. § 10.02(6). While an applicant may continue to attach a current channel line-up for all tiers, we determine that the applicant must provide a statement of whether the proposed service offerings differ from the current offerings and, if so, how they so differ. License Application at Question 12.

2. Local Programming Services

Municipal commenters argued for greater disclosure as to services related to public, educational, and governmental access channels (“PEG”) and local origination. Some municipalities sought specific information about the amount and type of funding for local access channels and proposed sites for remote origination (CMT-17, at 1; CMT-18, at 2-4; CMT-19, at 1). Municipalities also asserted that cable operators should be required to state whether the access channel is run by an access corporation, the number of access channels currently provided, and any on-going signal quality issues (CMT-18, at 2-4; CMT-19, at 1).

Cable operators argued that all questions related to local origination should be deleted from the License Application. Cable operators generally agreed that information as to PEG channels may be relevant but argued that it should be limited in scope. For example, Charter contended that all questions related to cost information should be deleted, and that Issuing Authorities that need such information should ask targeted questions of the cable operator (CMT-21, at 12; CMT-31, at 10). Adelphia noted that the bulk of the additional information sought by municipalities related to issues that the Issuing Authority should have gathered during ascertainment (CMT-30, at 9). Comcast asserted that while under federal law Issuing Authorities may require assurances that the cable operator will provide adequate PEG channel capability, facilities, or financial support, Issuing Authorities may not require the cable operator to provide the actual production (CMT-22, at 7-8). Comcast specifically contended that the provision of local origination programming is not a requirement under federal or state law, and as such it is unnecessary to include reference to such services in the License Application (CMT-21, at 11; CMT-32, at 7).

As stated in the RFC, an Issuing Authority may consider whether the applicant's proposal related to PEG access channel capability, facilities, and financial support is adequate. RFC at 11, citing 47 U.S.C. § 541(a)(4). In addition, 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 considering the appropriateness of including questions as to PEG access and local origination, we find that nothing in the comments changes our view as stated in the RFC. That is, a community has the right to understand the nature and extent of the community-based services that are proposed, particularly if there is to be a change from what the cable operator currently provides. RFC at 11-12. However, much of the additional information sought by municipalities as to PEG channels either should be already known by the municipality or may be reasonably discovered through ascertainment. For example, an Issuing Authority should not need to be informed whether a municipally-mandated access corporation has been formed in its community. We find that the area where greater disclosure is warranted concerns the Company's resources available to provide PEG access. We have typically required applicants to disclose general revenues, but suggest that disclosure of revenue for the specific service area will better assist municipalities. For example, communities that negotiate a franchise fee based on a percentage of gross revenue will be better prepared to calculate the potential amount of support for PEG access. Therefore, we are retaining questions as to PEG access and local origination. License Application at Questions 14, 15.¹² We have modified the question related to PEG access to require an applicant to identify the financial support proposed. License Application at Question 15. In addition, we have revised a question in the financial section to address the issue of local revenues. License Application at Question 28f.

¹² We make no finding with regard to whether a cable operator must provide local origination programming.

3. Institutional Networks

Municipalities suggested that an additional question concerning proposed Institutional Network (“I-Net”) capabilities and support be added to the License Application (CMT-1, at 2; CMT-18, at 4). An Issuing Authority may establish requirements for facilities and equipment in requests for proposals. 47 U.S.C. § 544(b). These requirements must be related to the establishment or operation of a cable system, such as system configuration and capacity, including I-Nets. H.R.Rep. No. 98-934, ¶ 3.04 note 1, at 68. Although construction and maintenance of an I-Net in a particular community is not mandated, many current licenses do indeed contain such a requirement. The burden on the cable operator to provide this information is minimal. Given the value to an Issuing Authority of including a question on I-Nets as measured against the burden on the cable operator in responding to such a question, we will require an applicant to state its intention with regard to constructing and/or maintaining an I-Net. License Application at Question 16.

C. Services Outside of Issuing Authority's Control

Several municipalities suggested including questions that inquire as to what non-cable related services will be offered by the applicant (CMT-2, at 3-4; CMT-3, at 1). In response to the NOI, the Town of Lancaster, in particular, articulated the need to include a question on the License Application that elicits information regarding “ancillary services” that will be offered over the cable system because it will allow the municipality to know “what to expect and can easily explain it to the community” (CMT-2, at 3-4). Lancaster acknowledged that federal law precludes telecommunication and cable modem services from regulation through cable license negotiations, but emphasized that such issues should not be completely ignored (CMT-2, at 4). Some cable operators suggested that inclusion of this type of information is inappropriate since Issuing Authorities are preempted by federal law of having any control over these services (CMT-10, at 9; CMT-11, at 3; CMT-20, at 7-9; CMT-21, at 12-14).

At present, these areas are beyond regulation by the Issuing Authority, even by negotiation in cable licensing. For example, federal law specifically prohibits an Issuing Authority from making any requirements relative to telecommunication services. See generally 47 U.S.C. §§ 253, 541, 544. However, since these may be new services, community members may direct numerous questions to the Issuing Authority. As stated in the RFC, the Issuing Authority needs to have the ability to respond appropriately to community concerns. RFC at 7. Thus, while Issuing Authority jurisdiction is limited to cable services, we determine it is reasonable at this time to include a question related to non-cable related services. License Application at Question 17. We acknowledge the concern voiced by many cable operators that inclusion of this information may lead an Issuing Authority to improperly conclude that it may negotiate these issues, or worse, deny a license based on disputes regarding these services. Thus, we include the clearly-worded notice that the responses are for

informational purposes only. We will continue to monitor the use of the information and will revisit its inclusion in the License Application if it should become necessary.

D. Technical Information

1. System Details

In the proposed License Application, we included a requirement that the cable operator provide a strand or street map that contains non-proprietary information. Proposed License Application at Question 23. We sought to address concerns expressed by cable operators that releasing specific technical information could pose a potential security risk as well as be competitively harmful. See RFC at 9. In response to the RFC, municipal commenters asked that additional detailed technical information be included on the License Application (CMT-13, at 1-2; CMT-26, at 2). For example, one commenter suggested that the system map include “all trunks, nodes, and feeder lines” as well as allocation of bandwidth and homes per node (CMT-13, at 1). Cable operators indicated a resistance to full disclosure of technical description of a system within the License Application. Specifically, cable operators posited that such information is proprietary in nature or could compromise the security of the system (CMT-20, at 9-11; CMT-22, at 8). Moreover, Comcast argued that pursuant to federal law, a cable operator has sole discretion to select the equipment and transmission technology it uses to provide service and that Issuing Authorities may not prohibit, condition or restrict a cable system's use of any type of subscriber equipment or transmission technology (CMT-8, at 4; see also CMT-11, at 3, citing 47 U.S.C. § 544).

The municipal comments we received in response to both the NOI and the RFC evidence a range of expertise with respect to cable issues, particularly those of a technical nature. Some communities, like Amherst, have a comprehensive understanding of the technical features of a cable system (see CMT-13). Other communities may be overwhelmed by the technical terms and lose enthusiasm, or worse, confidence in their ability to negotiate a license. We have stated in this Order that the License Application be appropriate for general use and provide a uniform base of information. Requiring the presentation of detailed technical aspects of a cable system would not promote general use. Communities such as Amherst may solicit technical information it requires during the renewal process. As we have previously noted, an Issuing Authority may request a detailed presentation, provided it is willing to enter into a non-disclosure agreement with the cable operator if so requested. RFC at 9.

Massachusetts General Laws Chapter 166A requires an applicant to identify “as completely as possible” the equipment employed by the applicant, as well as the routes of the wires and cables and the area or areas to be served. G.L.c. 166A, § 4. We find that a strand map identifying the presence and location of the cable system within a specific community is sufficient to satisfy the statutory requirement. We are not persuaded that a more detailed map providing information as to the bandwidth allocation or maximum homes per node is necessary

as a matter of course, particularly given the legitimate security and competitive concerns raised by the cable operators. Therefore, we require an applicant to provide a technical description of the cable system, including a strand or street map showing the extent of cable plant in the municipality. License Application at Question 23.

2. Emergency Alert System

Several commenters raised the issue of incorporating questions in the License Application regarding the Emergency Alert System (“EAS”) compliance (CMT-18, at 4; CMT-19, at 1). The FCC implemented requirements in 1994 to ensure that cable television viewers receive the same level of emergency information as that provided to broadcast viewers. See In the Matter of Amendment of Part 73, Subpart G of the Commission's Rules Regarding the Emergency Broadcast System, 10 FCCR 1786 (1994), rule modification granted 12 FCCR 15503 (1997). We consider it reasonable for a local official to request proof of a cable operator's compliance with EAS rules. As such, a question regarding compliance with the federal and state rules that govern the EAS has been added to the License Application. License Application at Question 26.

D. Ownership and Financial Information

In the RFC, we proposed removing the requirement that an established cable operator provide pro formas. RFC at 10-11. Instead, we noted that financial information is generally available in an annual report or audited financial statement and that such information is more beneficial than simplistic forward-looking financial projections. Id. Some municipal commenters continued to assert, without specification, that the pro formas are useful to determine levels of support for PEG access and ownership of other entities (CMT-15, at 1; CMT-16, at 1). Cable operators contended that while pro formas may be relevant in considering the financial viability of a company with no operating history, they are not relevant for well-established companies (CMT-31, at 9; see also CMT-7, at 6-7; CMT-8, at 7; CMT-9, at 2; CMT-10, at 8; CMT-11, at 5).

With respect to the use of pro formas in determining levels of support for PEG access, we offer a more direct solution first, by requiring that the cable operator state the amount and type of financial support it will provide, and second, by revising the financial section to solicit the local revenue as opposed to company revenue. License Application at Questions 15, 27, 28f. In addition, as noted in the RFC, the annual report and financial statement offer additional information to municipalities with respect to ownership interests in other ventures. RFC at 10-11. Therefore, we find that an annual report or audited financial statement provides appropriate financial information. License Application at Question 27. As stated in the RFC, we recognize that pro formas may be useful for newly-formed entities. RFC at 11. As such, we are retaining the pro formas for use by individuals and newly-formed entities that do not

have an annual report or audited financial statement. License Application at Question 27; Supplement to License Application.

IV. CONCLUSION AND ORDER

Upon due notice and consideration, the Cable Division hereby prescribes the License Application to be used by all cable operators seeking initial or renewal licenses in the Commonwealth of Massachusetts. The Cable Division orders that the License Application, known as the Form 100, become effective January 1, 2005. The License Application may be downloaded as a Microsoft Word document from the Cable Division's website.

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

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

Issued: November 30, 2004

APPENDIX

Initial Comments Received on Notice of Inquiry

<u>Number</u>	<u>Commenter</u>	<u>Date Submitted</u>
CMT-1	Issuing Authorities for the Towns of Canton and Winchester	11/10/03
CMT-2	Issuing Authority and Cable TV Advisory Committee for the Town of Lancaster	11/10/03
CMT-3	Communications Advisory Committee for the Town of Lexington	11/10/03
CMT-4	Issuing Authority for the City of Lowell	9/5/03
CMT-5	Cable Advisory Committee for the Town of North Brookfield	9/16/03
CMT-6	Adelphia Communications Corporation	11/10/03
CMT-7	Charter Communications Entertainment I, LLC (also submitted draft License Application)	11/10/03
CMT-8	Comcast Cable Communications, Inc. (also submitted draft License Application)	11/10/03
CMT-9	RCN	11/10/03

Reply Comments Received on Notice of Inquiry

<u>Number</u>	<u>Commenter</u>	<u>Date Submitted</u>
CMT-10	Charter Communications Entertainment I, LLC (also submitted draft License Application)	12/10/03
CMT-11	Comcast Cable Communications, Inc.	12/10/03

Initial Comments Received on Notice of Proposed License Application and Request for Further Comment

<u>Number</u>	<u>Commenter</u>	<u>Date Submitted</u>
CMT-12	Town Manager for the Town of Acton	6/25/04
CMT-13	Cable Advisory Committee for the Town of Amherst	6/25/04
CMT-14	Issuing Authorities for the Towns of Brookline, Canton, and Milton, and the City of Newton	6/25/04
CMT-15	Executive Administrator for the Town of Dartmouth	6/23/04
CMT-16	Communications Advisory Committee for the Town of Lexington	6/25/04
CMT-17	Cable Advisory Committee for the Town of Randolph	6/25/04
CMT-18	Boston Community Access and Programming Foundation, Inc., Cambridge Community Television, Inc., Dartmouth Community Television, Falmouth Community Television, Inc., Malden Community Access Television, Inc., the Massachusetts Chapter of the Alliance for Community Media, Newton Communications Access Center, Inc., Pittsfield Community Television, Inc., Plymouth Area Community Television, Inc., Winchester Community Access & Media, Inc., Worcester Community Cable Access, Inc., and Issuing Authorities for the Towns of Andover, Arlington, Bellingham, Dartmouth, Grafton, Northborough, and Winchester, and the City of Taunton	6/25/04
CMT-19	Massachusetts Municipal Association	6/30/04
CMT-20	Adelphia Communications Corporation	6/25/04
CMT-21	Charter Communications Entertainment I, LLC (also submitted draft License Application)	6/25/04
CMT-22	Comcast Cable Communications, Inc.	6/25/04

Reply Comments Received on Notice of Proposed License Application and Request for Further Comment

<u>Number</u>	<u>Commenter</u>	<u>Date Submitted</u>
CMT-23	U.S. Congressman Edward J. Markey	7/16/04
CMT-24	State Senator Pamela P. Resor	7/16/04
CMT-25	State Representative Paul C. Casey	7/16/04
CMT-26	Issuing Authority for the City of Boston	7/16/04
CMT-27	Issuing Authority for the City of Lowell	7/16/04
CMT-28	Boston Community Access and Programming Foundation, Inc., Brockton Community Cable Television, Inc., Cambridge Community Television, Inc., Cape Cod Community Television, Inc., Carver Community Access Television, Inc., Dartmouth Community Television, Falmouth Community Television, Inc., Malden Community Access Television, Inc., the Massachusetts Chapter of the Alliance for Community Media, Newton Communications Access Center, Inc., Pittsfield Community Television, Inc., Plymouth Area Community Television, Inc., Winchester Community Access & Media, Inc., and Worcester Community Cable Access, Inc., and Issuing Authorities for the Towns of Andover, Arlington, Bellingham, Bourne, Brookline, Canton, Dartmouth, Grafton, Marblehead, Milton, Northborough, and Winchester, and the Cities of Newton and Taunton	7/16/04
CMT-29	William H. Solomon, Esq.	7/16/04
CMT-30	Adelphia Communications Corporation	7/16/04
CMT-31	Charter Communications Entertainment I, LLC (also submitted draft License Application)	7/16/04
CMT-32	Comcast Cable Communications, Inc.	7/16/04