

Extra Info  
10-03-06  
Latest Changes  
@ 5:27pm

**John Murray**

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**From:** William Solomon  
**Sent:** Tuesday, October 03, 2006 5:27 PM  
**To:** Don Johnson; John Murray; Frits Riep; 'Frits Riep'; John Covert; mark.eisenberg@microsoft.com  
**Subject:** FW: Acton - Verizon Final License  
**Attachments:** Acton Final License.DOC; Acton Comparison.DOC

Folks

Here is a further revised draft License based upon my conversations with Verizon counsel Tom Antonucci late this afternoon.

My response to Tom moments ago was as follows:

Tom

*Thank you for forwarding the revised draft. As discussed, all Town decisions are up to the Board of Selectmen.*

Bill

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**From:** Antonucci, Thomas [mailto:TAntonucci@wrf.com]  
**Sent:** Tuesday, October 03, 2006 5:22 PM  
**To:** attywhs@comcast.net  
**Cc:** ptrane@telecominsightgroup.com; jim@mcgraillaw.com  
**Subject:** Acton - Verizon Final License

Bill - attached is the Final License for Acton - Verizon for consideration at this evening's Board of Selectmen hearing. It includes the revisions that we discussed a few minutes ago (sections 4.2.2, 5.2, 8.6, 10.1 and 13.6). I have also included a blackline version which shows the changes to the prior draft.

I will bring four copies of this Final License for execution by the Board (two originals for you/the Board; two for me/Verizon); please bring four copies of the side letter tonight.

We will see you this evening at 7:30 at the Acton Library.

Regards,  
Tom



**Thomas Antonucci**  
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#### 4. **SYSTEM FACILITIES**

4.1. *System Characteristics:* Licensee's Cable System shall meet or exceed the following requirements and/or have at least the following characteristics:

4.1.1. The Cable System shall be designed with an initial analog and digital passband of 50-860 MHz.

4.1.2. The Cable System shall be designed to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

4.1.3. The Cable System shall comply with applicable FCC technical standards, as such standards may be amended from time to time.

4.1.4. The Cable System shall conform in all material respects to the following standards to the extent applicable: Occupational Safety and Health Administration regulations, the Massachusetts Electrical Code, the National Electrical Code, the National Electrical Safety Code, the Massachusetts State Building Code, and the rules and regulations of the Cable Division and the FCC.

#### 4.2. *Interconnection With Other Cable Systems:*

4.2.1 The Licensee shall design its Cable System so that it may be interconnected with other cable systems in the Town. Interconnection of systems may be made by direct cable connection, microwave link, satellite, or other appropriate methods.

4.2.2 The Licensee shall in good faith cooperate with the Issuing Authority in implementing interconnection of the Cable Service with communications systems beyond the boundaries of the Town; provided that the cost of any such interconnection shall be borne by the Issuing Authority and/or the party seeking such interconnection. The first sentence of this section shall not apply to the transmission by the Licensee of Boxborough public, educational and/or government programming to Boxborough subscribers from the Town of Acton, which obligation, including costs (if any costs) shall be governed by the terms of the Cable Television Final License dated September 18, 2006 granted by the Town of Boxborough to the Licensee.

4.3. *Emergency Alert System:* Licensee shall comply with the Emergency Alert System ("EAS") requirements of the FCC in order that emergency messages may be distributed over the Cable System.

4.4. *Parental Control Capability:* The Licensee shall comply with all applicable requirements of federal law(s) governing Subscribers' capability to control the reception of any channels being received on their television sets.

4.5. *Leased Access:* The Licensee shall comply with applicable provisions of Section 612 of the Communications Act (47 U.S.C. §532) with respect to making channel capacity available for commercial use.

## 5. PEG SERVICES AND SUPPORT

### 5.1. *PEG Channels:*

5.1.1. In order to ensure universal availability of Acton PEG programming to Subscribers in the Town, Licensee shall provide capacity on its Basic Service tier for three (3) Channels for Public Access, Educational Access and Government Access (collectively, "PEG Channels").

5.1.2. The PEG Channel designations (i.e. Public Access Channel, Educational Access Channel or Government Access Channel) for each of the PEG Channels set aside by the Licensee are reflected on **Exhibit C**. The Issuing Authority hereby authorizes the Licensee to transmit PEG programming within the Town's jurisdictional boundaries and outside the Town's jurisdictional boundaries to other areas that are served out of the same central offices as those that serve the Town. Licensee specifically reserves the right to make or change PEG Channel assignments in its sole discretion. If a PEG Channel provided under this Article is not being utilized by the Town or its designee for a period of 120 days, the Licensee may utilize such PEG Channel, in its sole discretion, until such time as the Town elects to utilize the PEG Channel for its intended purpose. In the event that the Town determines to again use such PEG capacity, the Town shall provide Licensee with 120 days' prior written notice.

5.2. *PEG Interconnection and Cablecasting:* The Licensee shall use reasonable efforts to interconnect its Cable System at a location selected by the Licensee in the Town ("Town Source Location") and/or with the existing cable operator(s) cable system so as to ensure carriage of all the PEG Channels and PEG Programming over the Cable System. With respect to any location(s) owned and operated by the Town, the Licensee shall have one hundred eighty (180) days after the Effective Date to effect such interconnection; provided that the Town shall cooperate with the Licensee with respect to such interconnection, to the extent within the Town's authority, including, without limitation, providing Licensee with sufficient access to the location to the extent within the Town's authority. With respect to any locations(s) owned and operated by the existing cable operator(s) in the Town, the Licensee shall expeditiously negotiate with the existing cable operator(s) for an interconnection agreement respecting reasonable, mutually convenient, cost-effective and technically viable interconnection points, methods, terms and conditions so as to ensure carriage of all the PEG Channels and PEG programming over the Cable System, and shall have twelve (12) months from the Effective Date to enter into such interconnection agreement. The Issuing Authority shall use its best efforts to facilitate these negotiations. If no agreement is reached within the above time frame, then the Licensee shall have an additional six (6) months (i.e., eighteen (18) months from the Effective Date) to use an alternative methodology to obtain and transmit all of the PEG Channels and PEG programming to its Subscribers, provided that the Issuing Authority shall cooperate with the Licensee's efforts pursuant to this Section to the extent within its authority. The Licensee shall provide, install, maintain, repair and replace all equipment necessary to receive and transmit such PEG programming from the Town Source Location to Subscribers. The Licensee shall monitor the PEG Channels for technical quality and shall ensure that they are maintained at standards the same or better than those which apply to the Cable System's commercial channels, provided, however, that the Licensee is not responsible for the production quality of PEG programming

8.6. *Additional Reports:* The Licensee shall provide the Issuing Authority with a copy of any reports required to be provided to the Issuing Authority pursuant to applicable State law and regulation. In addition, the Licensee shall, upon written request by the Issuing Authority, provide the Issuing Authority with a copy of any documents or forms filed by the Licensee with the FCC and/or the DTE that materially pertain to the Licensee's Cable System in the Town.

8.7. *Proof of Performance Tests:* Upon written request of the Issuing Authority, the Licensee shall provide copies of performance tests required by applicable law.

8.8. *Performance Evaluations:* The Licensee, if requested in writing by the Issuing Authority, shall attend a performance evaluation hearing no more than once per year. Nothing in this Section 8.8 shall limit any rights that the Issuing Authority may have to conduct additional hearings and/or compel the Licensee's attendance at such hearing. The Issuing Authority shall provide Licensee with the results of its performance evaluation in writing within thirty (30) days after the conclusion of such hearing.

## **9. INSURANCE AND INDEMNIFICATION**

### *9.1. Insurance:*

9.1.1. Licensee shall maintain in full force and effect, at its own cost and expense (including all deductibles), during the term of this License, the following insurance coverage:

9.1.1.1. Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for property damage, bodily injury and death. Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

9.1.1.2. Automobile Liability Insurance for owned, non-owned, hired and/or rented motor vehicles in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

9.1.1.3. Workers' Compensation Insurance meeting all legal requirements of the State.

9.1.1.4. Employers' Liability Insurance in the following amounts: (A) Bodily Injury by Accident: \$100,000; and (B) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

9.1.1.5. Excess liability or umbrella coverage covering in umbrella form all other insurance required by this Article 9, of not less than five million dollars (\$5,000,000).

9.2.3. With respect to Licensee's indemnity obligations set forth in this Article 9, Licensee shall, at its own expense, provide the defense of any claims, suits, causes of action, or proceedings brought against the Town by selecting counsel of Licensee's choice to defend the claim, subject to applicable professional ethics laws and standards and the consent of the Town, which shall not unreasonably be withheld, delayed or conditioned. The Licensee shall, subject to the consent of the Issuing Authority as described herein, have the right to defend, settle or compromise any claim or action arising hereunder, so long as the settlement includes a full release of the Town with respect to the claim giving rise to Licensee's indemnification obligation. In the event that the Town does not consent to the terms of any such settlement or compromise, the Licensee shall not settle the claim or action but its obligation to indemnify the Town shall in no event exceed the amount of the otherwise agreed upon settlement.

9.2.4. In the event that Licensee fails, after notice pursuant to Section 9.2.3, to undertake the Town's defense of any claims encompassed within this Section 9.2, then the Town may provide a second written notice to the Licensee. In the event that the Licensee fails to undertake the Town's defense within a reasonable time after receipt of said second notice, then Licensee's indemnification obligation under this Section 9.2 shall include the Town's costs of defending such claim, suit, cause of action or proceeding, including, but not limited to, reasonable attorneys' fees.

9.2.5. Neither the provisions of this Section 9.2, nor any damages recovered by the Town shall be construed to limit the liability of the Licensee or its subcontractors for damages under this License or to excuse the faithful performance of obligations required by this License, except to the extent that any monetary damages suffered by the Town have been satisfied by a financial recovery under this section or other provisions of this License.

## **10. PERFORMANCE BOND**

10.1. Prior to the Service Date, ~~Licensee~~Licensee shall provide to the Town, and shall maintain throughout the remainder of the term of this License, a performance bond in the Town's favor in the amount of Fifty Thousand Dollars (\$50,000) securing the performance of Licensee's obligations under this License. The Town may not attempt to collect under this bond unless thirty (30) days have passed since the Town provided the Licensee with written notice of its intent to collect under this bond. If within this thirty (30) day time frame, Licensee gives written notice it disputes entitlement to payments from Licensee for which it has refused to make payment, the parties shall promptly meet to attempt to resolve the dispute in good faith amongst themselves.

10.2. The performance bond shall be in the same form as attached hereto as **Exhibit E**; however, notwithstanding any provision in Exhibit E, nothing shall permit the amount of the bond or any replacement bond to be less than the minimum amount required by Section 10.1 above. The Licensee shall not permit the performance bond to expire or approach less than thirty (30) days prior to expiration without securing and delivering to the Town a substitute, renewal or replacement bond in conformance with applicable law. The Licensee shall

13.6. *Liquidated Damages:* The parties agree and acknowledge that the Licensee's failure to comply with certain provisions of this License will result in injury to the Issuing Authority, the extent of which will be difficult to estimate. As such, the parties agree to the liquidated damages provided for in this Section 13.6, ~~with such liquidated damages representing the parties' best estimate of the damages resulting from the specified noncompliance,~~ and that said liquidated damages, if imposed by the Issuing Authority pursuant to the terms of this License, are fair and reasonable compensation for such damage. Any such liquidated damages shall be assessed as of the date that the Licensee received written notice of the provision(s) with which the Issuing Authority believes the Licensee has failed to comply, provided that the Issuing Authority has made a determination of default in accordance with the procedures set forth in Sections 13.1 through 13.4. Such liquidated damages shall not be a limitation upon any other remedy available under the provisions of this License or applicable law; provided, however, that in the event the Issuing Authority collects liquidated damages for a specific breach for a specific period of time, pursuant to this Section 13.6, the collection of such liquidated damages shall be deemed to be the exclusive remedy for said specific breach for such specific period of time only.

On an annual basis, the Licensee shall not be liable for liquidated damages that exceed ten thousand dollars (\$10,000). All violations or failures for the same factual events affecting multiple Subscribers shall be assessed as a single violation, and a violation or a failure may only be assessed under one of the below referenced categories

The liquidated damages shall be assessed in the following manner:

13.6.1. For failure to comply with the PEG Access provisions in accordance with Sections 5.1 and 5.2, one hundred dollars (\$100) per day for each day that such failure continues;

13.6.2. For failure to comply with the customer service standards in accordance with Article 7, one hundred fifty dollars (\$150) per day for each day that such failure continues; and

13.6.3. For failure to submit the reports or records in accordance with Article 8, as follows: (i) from the Effective Date through the fifth anniversary of the Effective Date fifty dollars (\$50) per day for each day that such failure continues; and (ii) from the day after the fifth anniversary of the Effective Date until the end of the term of this License, one hundred dollars (\$100) per day for each day that such failure continues.

#### **14. MISCELLANEOUS PROVISIONS**

14.1. *Actions of Parties:* In any action by the Town or Licensee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner.

14.2. *Binding Acceptance:* This License shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.