

**COMCAST'S RESPONSE TO THE  
REQUEST FOR A CABLE TELEVISION  
RENEWAL PROPOSAL**

**TOWN OF SHELBURNE,  
MASSACHUSETTS**

**May 22, 2008**

Towns of Buckland and Shelburne, Massachusetts

Cable License Renewal Ascertainment Findings, Recommendations and Report

I. Introduction and Background

This document reflects the ascertainment of the cable-related needs of the Towns of Buckland and Shelburne in connection with pending Comcast Corporation license renewal proceedings. The Cable Franchise Policy and Communications Act of 1984 (the Cable Act) section on cable license renewal, 47 U.S.C. 546, broadly authorizes municipal franchising authorities, such as Boards of Selectmen, to ascertain community cable-related needs. The renewal section of the Cable Act expressly states that the municipal franchising authority can “(1) *identify*[] the future cable-related community *needs and interests*; and (2) *review*[] the performance of the cable operator under the franchise during the then current franchise term.” 47 U.S.C. 546(a)(1). Because the renewal law broadly authorizes municipal ascertainment of cable service needs, and the law contemplates renewal proceedings based on such ascertainment, municipal licensing authorities therefore have broad authority to reasonably identify which needs are priorities in their own communities. Moreover, with respect to findings of need and of facts regarding what is to be in a renewal license, the courts recognize that deference is to be afforded the findings of municipal franchising authorities. See Union CATV v. City of Sturgis, 107 F. 3rd 434 (1999).

We find, based on extensive testimony at extraordinary public ascertainment hearings, and based on review of more than forty ascertainment exhibits, there is a compelling and great need for service area expansion and cable system build-out in the Towns of Buckland and Shelburne, and the foregoing is the top cable-related need of the Towns of Buckland and Shelburne, for reasons explained and detailed below. Our ascertainment proceedings have also identified other significant cable-related needs, as summarized below.

RESPONSE: Comcast of Massachusetts/Virginia, Inc. (hereinafter “Comcast” or “Licensee”) is pleased to submit to the Board of Selectmen (the “Issuing Authority”) for the Towns of Buckland and Shelburne its responses to the Towns’ Request For Proposal (“RFP”), dated March 25, 2008 and received by Comcast on April 7, 2008. Please note, the Responses are addressed to the requests only and shall not be considered the Comcast’s renewal proposal. Comcast is confident that the enclosed, formal Cable Television Renewal License Proposal (hereinafter “Renewal Proposal”) submitted by Comcast presents commitments sufficient to meet the demonstrated cable related needs of Buckland and Shelburne, taking into account the costs thereof.

Comcast has enjoyed a close and mutually rewarding relationship with the citizens and governments of the Towns over the years. We have grown to become the nation's largest cable operator, serving more than 22 Million cable households nationwide; and have become the leading cable provider in the region, offering a variety of services and

programming to more than 2 Million customers in New England. We attribute much of our success to our partnerships with respective Issuing Authorities. Comcast is confident that it is well suited to serve the many cultural, entertainment, and educational needs of Buckland and Shelburne.

Comcast has provided herein responses to all requests for information that are pertinent to the renewal process only. Comcast has repeated the Towns' requests and statements in bold font while providing its responses in normal font. Should the Towns believe that Comcast's response to any question is not complete, Comcast requests clarification in writing from the Towns as to the basis for such a determination.

While this RFP resumes the formal renewal process, Comcast commenced renewal proceedings under 47 USC Section 546 in a letter to each Town on January 10, 2006. Should the Towns wish to continue to proceed informally while also maintaining the formal renewal process, Comcast will work with the Towns to reach mutually agreeable renewal license terms that meet the cable-related needs and interests of the residents of Buckland and Shelburne. At this time, Comcast cannot commit to individual parts of any renewal license as it views the entire agreement as a renewal package. Therefore, drafting of a final informal agreement should occur during the review period described herein. Further, Comcast has internal processes it must follow before a final commitment can be made to the Towns, as we are sure the Towns have similar procedures that Comcast will respect.

Comcast's Renewal Proposal is based on ascertainment in accordance with Section 626 of the Cable Act, which Comcast has deemed to be "reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." Comcast informs the Town that its Renewal Proposal shall be considered as a "package" and Comcast will not under any informal negotiations, agree on specific sections of a renewal license without considering all aspects of the renewal license.

**Summary of Priority Needs:**

- **The Cable Advisory Boards and the Boards of Selectmen found that the most important cable-related need in the Towns of Buckland and Shelburne is an expansion of the cable system to include all residential and commercial locations in the towns, or in accordance with Comcast's Norwich, Vermont line extension model set forth below at P. 13 and Exhibit 30. Based on substantial evidence and reasonable financial analysis, we find that Comcast can expand the Buckland-Shelburne cable systems into unserved areas while maintaining a reasonable return on investment, and, therefore, we find that a renewal license can require such build-out and be reasonable in light of the cost thereof.**

- Further to service area and line extension, the Towns find it reasonable to require that Licensee count and give some weight to the presence of potential commercial and “long drop” \* subscribers, and give extra weight to subscribers with multiple accounts, when counting buildings or potential subscribers in the application of line extension policy. We find that Comcast’s street density build-out proposal(s) must reflect the economic reality of the presence of potential commercial subscribers on streets with commercial buildings, and failure to include commercial subscribers in the application of line extension policy would be plainly arbitrary and unreasonable. Likewise, Comcast’s renewal proposal should reflect that “long drop” subscribers that indicate willingness to subscribe and pay necessary non-standard installation costs should be included in line extension policies. Similarly, Comcast’s renewal proposal should reflect that subscribers with multiple accounts should be given extra weight in the application of Comcast line extension policy. Failure to rationally and equitably count such subscribers and additional accounts in application of line extension policy would be tantamount to ignoring actual subscriber accounts when determining the number of accounts, and this would be unfair and not responsive to the Towns’ needs. \*(A “long drop” subscriber is a subscriber with a residence that is a greater distance from the cable system than the distance of a so-called standard drop.)
- The Cable Advisory Boards and the Boards of Selectmen further found that the next most important need is for, at a minimum, level funding of the existing Public, Educational and Government (PEG) Access operating budget (four percent of gross annual revenues) to allow continued distribution of important local, community programming, including local government and educational information, and to provide a mechanism for delivery of critical information by local first responders (police, fire and other public safety officers) in the event of an emergency. The access designee for the Towns is in dire need of replacing certain obsolete equipment, and requires at least level funding for its annual operating budget, as discussed further below.
- The Towns of Buckland and Shelburne have numerous significant needs with respect to customer service, license administration and enforcement, cable system technology and the many customary terms and conditions negotiated in a cable franchise. Based on our extensive ascertainment work, we find therefore that a renewal franchise, if any, must include comprehensive customer service, consumer protection and license enforcement terms and conditions, and continuation of at least the terms and conditions in the existing franchises issued to Comcast’s predecessor, attached hereto and incorporated herein as specifications for a future renewal license, and for use as part of the Request for Proposals of the Towns under the formal licensing procedures as indicated herein. Licensee must generally provide Buckland and Shelburne with renewal franchises that provide at least as much regarding such terms and conditions as the existing franchises, and the attached existing licenses are a proven template for such terms and conditions, subject to modification to address the needs outlined in this Report.

- We therefore authorize issuance of a formal Request for Proposal to Comcast, as part of the formal licensing process, with the findings in the Report as summarized above and set forth below as renewal specifications, and with the existing Licenses attached as further specifications for a renewal license, as modified by the additional items set forth in this Report concerning any matter wherein this Report identifies additional needs of the Towns. Further instructions on Request for Proposal procedures are set forth below.

## II. Discussion and Analysis of the Need for Infrastructure Expansion

The findings of the Towns are supported by extensive testimony at public ascertainment hearings, multiple surveys of town residents, letters from the public, telephone calls, and email messages sent to Cable Advisory Board and Select Board members, town administrators, and Comcast Corporation. In addition, the Cable Boards and Selectmen reviewed and entered more than forty documentary exhibits into the ascertainment record. As discussed below, these exhibits provide substantial further evidence of the importance and reasonableness of Buckland and Shelburne identifying service area expansion as a compelling license renewal cable-related need. *See* List of Ascertainment Exhibits, attached.

### Need for Service Area Expansion

A public ascertainment hearing was held on February 27, 2008. The hearing was attended by more than 160 Shelburne and Buckland residents, an exceptional showing on a night with other important competing events. More than 50 speakers presented testimony that was compelling and extraordinary in its unanimity. *See* Transcript of February 27, 2008 Ascertainment Public Hearing, Exhibit 41, incorporated herein by reference; and *see* Summary of Public Hearing, Exhibit 31. Many speakers described the need for expanded cable service, including substantial testimony focusing on how regular cable television video services were essential for providing needed access to local educational programming, municipal meeting coverage, local news, first responder emergency information, other important community information, PBS, other cable programs, and news and weather programming. *See* Transcript at Page 20 (Margaret Ray Davis: "There was a wonderful program on Currier & Ives . . . a three-part series. It was incredible the other night, and a lot of you didn't have a chance to see it because you didn't have cable. . . . Cable is necessary. [T]he education part of it is the essential part of it."); Transcript at Page 22 (Gina Carrington: "I think we need to have access to local events and news. . . . Also, the communication during an emergency. We may not always be able to gather for some sort of a training or something, how to handle an event such as a flu epidemic . . .so you need that communication."); Transcript at Page 28 (John Payne: "I can't get PBS. I can't get the local stations, all because there's a tree in the way. I can't find out what's going on at the schools. . . . We need it."); Transcript at Page 51 (Arlene Patenaude: "PBS should be a given for these people who need to have something in their life. This kind of weather brings on depression. . . . [W]e're patient people, but we're becoming impatient for just the minimum

necessary cable. . . ."); and Transcript at 72 (John Strong: "Educationally, the programming on television, let's be serious. There is some good stuff. Our kids deserve it. You're making second class citizens out of business owners and the kids and the public in this community by depriving us of reasonable access."). Several residents currently using satellite dish receivers for television programming expressed dissatisfaction with service quality, reception and lack of local programming options. See Transcript at Page 62 (Larry Flacus: "[E]ven though we do get some off area news, such as NBC and so forth, a lot of the programming today is o[n] Cable. So on the news they say watch the debates tonight, on MSNBC. We, of course, can't receive those, so once again we're being disenfranchised from a lot of national news because we can't pick it up."); Transcript at Page 35 (Anisa Newman: "Even though Direct TV gives us the weather channel, we don't have the local on 8. I have no idea what's going on. No local channels.") Some speakers described a need for access to the PEG system for emergency and public event information. See Transcript at Page 57-58 (John Taylor: "[T]here's a lot of people in Shelburne and BUckland that can't even watch this (Hearing) on the television, nor can they get emergency information, nor can they get educational, nor watch Select Board meetings or anything. So that's not community access television, if you don't provide the community access."). Business owners reported that lack of cable television service puts them at a competitive disadvantage. See Transcript at Page 62 (Larry Flacus: "[W]e're at a competitive disadvantage as a bed and breakfast. There was a survey that was done . . . by Best Western . . . and fifty-two percent of respondents said that complimentary High Speed Internet access is the most important amenity when choosing a place to stay. And then Internet access, regardless of use, was second . . . . So, in essence, I think that adds up to sixty-eight percent of travelers who choose a location because of access.") Local tourism is a growing part of the Buckland Shelburne economies, and representatives from that industry testified that absence of cable service results in lost business for the local economy. See Transcript at Page 26 (Art Belanger: "There's five businesses out there. We are screaming for something, TV. We want it. There is the Oxbow Motel. He's got twenty-five rooms. He's got people leaving, no TV. We're not staying here. Business is leaving. We need to bring business to this area, otherwise we're going to dry up and things are going to fall apart, disrepair."). Many people testified about the need for ancillary services associated with cable television, namely high-speed internet and telephone service. See Transcript at Page 30 (Alex Gogel: "The DOE recently launched something called Mass ONE, which is Massachusetts Online Network for Education. It's a way for students to hand in papers, so I can electronically edit and hand back to them. It has vast resources all in one place for them to research. And all of this is based on the assumption . . . that every student, every household has High Speed Internet. . . . [I]t is a fundamental and extreme disadvantage to put every child in school and to not allow them that assumed access. To not give them even the beginning of a level playing field is saying you will not receive as good an education.")

An initial ascertainment hearing was held early in the process, on May 31, 2006. All who spoke stated a need for service area expansion and line extension. The Cable Advisory Boards and the Boards of Selectmen find that there has been substantial evidence of a strong need for service area expansion throughout the ascertainment process, and received comments regarding this need from residents seeking service in their area. The Cable Advisory Boards developed an on-line and hard-copy survey which resulted in 81 responses. See Exhibit 5.

**Approximately 2/3 (58) of responders live in areas with no cable service available. Fewer than 10% (8) of responders indicated that they were not interested in cable television service. The survey also asked for interest in other services commonly available along with cable television - broadband internet and telephone service. Over 90% (74) of responders indicated interest in some combination of such 'bundled' services.**

**The overwhelming sentiment expressed at the hearings was that cable service in all its forms is no longer a luxury, but is now an absolute necessity for the long-term viability of our towns, and that no resident should be deprived of such services.**

RESPONSE: Comcast has reviewed the transcripts of the public ascertainment hearings held on May 31, 2006 and February 27, 2008. During the first hearing, absent the members of the Joint Cable Advisory Committee, there were no members of the public present. The testimony at the second public hearing mainly covered the desire of residents in unserved areas of the Towns to receive High Speed internet service. Approximately fifty-three (53) individuals testified. The individuals that testified were primarily from Shelburne and also included individuals from neighboring communities, such as Conway, Colrain and Charlemont, which are not part of Comcast's service area. Most of these individuals testified regarding the lack of high speed internet in their area. Some individuals also testified secondarily regarding the lack of access to local Town specific information, such as the type of programming that would be provided on a Town PEG Access Channel. Those testifying at the hearing were not asked any questions nor did any individuals testify regarding their willingness to pay existing or increased franchise related and/or renewal license related costs associated with "future cable related needs and interests of the community" as required by Section 626 of the Cable Act.

It appears that contrary to Section 626 of the Cable Act, there was little, if any, consideration as to the cost of meeting the Towns' "future cable-related community needs and interests, taking into account the cost of meeting such needs and interests." We cannot find any general or specific responses or evidence which clearly demonstrates willingness by the communities, more specifically the cable customers of Buckland and Shelburne to financially support the renewal initiatives proposed by the Towns. As you may be aware, it is the cable customer that ultimately pays, as part of their cable service, for all license mandated costs in accordance with applicable law.

With regard to the Towns' petitions, it is unclear whether petitioners are responding to questions regarding the availability of cable television, high speed internet or something else. In addition, with regard to petitioners that appear to be identified as Comcast customers, it is not clear whether those petitioners agree to an increase in their monthly cable bill to support the costly initiatives sought by the Towns. There is also no indication as to the number of individuals who were asked, but refused to sign the Petition. Accordingly, it is impossible to determine if those individuals that were asked to sign the petition and refused widely outweighs the number of persons who may have signed in support of universal cable television service.

With respect to the reasonableness of the Towns finding need for service area build-out, we also note that the legislative history of the Cable Act, recent formal policy statements by Comcast, as well as numerous policy statements of Governor Deval Patrick and others, all support the Towns finding that there is a reasonable basis for service area expansion requirements, as outlined immediately below.

RESPONSE: With no further explanation, specificity or questions, it is unclear to Comcast how the foregoing policy statements pertain to the Towns' cable related community needs and interests.

Specifically, the legislative history of the Cable Act makes explicit that "when the terms of the franchise are subject to renegotiation, the city will commonly require an "upgrade" of the existing system as a condition of the new franchise. This will require additional investment on the part of the cable operator." Report of the Committee on Energy and Commerce, Cable Franchise Policy and Communications Act of 1984, at 25. Inasmuch as Congress has recognized that it is reasonable to require investment for mere upgrading, requiring additional investment to provide service to those who receive no service whatsoever is self-evidently of even higher public value and need. And Comcast itself has made this point emphatically in recent legal filings before the Federal Communications Commission. See Comments of Comcast Corporation, Federal Communications Commission MB Docket No. 05-311, at 25 (Feb. 13, 2006). "[I]t is astonishing that they would demand 'relief' from build-out and antidiscrimination requirements in light of an Administration's firmly-stated goal that such broadband-based services should be available to all consumers, not just the well-to-do: 'We ought to have a *universal, affordable* access for broadband technology by the year 2007'; 'I believe there ought to be broadband in *every* community, and available to *every* house by 2007'; and [t]he objective of this administration is to make sure that *every* American has access by the year 2007.'" Exhibit 26 (Comcast comment followed by Comcast quoting Administration source.). The foregoing Comcast comments were made to oppose telephone company comments against service area requirements for new licensees, which was under consideration by the Federal Communications Commission. Plainly, if it is "astonishing" (Comcast's word) that new cable competitors should seek relief from local licensing service area requirements, would it not be even more astonishing to give such relief to an incumbent cable operator that already enjoys far greater market share than new competitors?

RESPONSE: The RFP makes reference to Exhibit 26, which is a cover page for comments of Comcast Corporation filed in FCC Docket No. 05-311. In addition, the Towns include a Memorandum regarding the referenced docket, which appears to analyze the filing and makes reference and conclusions based on certain portions of the filing. It is unclear to Comcast how the referenced docket regarding the Implementation of §621 of the Cable Act which is in response to the FCC's request for comments as to whether build out requirements were creating unreasonable barriers to entry for ILEC's, pertains to the "cable related community needs and interests" of Shelburne and Buckland.



The reasonableness of the Towns' finding need for service area expansion is broadly supported by numerous other statements of public policy by Massachusetts officials and others. See for example Exhibits 2 and 7, Letter of Governor Deval Patrick to Senate and House, October 18, 2007, and Testimony of Sharon E. Gillett, Commissioner, Department of Telecommunications and Cable. Governor Patrick's letter and Commissioner Gillett's testimony plainly state that connectivity is a priority need for our communities based on the fact that lack of service negatively impacts the ability of Massachusetts consumers and businesses to access information of value to their lives and businesses. We find, by analogy, that this reasoning and public interest analysis is relevant to our finding that expanded television service is a priority need of the Towns. Just as consumers and businesses are negatively impacted by the lack of information services and Internet, they are negatively impacted by the lack of regular cable channels that can provide vital information, including but not limited to local access channels, local emergency information, health-related programming, Public Broadcasting System educational channels, local news programs, entertainment, and all the basic cable services that provide public affairs programming, local information and educational content of value to Buckland and Shelburne homes and businesses. Providing service is an important local need, whether the service is regular video cable channels, or Internet service. Although there are differences between the various categories of service, we find that the absence of regular video cable service is harmful to our communities, just as the absence of high speed Internet is harmful to our communities. Both are independently important to Buckland and Shelburne. It is a cornerstone of democracy, the First Amendment, and communications law that democracy rests for its foundation on an informed citizenry. In this information age, cable service is a source of programming, information and content, and licensing requirements designed to broaden service area therefore are part of the important process of keeping our citizens informed. Keeping our citizens informed is plainly a paramount need that must be diligently pursued.

RESPONSE: RESPONSE: The towns cite to two exhibits that refer to legislation under consideration by the Massachusetts Legislature regarding the availability of high speed internet access in certain unserved areas of Massachusetts.. It is unclear to Comcast how the foregoing letter and testimony regarding House Bill No. 4311 *An Act Establishing and Funding The Massachusetts Broadband Institute* relate to the Towns' "cable-related community needs and interests." The Towns also include with the RFP several exhibits pertaining to general newspaper, website and magazine articles primarily related to high speed internet access or rural broadband. With no further explanation, specificity or questions pertaining to these newspapers, website references and magazine articles, it is unclear to Comcast how these exhibits pertain to the Towns' cable related community needs and interests. Further, Comcast does not believe that the referenced newspapers, magazines, and/or media websites qualify as ascertainment

### Financial Analysis Showing Service Area Expansion Requirements Reasonable In Light of the Cost Thereof

#### Infrastructure Expansion Funding Considerations

Throughout the process of license renewal ascertainment and negotiation, the Towns have been cognizant of the fact that common sense and the Federal Cable Act dictate that

**demands for expansion of the cable infrastructure must take the cost of service area expansion into consideration to determine ‘reasonableness’. We note for the record that the Town has requested financial information from Comcast to determine whether Comcast could further build-out the Buckland-Shelburne cable systems and maintain solid profit and return on investment, but Comcast has failed to adequately respond to every such request. See e.g., Joint Buckland Shelburne February 12, 2008 Letter to Comcast with Town Ascertainment Questions, Exhibit 3, which were not answered as of the February 27, 2008 public hearing. Comcast’s March 10, 2008 reply letter was not adequately responsive as it declined to answer most of the financial questions of the Towns, stating instead that it would provide information in the future in its Form 100 renewal application. Comcast has not been sufficiently responsive to multiple requests, both formally and informally for financial information regarding how line expansion costs would or would not impact Comcast’s ability to maintain a reasonable return on investment in Buckland and Shelburne. We therefore find that Comcast has not been adequately responsive to the renewal process needs of the Towns.**

RESPONSE: Pursuant to the Massachusetts Cable Television Division’s November 30, 2004 Form 100 Order, such proprietary financial information is not required to be filed by the cable operator. Rather, the Form 100 Application requires that cable operators include a copy of their latest Annual Report. In addition, Comcast has filed with the Towns, the necessary Forms 200, 300 and 400 as required by the Massachusetts Cable Television Division, copies of which have been provided annually to the Town and with Comcast’s correspondence dated March 10, 2008. In addition, Comcast annually provides each Town with detailed information regarding gross annual revenues and separately provided this information as an attachment to its correspondence dated March 10, 2008.

**We note for the record that Comcast’s delays in the provision of necessary ascertainment information have frustrated the Towns’ timely execution of its timetable for renewal proceedings, and the Towns accordingly reserve the right to extend renewal deadlines as needed and until such time as the Towns receive and have reasonable additional time to consider and deliberate on the requested information, or hold an additional hearing on the requested information.**

RESPONSE: Comcast has provided the Towns with the required information in accordance Massachusetts Cable Television Division’s November 30, 2004 Form 100 Order. In addition, Comcast has annually provided the Town with the necessary Forms 200, 300 and 400 as required by the Massachusetts Cable Television Division and filed again with the Towns on March 10, 2008. In addition, Comcast annually provides each Town with detailed information regarding gross annual revenues in accordance with Section 7.4 of the Franchise Agreement and separately provided this information as an attachment to its correspondence dated March 10, 2008. Much of the information requested by the Towns referred to the financial performance of services other than cable television service, and therefore such requests are beyond the scope of the cable television renewal process.

As Comcast is the only source of Buckland-Shelburne-specific cable system financial information and Comcast has not disclosed relevant requested information, the Towns have no choice but to rely, in large part, on broader industry financial data to consider the reasonableness of requiring service area expansion. In this connection we have investigated and deliberated on Comcast's own Annual and Quarterly Financial Reports for Comcast operations nationwide, and on other relevant financial information. Based on this ascertainment activity, we conclude there is substantial evidence for finding Comcast can substantially expand its Buckland and Shelburne service area with reasonable financial impact.

RESPONSE: Pursuant to the Massachusetts Cable Television Division's November 30, 2004 Form 100 Order, the information requested by the Towns regarding financial information for Comcast high speed internet revenues and Comcast Digital Voice revenue information are not required to be filed by the cable operator. Rather, the Form 100 Application requires that cable operators include a copy of their latest Annual Report, which is included with the Form 100 Application. In fact, providing that financial information for non-cable services is beyond the scope of the cable television license renewal process.

#### Line Extension Reasonableness in Light of the Costs Thereof

The Towns have been asking Comcast for line extension to streets with between seven and ten homes per mile, and in some cases streets with fewer homes. Financial analysis shows Comcast could reasonably pay itself back the cost of line extension on streets with approximately seven to ten or fewer subscribers per mile, as outlined below.

#### Streets with 10 subscribers per mile:

Industry representatives frequently state that as a rule of thumb, cable subscribers currently pay approximately \$65.00 per month for cable services (not counting cable modem/Internet or telephony services). However, the example below utilizes Comcast's own figure, \$61.00 per month (notably increased by \$4 per month from 2006), that Comcast used in its Form 10-K as part of Comcast's 2007 Annual Report. See Comcast Annual Report - Form 10-K for the Fiscal Year Ending December 31, 2007, at 24-25 (available at [www.sec.gov](http://www.sec.gov).)

On a street with 10 subscribers per mile paying \$61.00 each as a monthly cable service bill, Comcast would generate \$610.00 per month/per mile (not even counting telephone or cable modem revenue). This would pay Comcast approximately \$7,320.00 per year (\$610.00 X 12); which would yield a payback of \$73,200.00 during the term of a 10-year license, and an even higher payback over the useful life of the cable system. A \$73,200 per mile payback per license term is well in excess of the cost of constructing a typical mile of cable plant, which would cost from \$20,000.00 to \$40,000.00 per mile, according to Comcast. Of course, the return on investment and reasonableness of such a line extension is actually far greater than shown in the foregoing numbers. In reality, Comcast receives more than \$61.00 per customer, because Comcast receives significant cable modem/Internet and telephone service revenues from many of its cable customers, and telephone revenues are growing. Comcast itself has indicated they were "able to increase [their] total average monthly revenue per video subscriber (including all Cable segment revenue sources) from approximately \$82 in 2005 to approximately \$95 in 2006 and to approximately \$102 in 2007." See Comcast Annual Report, Form 10-K for the Fiscal Year

Ending December 31, 2007, at 24-25 (available on the SEC web site at [www.sec.gov](http://www.sec.gov)). Although the municipal franchising authorities cannot impose cable license conditions regarding the provision of Internet and/or telephone services, it would be arbitrary and unreasonable for municipal franchising authorities not to consider the existence of such revenues when evaluating line extensions and their reasonableness in light of the true cost thereof. If we estimate average subscriber revenues from all sources at the Comcast 2007 average total cable segment revenue per subscriber of \$102.00 per month, then Comcast would generate approximately \$1,020.00 per month from a street with 10 subscribers; which yields \$12, 240.00 per year or \$122,400.00 over a 10-year license term. This is far greater than the line extension costs for a mile of plant, and would more than offset the marginal increases in operating costs. Given the often noted longevity of fiber optic cable, Comcast could earn approximately \$244,800.00 per plant mile in cable systems with line extensions having a 20-year useful life.

Streets with 7 or fewer subscribers per mile:

Using the same analysis set forth above, we find that streets with seven or possibly fewer subscribers may be built in Buckland and Shelburne while Comcast maintains a reasonable return on investment. Here, some additional considerations are appropriate. For example, on a street with seven subscribers per mile paying \$61.00 each per month, Comcast would generate \$427.00 per month/per mile (not even counting telephone or cable modem revenue). Over 12 months, Comcast would receive \$5,124.00 per year; which would pay back Comcast \$51,240.00 (for 7 subscribers per mile) during the term of a 10-year license, or \$102,480.00 during a possible 20-year useful life of the cable, and much more in cases having a higher useful life. These paybacks are well in excess of the cost of constructing a typical mile of cable plant, which Comcast has stated to cost between \$20,000.00 to \$40,000.00 per mile. As above, the return on investment and reasonableness of such a line extension is actually far greater than shown in the foregoing numbers based on the fact that Comcast has multiple revenue streams (cable modem/Internet and telephone service revenues from many of its cable customers). Average revenue per subscriber when counting in actual other revenue streams is greater than \$61.00 per month. If we estimate average subscriber revenues from all sources at the Comcast 2007 average total cable segment revenue per subscriber of \$102.00 per month, then Comcast would generate far greater revenues (\$85,680 for 10-year; and \$171,360 over 20-year life of cable), all well above line extension costs.

However, our analysis does not stop here. Even if, for the sake of argument, we were to assume that line extension on any one street did not yield a full payback during the license term, that would not in any way mean that Comcast would not generate a reasonable return on investment for its cable system plant when taken as a whole in the Buckland and Shelburne communities. For example, if Comcast is earning more than 30% net income in Buckland and Shelburne, and lost a small amount of revenue on any given line extension, the result could be reduced return on investment, but the return on investment might still be extraordinarily high. The Towns repeatedly asked Comcast for such financial analysis but it has not been provided.

Based on all of the foregoing, and the findings of need, it is essential that Comcast provide reasonable license renewal line extension proposals.

Numerous other aspects of Comcast's Buckland-Shelburne operations also indicate reasonableness, in light of the cost thereof, of finding need for service area extension. 1) Given the gradual but consistent growth of population in the Shelburne and Buckland areas, the above numbers understate the probable revenue potential on such streets. 2) Given the fact that

Comcast did not rebuild its cable system during the existing license term, but merely implemented some system upgrades and modest line extensions, Shelburne and Buckland (like many other Comcast markets) appear to be “declining cost” operations (when compared to prior license terms during which new construction or rebuild required larger capital investment), allowing Comcast ever-increasing profitability from these systems. Indeed, Comcast appears to be investing less in rebuilds today than it did in the 1990s, providing further evidence of apparent declining capital costs in regular cable operations, creating a greater margin of reasonableness for re-investment in Buckland and Shelburne service area expansion. 3) When Comcast’s predecessors built out Buckland and Shelburne, and negotiated and defined the core local service area, cable operators only had regular television service revenues. Today, Comcast receives multiple additional revenue streams from cable modems, telephony and a myriad of new pay-per-view services. In addition, the cost of regular cable service has been dramatically raised by Comcast throughout the license period, also creating ever growing levels of revenue. This also provides reasonable basis for finding that today’s cable company total revenues from all sources justify far more service area line extension than justified during the previous license terms. 4) The Towns’ views about these matters have been discussed at length with Comcast, and the Towns have repeatedly requested financial information on these matters. Comcast’s responses to Town information requests on financial factors were in essence completely non-responsive to the requests. This further reinforces the reasonableness of the Towns in concluding that there is sound financial basis for service area expansion requirements. 5) Last, but not least, Comcast’s own financial reports show strong growth in operating revenues and net income. Cited in Exhibit 19, Comcast’s 2007 financial results show that in the past year, operating income has grown 21% from \$4.6 billion to \$5.6 billion. *See Press Release, Comcast Reports 2007 Results and Provides Outlook for 2008, at 1.* Net income increased by 54% in the last quarter of 2007 and 2% for the entire year - net income totaled \$2.6 billion for 2007. *See Press Release, Comcast Reports 2007 Results and Provides Outlook for 2008, at 1.* Revenue specifically from cable services in 2007 increased by 7% to \$17.7 billion. *See Press Release, Comcast Reports 2007 Results and Provides Outlook for 2008, at 2.* Comcast estimates strong growth for the coming year. The 2007 financial results states its outlook that consolidated revenue and operating cash flow will grow between 8 to 10% for 2008. *See Press Release, Comcast Reports 2007 Results and Provides Outlook for 2008, at 5.*

Furthermore, we specifically find that the areas that are already wired have a relatively high density (above twenty homes per mile according to Comcast’s March 10, 2008 letter), which would enable Comcast to generate above average earnings on existing streets. According to attachments to Comcast’s March 10, 2008 partial replies to the ascertainment questions of the Towns, Shelburne has about 22 miles of plant with 440 subscribers, or approximately 20 subscribers per existing mile; and Buckland has about 24 miles of plant with about 534 subscribers or approximately 23 subscriber per existing mile. Based on the foregoing, if Comcast were to extend its plant into contiguous streets, it would appear to have ample revenues from the high density already-wired streets, and Comcast could thus absorb some line extension in less profitable streets, while retaining a reasonable return on investment when viewing the Buckland and Shelburne markets taken as a whole. In other words, the downtown Shelburne Falls Village area has a relatively high density, so additional line extension can occur while enabling Comcast to maintain a reasonable average density, even if density was not optimal on any single street. Additionally, we find that in Shelburne there are 278 dwellings units and 29 commercial businesses on 29.17 miles of road not currently wired for cable, and in

**Buckland there are 209 dwelling units and commercial businesses combined on 19.7 miles of road not currently wired for cable. Given that the economic return on investment in comparable contracts is normally calculated at 10-15 units per mile per mile, we expect that:**

- 1. Comcast will calculate potential subscribers and revenues based on *all* the residential and commercial units on inhabited roads in Town; and**
- 2. Comcast will average the total number of current and potential residential and business locations over the total number of inhabited road miles in town for the purposes of calculating the density per mile and potential return on investment.**

**The existing contract dictates that Comcast must pay license fees based on ALL cable related Gross Annual Revenues. Given the fact that Comcast has not taken steps to expand the subscriber base by extending the cable network to meet demonstrated demand, and therefore increase their revenues, we find that Comcast is depriving the Town of potential revenue to fund local public access activities.**

RESPONSE: With regard to line extensions, please see Section 3.1 of the Renewal Proposal, wherein Comcast proposes to extend its cable plant up to three (3) miles in a currently unserved area of each Town. Further, Comcast has and continues to comply with the line extension provisions of Article 4 of the current Franchise Agreement, which require that Comcast extend the Cable Television System automatically at the Licensee's sole cost and expense to any and all areas of the Town containing 30 subscribers per aerial mile of cable plant or 60 subscribers per underground mile of cable plant. Coincidentally, the Towns acknowledge the requirements of Article 4 in the RFP. In accordance with Section 4.2 of the Franchise Agreements, Comcast has constructed 3.4 miles of line extensions in Buckland and 2.8 miles of line extensions in Shelburne. In addition, since 2002 Comcast has additionally constructed approximately 7.3 miles of line extensions in previously unserved locations of the Towns.

**Comcast has not adequately responded to our requests for specific financial data on their return on investment in Buckland and Shelburne. Absent such information, we can only assume that our request for universal service is reasonable, based on attached Exhibits of Comcast Corporation financial documents and annual reports. Additionally, support for the reasonability of universal service was noted in Exhibits that were presented at the February 27, 2008 ascertainment hearing regarding state and federal initiatives to expand the availability of broadband services to rural areas. The finding of an absolute need and justification for requiring town-wide cable service is further confirmed by more than 30 attached Ascertainment Exhibits encompassing a wide range of documents, including public policy statements from government officials, news reports, letters from the public, and other documents.**

REPOSENSE: Comcast has provided the Towns with the required information in accordance Massachusetts Cable Television Division's November 30, 2004 Form 100 Order. In addition, Comcast has annually provided the Town with the necessary Forms 200, 300 and 400 as required by the Massachusetts Cable Television Division and filed again with the

Towns on March 10, 2008. In addition, Comcast annually provides each Town with detailed information regarding gross annual revenues in accordance with Section 7.4 of the Franchise Agreement and separately provided this information as an attachment to its correspondence dated March 10, 2008.

### **Cable License Line Extension Terms**

**The Buckland-Shelburne line extension terms are inferior and unreasonable in comparison to line extension terms elsewhere offered by Comcast. Article 4 of the existing contract between the Towns of Buckland and Shelburne and the licensee (Comcast Corporation) defines the line extension policy for service area expansion. Section 4.3 describes the criteria for automatic line extension at the licensee's sole cost as 30 subscribers per aerial mile and/or 60 subscribers per underground mile. Ascertainment by the Cable Advisory Boards has resulted in our finding that Comcast has recently offered substantially more favorable terms in other locations, including the Town of Norwich, Vermont cited in Exhibit 30, which obtained an offer from Comcast to extend service to unwired areas of town in exchange for a service commitment by fewer than 8 customers per aerial mile. The Cable Advisory Boards have researched cable contracts between Comcast and other cable television providers throughout Massachusetts, and find that Comcast has offered superior line extension terms in many other cities and towns. Further, the Comcast contract terms for Georgetown, Stoughton, Sterling, Springfield (all in Massachusetts) have a density requirement of merely 10 dwelling units per aerial mile; and the Sudbury license indicates that service shall be provided to all residents. We find that the restrictive terms of the current Buckland-Shelburne contract have resulted in harm to the residents of the Towns due to their inability to receive needed cable services, as documented above. Based on the disparate treatment of Towns to the disadvantage of Buckland and Shelburne, we find that as part of its renewal proposal Comcast must demonstrate that it will be extending the service area significantly beyond the current service area, to wire all of the Towns, or in accordance with Comcast's Norwich, Vermont line extension model described above, and provide detailed financial data with respect to its return on investment in Buckland and Shelburne, and how its line extension proposals will impact its return on investment.**

RESPONSE: Please see Section 3.1 of the Renewal Proposal, wherein Comcast proposes to extend its cable plant up to three (3) miles in a currently unserved area of each Town. As you know, our significant investment in the upgrade of the Buckland/Shelburne cable system has allowed us to launch advanced services, such as digital and high definition television, video on demand, Comcast Digital Video Recorder (DVR) service, Comcast High Speed Internet, Comcast Digital Voice (CDV) telephone service and our Triple Play Bundle. Further, in accordance with Section 4.2 of the Franchise Agreements, Comcast constructed 3.4 miles of line extensions in Buckland and 2.8 miles of line extensions in Shelburne. In addition, since 2002 Comcast has additionally constructed approximately 7.3 miles of line extensions in previously unserved locations of the Towns.

The RKM survey states that 64% of Buckland customers and 62% of Shelburne customers opposed paying a fee in their monthly cable bill in order to extend cable plant to currently unserved areas of the Town. Finally, as you may know due to extensive direct broadcast satellite penetration, the Town of Shelburne is subject to effective competition in accordance with Section 623(1)(1)(B) of the Communications Act of 1934 and 47 CFR §905. See Attachment A - FCC Memorandum Opinion and Order.

It is unclear how newspaper, magazine and website articles pertaining to high speed internet in rural areas and policy statements regarding legislation pertain to the future cable related needs of Buckland and Shelburne. It is also unclear to Comcast how reference to a community from the State of Vermont, with a completely separate regulatory scheme and/or references to other Massachusetts communities relate in any manner to the future cable related needs of Buckland and Shelburne.

As the Towns know, high speed internet service is not a "cable service" and therefore not subject to local regulation under the Cable Television Renewal License. Accordingly, Comcast's Response does not address requests pertaining to products and services which are not considered "cable services" and Comcast will not include reference to any such products and services in its Renewal Proposal.

**The Boards of Selectmen and the Cable Advisory Boards request that Comcast's renewal proposal offer new alternatives for line extension proposals, including counting of commercial and long drop subscribers toward line extension criteria; and factoring in the already high density of the Village of Shelburne Falls, which is partially in the Town of Shelburne and the Town of Buckland, thus basing the line extension formula on "average density" that includes the number of already served homes, rather than solely unwired streets. In addition, the Boards of Selectmen request that Comcast's renewal proposal include alternative financial arrangements to promote line extension, such as allowing subscriber contributions to capital construction costs to be paid over longer terms, pursuant to subscriber installment payment plans. Comcast has so far not responded to informal requests for such proposals.**

RESPONSE: As Comcast has discussed with the Towns, the unserved areas of the Towns contain very low density and in some cases contain homes that are located in excess of three hundred (300) feet from the Trunk and Distribution System. Section 4.1(b) of the Renewal Cable Television Licenses defines a standard installation as a residence not more than two hundred (200') feet from the existing Trunk and Distribution System.

Comcast is unclear what the Town is referencing in regard to "new alternatives" for line extensions and welcomes the opportunity to further discuss issues pertaining to regulated services. Without any further explanation or detail, Comcast is similarly unclear as to the meaning or intent of "alternative financial arrangements".

#### **Falls Cable Corporation (PEG) Status and Needed Improvements**



The Towns find that Licensee must continue to provide annual funding to the Access Corporation, Falls Cable Corporation, for PEG Access purposes to be used for, among other things, salary, operating and other related expenses connected with PEG Access programming and operations.

Under its existing license, Comcast Corp. currently makes an annual PEG payment to Falls Cable Corp. of \$9,845.23 based upon 4% of gross annual revenues for 440 subscribers in Shelburne. And Comcast Corp. currently makes an annual PEG payment to Falls Cable Corp. of \$12,891.39 based upon 4% of gross annual revenues of 534 subscribers in Buckland. This provides Falls Cable Corp. with a most minimal, shoe string operating budget, and the Towns' local programming needs would not be met if Falls Cable Corp's operating budget were in any way reduced.

Falls Cable Corporation has certain minimal requirements in order to keep operating over the term of a new contract with Comcast. The Towns have found that Comcast's level funding of Falls Cable Corp's operating budget is absolutely essential to Comcast's adequately meeting the cable needs of the Towns. The following items have been identified as minimal requirements to be satisfied within the next contract term.

In order to support further build-out, the Board of Directors of the Falls Cable Corporation has pared their requirements down to a list of primary and secondary needs, as listed below. Items in bold type have been identified as essential, critical needs, while other items are needed to sustain and enhance the quality of public services provided under the PEG requirements of the Cable Act. If a new contract is to extend over a 10-year term, Falls Cable Corporation must have certain revenues and certain equipment in order to maintain the viability of this community-access station.

Anticipated equipment, personnel and service needs		
		Estimated Cost
1.	Replacement of studio cameras	\$45,000
2.	Video system control (updated video scheduling controller)	2,500
3.	Equipment to digitize analog signal	1,500
4.	High-capacity video server distribution system (hard drive) (Converts system from VCR-DVD based)	35,000
5.	Part-time studio manager, hourly pay and all related costs**	144,000
6.	Security equipment (per Mohawk agreement)	1,500
7.	Contingency for studio space rental (\$2,000 per month X 10)	240,000
	Subtotal (all priorities)	\$469,500
	Subtotal (Critical priorities)	\$182,000
	<b>Additional Cable Drop locations &amp; wiring requirements</b>	
8.	Upstream cable drop for Shelburne Falls central fire station. (Primary EOC – emergency operations center – for Buckland, secondary for	FNA*

	Shelburne)	
9.	Wire Upstream and downstream cable into Town of Shelburne primary EOC at Shelburne Center fire station	FNA*
10.	Cable drop at Shelburne Visitor Information Center on Bridge St.	FNA*
11.	Rewire Mohawk Regional High School west wing	FNA*
	<b>Funding Requirements</b>	
12.	Percentage of gross local revenues paid to the station (through each town) to increase from current 4% to 5% (Or maximum allowed under current law.)	

\*FNA – Cost to be provided by Cable provider – figures not (currently) available

\*\* Already hired – this is a total figure for a 10-year period

RESPONSE: Please see Section 6.4 of the Renewal Proposal regarding PEG Access Support.

Comcast bases its proposal for PEG Access Support, in part, on the information provided by the RKM survey, which found in pertinent part as follows:

- 69% of Shelburne customers and 59% of Buckland customers oppose paying a monthly fee in order to provide funding for PEG Access equipment and operating expenses for a PEG Access production facility;
- A majority of customers (57 % of Shelburne customers and 49% of Buckland customers) would not be willing to pay anything in order to provide funding for such PEG Access equipment and operating expenses.
- 66% of Shelburne customers and 69% of Buckland customers opposed paying a monthly fee to provide funding for a local PEG access corporation;
- A majority of customer (65% of Shelburne customers and 56% of Buckland customers) would not be willing to pay anything in order to provide funding for a local PEG access corporation;
- 57% of Shelburne customers and 62% of Buckland customers would oppose paying a monthly fee to provide funding for television production equipment and services for public schools.
- A majority of customer (54% of Shelburne customers and 54% of Buckland customers) would not be willing to pay anything in order to provide funding for television production equipment and services for public schools.

Comcast further states that there was limited support for PEG Access operations at the public hearings and no person at either hearing was asked any question nor did any individuals testify regarding their willingness to pay franchise related and/or renewal license related costs associated with PEG Access operations as requested by the Town as required by Section 626 of the Cable Act.

Comcast accordingly makes its offer for PEG Access support based, in part, on the factors expressed herein and the RKM Survey and directs the Towns to Section 6.4 of the respective Renewal Proposals. Comcast believes this level of funding will provide the Towns or their designee with sufficient financial support in order to meet the PEG Access

programming needs of the Town, while taking into account the costs to subscribers, subject to the requirements described in Section 626 of the Cable Act and the ascertainment record referenced herein.

Based on the RKM survey, it is clear that there is an overall lack of support for PEG Access initiatives and no support within the community to pay such License Renewal costs. Further, the RKM survey determined that there is an overall lack of support in both Towns for continuation of the current franchise fee.

### **Other License Requirements**

**As explained above**, The Towns of Buckland and Shelburne have numerous significant needs with respect to customer service, license administration, cable system technology and the many customary terms and conditions negotiated in a cable franchise. Based on our extensive ascertainment work, we find therefore that a renewal franchise, if any, must include comprehensive customer service, consumer protection and license enforcement terms and conditions, and continuation of at least the terms and conditions in the existing franchises issued to Comcast's predecessor, attached hereto and incorporated herein as specifications for a future renewal license, and for use as part of the Request for Proposals of the Towns under the formal licensing procedures as indicated herein. We find it necessary for a renewal Franchisee to provide for at least the customer service standards, performance bond, reporting requirements, license enforcement provisions and other terms and conditions set forth in the attached existing licenses; and that Franchisee must generally provide Buckland and Shelburne with renewal franchises that provide at least as much regarding such terms and conditions as the existing franchises. To do otherwise would be to agree to a weakening of the legal terms and conditions already agreed to in the existing license.

RESPONSE: While Comcast is willing to discuss the terms and conditions of the extant Renewal Licenses, Comcast has included many of the referenced terms and conditions in its formal Draft Renewal Cable Television License as its Renewal Proposal with this RFP response.

### **Request for Proposal**

Based on the foregoing, the Cable Advisory Boards recommend, and the Selectmen do hereby authorize issuance of the specifications and findings in this Report as a formal Request for Proposal (RFP) to Comcast, as part of the formal licensing process. The findings in this Report shall serve as RFP renewal specifications (including but not limited to the Summary of Findings above), and with the existing Licenses attached and incorporated herein as further specifications for a renewal license, as modified by the additional items set forth in this Report concerning any matter wherein this Report identifies additional needs of the Towns. This Report shall be effective as a Request for Proposal as of April 22, 2008, and Comcast is directed to reply to this Request for Proposal within thirty (30) days thereafter by filing a formal renewal proposal with each Town, including a draft license addressing the specifications herein (with particular focus on those findings in the summary of findings), and with a copies to cable

counsel for the Towns, William August, Esq., 101 Arch Street, 9<sup>th</sup> Floor, Boston, MA 02110. Notwithstanding the foregoing, until said April 22, 2008 RFP issuance date, or such other date as allowed by law for issuance of an RFP, the Towns reserves the right to amend or otherwise supplement this RFP. Absent such action to modify this RFP, this document shall serve as the RFP as aforesaid.

RESPONSE: Comcast has provided the formal Draft Renewal Cable Television License enclosed herewith as its Renewal Proposal. Comcast's Renewal Proposal is based on ascertainment in accordance with Section 626 of the Cable Act, which Comcast has deemed to be "reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests."

**Respectfully submitted by the Boards of Selectmen and Cable Advisory Boards of the Towns of Buckland and Shelburne:**

**Board of Selectmen of Buckland, by:**

\_\_\_\_\_

**Board of Selectmen of Shelburne, by:**

\_\_\_\_\_

**Shelburne Cable Advisory Board**

**By: \_\_\_\_\_**

**March \_\_, 2008**

**Buckland Cable Advisory Board**

**By: \_\_\_\_\_**

**March \_\_, 2008**