MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON JULY 15, 1999

I. CALL TO ORDER AND ROLL CALL

The Special Town Council Meeting was called to order at 10:08 A. M. on Thursday, July 15, 1999, in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul Ilyinsky, President Lesly Smith, President Pro-Tem Wyett, Councilman Jack McDonald, Councilman Samuel McLendon, and Councilman Leslie Shaw. Also in attendance for all or a portion of the meeting were Town Manager Robert Doney, Assistant to the Town Manager David Jakubiak, Information Systems Director Spencer Wilson, Vice President of Columbia Telecommunications Corporation Andrew Afflerbach, Vice President of The Buske Group Randy Van Dalsen, Comcast Legal Counsel Terry S. Bienstock, Town Consultant Nicholas Miller, Esq., of the law firm of Miler & Van Eaton, and Deputy Town Clerk Susan Eichhorn.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Deputy Town Clerk Susan Eichhorn. President Smith led the Pledge of Allegiance.

III. APPROVAL OF AGENDA

Councilman Shaw moved approval of the Agenda. The motion was seconded by President Pro-Tem Wyett. On roll call the motion carried unanimously.

IV. CONSIDERATION OF COMCAST CABLEVISION, INC., REGARDING UPGRADE OF EQUIPMENT AND SERVICES TO TOWN RESIDENTS

A. INTRODUCTION BY DAVID JAKUBIAK, ASSISTANT TO THE TOWN MANAGER

Assistant to the Town Manager David Jakubiak began with a brief overview, commenting that a four step process for the Franchise renewal had been considered at the June Town Council Meeting. He explained that today the intent today (Phase 1) was to provide the Town Council with as much information to assist in making a decision on whether the Town Council would want to proceed with the other three steps in the Franchise renewal process. Mr. Jakubiak introduced Attorney Nicholas Miller, Andrew Afflerback with Columbia Telecommunications Corporation, and Randy Van Dalsen of The Buske Group. Mr. Jakubiak noted that letters had been sent to the Flagler Museum, The Society of the Four Arts, The Preservation Foundation, and the public and private schools on the Island for information purposes, all of whom may be interested in information related to the establishment of the "I-Net" for the community. Mr. Jakubiak noted that the Town of Palm Beach had been operating with a 550 MHz cable system since 1991, and the standards today were 750 MHz, which would mean that the Town did not have the present capabilities for cable companies to offer future technology, such as high speed Internet access, and two-way communications.

B. OVERVIEW OF CABLE RENEWAL PROCESS BY ATTORNEY NICHOLAS MILLER

Attorney Nicholas Miller addressed the Town Council, stating that the Comcast Franchise would expire in April 2000. He explained that Comcast and Adelphia had announced a swap of territories on a nationwide basis, and the expectation was that Adelphia would be taking over all of the West Palm Beach territory from Comcast. He emphasized that there was a wide range of possibilities available, and the purpose of the meeting today was to begin a dialogue so that the Town Council could consider the franchise that would be appropriate for the Town of Palm Beach in the future. He explained that he would speak today about the law regarding a cable franchise, Mr Afflerbach would do a presentation on state of the art technology, and Mr. Van Dalsen would address serving community needs and interests.

Attorney Miller established that the way a cable television franchise renewal worked was controlled by the existing franchise, and limited by Federal law (1984 Cable Act). The most important point to understand was that once the cable company requested a formal renewal process, a process that affirmatively denies renewal must take place, or the cable company would remain with the legal right to operate within the Town; in other words, no action would effectively be approval. He noted that Comcast had sent a renewal letter to the Town, and thus triggered their formal renewal rights. Federal law stated that once the Town receives the renewal letter the Town is supposed to initiate a needs assessment process. There were a variety of tools available to perform the needs assessment, such as public hearings, surveys, focus groups, interviews, and audits of performance of the operator in the past. A request for formal proposal can then be made from the cable company, and that would become the basis on which the formal process would move forward. The Town would have 120 days to evaluate the proposal, under Federal law. If the proposal was denied, the cable company had the right to a formal administrative law process at the Town Council level. Federal law specified four factors for denying renewal: 1) Has the operator substantially complied with the current franchise; 2) has the quality of service been adequate; 3) does the operator have the financial, legal and technical ability to fulfill their new proposal; 4) is the proposal adequate to address future community needs and interests.

Attorney Miller pointed out that the Federal law anticipates that 99.9% of all renewals would be handled informally, when both sides reached agreement. The company and the Town could conduct negotiations to reach a settlement on what the new Franchise would look like, which would short circuit the formal process.

Attorney Miller noted that the cable company had now triggered their formal renewal rights, and the Town now had an obligation to do some type of needs assessment. Once that needs assessment was completed, the cable company had the right to submit a formal proposal, which the Town Council would receive and decide to renew or preliminarily deny. In parallel to that, the two sides could meet at any time, and on an ongoing basis, to work out their differences.

C. STATE OF THE ART CABLE TECHNOLOGY BY ANDREW AFFLERBACH OF COLUMBIA TELECOMMUNICATIONS CORPORATION, COLUMBIA, MARYLAND

Dr. Andrew Afflerbach, Vice President of Columbia Telecommunications Corporation, addressed the Town Council, stating that Columbia Telecommunications Corporation worked exclusively for local governments and non-profit entities, advising them on cable television renewals.

Dr. Afflerbach stated that the current system had quite a few channels, with a wide range of programming available, as far as presentation of video one-way from a cable company to the viewer. There were a number of things that cable companies would be providing, which were interactive services. The current system was not set up for two-way communications within the cable system, which was the key technological limitation with the system right now. The 750 MHz capacity would allow space for Internet services and others that were expected to be coming in the future.

Dr. Afflerbach pointed out that cable was the only way, at the moment, which could provide acceptable quality two-way video. This type of upgrade would cost approximately $400 - $1,000 per subscriber on average He reviewed the current cable system capabilities and compared them with the full capability of broadband technology, where the computer would be directly connected to the cable, instead of the telephone, enabling connection much more quickly.

Dr. Afflerbach commented that with 550 MHz the system could be made to work two-way, however, as more and more things were provided by cable, a point would be reached where the 750 MHz was needed. He specified that the keys to obtaining advanced services for the community were 1) consumer demand for services; 2) aggressive stance by franchising authority in renewal or transfer; 3) cable operator capable of providing services. He pointed out that if the Town experienced a re-build of its cable television system, it would be worth looking at a partnership that would build the Town an institutional network.

Dr. Afflerbach expressed that the I-Net would help branch communications, such as to the Preservation Foundation, The Society of the Four Arts, etc., and reduce the amounts of photocopying and physical trips. This type of network would electronically wire everyone together. In addition, the framework for video would be created wherever the network was in place. Fiber optic cable would allow traffic cameras, as well as surveillance cameras to be set up that could be monitored for security reasons. In addition a database could be set up for recreational facilities where residents could sign up for lessons, tee times, etc.

Dr. Afflerbach exhibited a fiber optic cable as an example of what would be used by a cable company for upgrading, and discussed the related costs. He explained that the future cable system would reflect the needs of the community, involving a technical audit of the system, which would establish the quality of the system, make recommendations, and provide a negotiating point. He indicated that an Institutional Network plan was important, so that costs could be evaluated in detail. He stated that the current cable system in Palm Beach was not a two-way capable system, and the renewal process would open up a window of time for the community to step back and evaluate its future needs.

D. COMMUNITY BASED SERVICES AVAILABLE FROM A CABLE TELEVISION SYSTEM BY RANDY VANDALSEN, VICE PRESIDENT OF THE BUSKE GROUP, SACRAMENTO, CALIFORNIA

Attorney Miller introduced Mr. Randy VanDalsen, of The Buske Group, a consulting group specializing in working with local communities in needs assessments and the needs assessment process. Mr. VanDalsen had a great deal of experience in the area of community television and video applications for non-profit and community organizations.

Mr. VanDalsen addressed the Town Council, stating that he would discuss the needs assessment process. He explained that the reason to have a needs assessment process was that the Federal cable law demanded it. If negotiations to upgrade services were entered into with the cable operator, it would be necessary to have some information about why the upgrades were necessary; to do that the needs of the community must be assessed. There were a number of different techniques used to assess the needs of the community, among them, conducting a survey, focus group sessions, gathering and reviewing strategic plans, interviewing community leaders, and holding public hearings. He reviewed the content of focus group sessions, which would give an overview of the franchise renewal process. He provided video tapes to demonstrate examples of how different communities used the available cable technology. Mr. VanDalsen summarized that at the conclusion of the needs assessment process, all data gathered would be submitted in a report that would be used by the Town to consider the next step.

Attorney Miller explained that the Federal law demanded that the Town prove that the proposal that the cable company offered was not adequate to address future needs – a community based assessment was needed for that purpose. He stated that the focus group had been used as a very important educational tool to engage the community, so that the elected officials could gain an understanding of the importance, or lack of importance, of cable technology availability to the community.

Mr. VanDalsen addressed the community programming area, which was often an area discussed by focus group participants. He explained that cable channels could be set aside for use by the public, by educators, and by local government. He provided video tapes exhibiting some of the programs shown currently in this regard.

E. PUBLIC COMMENTS

Mr. Al Levenson, of the Citizens Association, addressed the Town Council, commenting that the Citizens Association represented 73 buildings, roughly 3525 units, approximately 14,000 television sets. He noted that they had been working with Mr. Jakubiak, and that there was confidence that the Town Council would be sure that 750MHz would be forthcoming.

Councilman Shaw questioned whether the buildings were capable of handling 750MHz, because that would be necessary before the 750MHz system could be installed.

F. OPEN DISCUSSION

Attorney Miller stated that the point of the meeting today was not to make recommendations, but rather to suggest that there were a number of things to think about in order for the Town Council to determine how to proceed, and to direct staff. The way that cable rate regulations currently worked was that the cable operator could recover through their rates any new franchise requirements with respect to new services that were required, but not with respect to hardware requirements. In effect, it was only new franchise requirements that could be recovered through rate increases, and there are operational requirements as opposed to hardware.

In response to Mr. Wyett, Mr. Miller stated that municipal ownership options of a cable system were available, and certainly worth looking at, although it was a very controversial matter.

Ms. Diane Christie, Director of System Development for Comcast Cable, addressed the Town Council, introducing Scott Weber, a regional Comcast technical person, and Attorney Terry Bienstock, legal counsel for Comcast Cable.

Mr. Scott Weber of Comcast Cable, addressed the Town Council, stating that Comcast was implementing fiber optic cable in Palm Beach, which was not required by the Franchise, but which Comcast believed was in the best interests of the customers. He noted that 550MHz, as compared to 750MHz was merely more space to get more things done. The plant that was in operation locally was fully capable of providing all of the services outlined today. Comcast fully intended to provide services that its customers wanted and expected.

Attorney Terry Beinstock addressed the question of the swap of the cable system with Adelphia, stating that it would be a serious problem for Comcast to commit for someone else as to what would be done in the future franchise, as well as the time frame in which it would be accomplished. He suggested that Adelphia be brought into the renewal process as the transfer began; during the next few months the transfer would be solidified as to timing, and Comcast would know more specifics. Mr. Beinstock urged that the opportunity be given to Comcast to discuss the issue with Adelphia to determine what commitment could be made for them. He stated that Comcast would be meeting with Adelphia over the next few months, as well as with Town staff on an informal basis.

Attorney Miller commented that the Federal law renewal language ran to the existing franchisee, which meant that the Town negotiating power would come solely from the opportunity to refuse to renew. There were two relevant bases: 1) the proposal was inadequate to address future needs; 2) the existing operator's past performance. As soon as the transfer was approved by the Town, and there was a new franchisee, the past performance issue would no longer be relevant; thus, Adelphia was in a much stronger negotiating position. In addition, there was much incentive on the part of the current operator, Comcast, to build good will with the Town Council to approve the transfer. He suggested that it was important to begin a needs assessment process, however, in the shorter term, staff would need guidance from the Town Council as to its priorities in order to move forward in negotiations with Comcast. In the event that agreement cannot be reached, documentation would be in the records that would be needed to deal with a formal process. The next step for the Town would be to focus on getting the deal points put together, simultaneously starting the more formal process.

Mr. Jakubiak stated that phase 2 of the process, the past performance and future needs survey, would cost approximately $60,000, which would be the next step.

Attorney Miller suggested that phase 2 be moved on a slower track – staff would need to circulate a list of issues to the Town Council with the major points that should be contained within the new franchise. That would allow the Town staff and the cable representatives to discuss the issues.

Town of Palm Beach Information Systems Manager Spencer Wilson commented that the I-Net was something that should definitely be considered by the Town, and that the Town would be able to put videos on the Internet that would be of interest to the community, based on the in-house technology that was currently being used.

Attorney Miller recommended that the Town Council authorize $60,000 to negotiate contracts, so that the process could begin. He pointed out that it was not a commitment to spend that money today, but a commitment to get the people in place and get the process started. It would be very important to have Dr. Afflerbach and Mr. VanDalsen involved in negotiating with the cable company, and it would be important to have contracts established for them so that their services could be used. He suggested that staff could put together a list of deal points, along with what the Town should be prepared for, versus what the cable operator should be asked to do. Afterwards, a meaningful dialogue could be held with Comcast representatives, and staff could report back to the Town Council at the October 12, 1999, Town Council meeting.

Town Manager Doney clarified that staff material, legal issues, and Comcast/Adelphia information could all be blended together to bring back to the Town Council at the October Town Council meeting.

President Smith suggested that the appropriate action would be to take all of the information together, and either put it on a Town Council agenda, or set a Special Town Council meeting with all of the principals in attendance to review it; to not specify that it occur at the October Town Council meeting, as the subject matter was so involved. It would also give time for the public, residents of the Town, and civic organizations to give input.

Attorney Bienstock commented that Comcast could do a cost assessment, once identification was made of what buildings would be connected to an I-Net system. He explained that there were operations costs, etc., involved with the system. He commented that in other communities Comcast had met with the Police departments, Fire departments, and administrative staff to assess what was desired.

Fire-Rescue Chief Elmore commented that an Internet connection to transmit training from the central station to the out stations would be very helpful.

Assistant Police Chief Reiter commented that he believed there was value to communication with other Town offices, and that many possibilities would be provided from the safety/security viewpoint.

Councilman McDonald moved the appropriation of $60,000, from the General Contingency Fund, to the discretion of the Town Manager to proceed with preliminary action. Councilman McLendon seconded the motion. On roll call the motion carried unanimously.

Councilman McLendon commented that he believed the Town should not wait too long to extend the cable franchise in order to comply with the Federal law.

Attorney Miller responded that there would be time to sit down and talk to determine if there was a will to reach a fair deal on both sides; if there was not, then an extension could be started.

G. CONCLUSION BY ATTORNEY NICHOLAS MILLER

The concluding remarks of Attorney Nicholas Miller were included in Item F.Open Discussion.

V. ANY OTHER MATTERS

There were none.

VI. ADJOURNMENT

The meeting was adjourned at 12:23 P.M.

Mary A. Pollitt
Town Clerk

Prepared by:
Susan Eichhorn
Deputy Town Clerk
E:\MINUTESTOWNCOUNCIL\1999\sue.wpd