

A public hearing was held by the Town Board of the Town of Moreau on October 26, 2010 in the Town of Moreau Office Building, 61 Hudson Street, South Glens Falls, New York, for the purpose of considering a renewal of the cable franchise agreement between the Town of Moreau and Time Warner New York Cable, LLC and to give the public the opportunity to speak for or against the proposed agreement.

Supervisor Jenkins opened the public hearing at 6:30 p.m.

The Town Clerk called the roll.

Town Board Members Present

Todd Kusnierz	Councilman
Gina LeClair	Councilwoman
Tom Cumm	Councilman
Preston Jenkins	Supervisor

Town Board Members Absent

Bob Prendergast	Councilman
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Also Present: Jeanne Fleury, Town Clerk; John Mucha from Time Warner Cable; Martin D. Auffredou, Attorney for the Town; Harry G. Gutheil, Jr., Village Resident; Denise Clothier, Town Resident; Adele Kurtz, Town Resident arrived at 6:37 p.m.; Paul Joseph, Highway Superintendent arrived at 6:38 p.m.; Lydia Wheeler, Post Star Reporter arrived at 6:45 p.m.; Reed Antis and Vince Sporrer, Town Residents arrived at 6:50 p.m. and Elizabeth Lanfear, Town Resident arrived at approximately 6:50 p.m.; Peggy Jenkins, Assessor arrived at 7:08 p.m.

Supervisor Jenkins welcomed everyone to the public hearing.

The following Notice of Public Hearing appeared in the legal ad section of the Post Star Newspaper on October 15, 2010:

TOWN OF MOREAU
NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that the Town Board of the Town of Moreau will conduct a public hearing on October 26, 2010 at 6:30 p.m. at the Moreau Town Hall located at 61 Hudson Street, South Glens Falls, New York, regarding the renewal of the cable franchise agreement between the Town of Moreau and Time Warner New York Cable, LLC d/b/a Time Warner Cable.

A copy of the proposed franchise agreement is available for public inspection during normal business hours at the office of the Town Clerk located at the Town Hall.

During the public hearing, all persons will be given an opportunity to be heard.

Jeanne M. Fleury
Town Clerk

Supervisor Jenkins stated that he has been through the contract and the attorney for the Town has been through it. His first comment was in regards to the term of the proposed franchise agreement with Time Warner. It refers to 10 years from the time final certification was issued by the PSC and he didn't think the Town wanted to do that. In his opinion the term of the contract should go back to when the previous contract ended.

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Councilman Kusnierz referred to the bottom of the first page of the proposed agreement that reads in part "The Board, in granting this franchise renewal, embodied in the renewal agreement the results of its review and any negotiations with the Company and has determined that said franchise renewal agreement and the Company respectively, fulfills and will fulfill the needs of the Municipality with respect to cable television service and complies with the standards and requirements of the New York State Public Service commission." He stated that it doesn't. He asked Mr. Mucha how much of the primary service area as it relates to the main thoroughfares down through the Town has been extended in linear miles since the last agreement.

Mr. Mucha said he didn't know. He then said they extended cable towards Fort Edward a couple of years ago. He stated that they began meeting back in 2006 with the former Supervisor, Harry Gutheil, and Councilman Kusnierz and other board members and they did a lot of research and rides for all the unserved areas and they determined that there are about 14 miles of Town roads that don't have service and for the record there is 91 miles that do have service. He also stated that the density threshold in their current agreement that was executed in 1996 is 20 homes per mile in the terms of extending it to new areas contiguous to the cable plants. That is the standard they have in every cable franchise agreement in New York State. The PSC standard is 35 homes per mile and they have voluntarily built a lot further down than the state requires.

Councilman Kusnierz stated that our Town is unique in that we have an agricultural district and areas that are rural and not classified as agricultural and are zoned R-5 and in many instances due to the topography and zoning requirements you need five acres of land to build on and he told Mr. Mucha that it is almost impossible to meet their build out threshold where they would come in and extend the primary service. Therefore, as the agreement is drafted, in his opinion, it is grossly inadequate and it discriminates from an economic and educational standpoint. He has pointed out to the board and people in the audience have told the board that many times the only way kids can get their homework assignments is to go on-line and in certain parts of the Town if they don't have satellite or other very expensive means to obtain internet service then they are at an educational disadvantage.

Councilman Kusnierz asked Mr. Mucha if he was one of the primary negotiators for Time Warner and Mr. Mucha replied yes.

Councilman Kusnierz advised that he has read through several franchise agreements with Time Warner from the Town of Kerhonkson and Ulster County that have standard language in several instances where there is an agreed upon build out whereby Time Warner will at no cost to the rate payers extend service for three miles within the first five years of a ten year contract. He asked if this was fair to say.

Mr. Mucha said he has been doing this for years for Time Warner Cable and he has never done an agreement like that.

Councilman Kusnierz asked Mr. Mucha if he meant personally or his company and Mr. Mucha replied personally.

Mr. Mucha said they have done thousands of these agreements.

Councilman Kusnierz pointed out that he had in front of him contracts that are in place from Woodstock, Kerhonkson, Warwarsing and Eckerd and the one from Woodstock was adopted October 13, 2009. He said it gives Time Warner leeway in their economic requirements and the Town gets a benefit. He said they generate about \$2.5 million from the Town of Moreau in cable revenue annually. That was the amount as of the last audit in 2007. He told Mr. Mucha if they weren't willing to extend service to some of our lesser served areas then they were doing a disservice to our area especially when the Planning Board is

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approving subdivisions off the main line. He said they are cherry picking. There isn't a lot of investment on Time Warner's part to generate revenue.

Mr. Mucha responded by saying that the scenario Councilman Kusnierz mentioned is not uncommon at all. There are many communities in the Adirondacks that they service that have stricter zoning regulations and stricter APA regulations. There has been a lot of action on the federal and state level to bring broad band to rural areas and the reason it hasn't expanded in many of rural areas is because it isn't financially feasible to do that.

Councilman Kusnierz asked him who it wasn't financially feasible for and Mr. Mucha replied for the private investment that has to be put in there. When a business invests money they do it for a return and if there is no return they don't invest money. They have a requirement that they provide investment for their stockholders where the return will be worthwhile for their company. He said that a lot of this is public policy decisions at the state and federal level.

Councilman Kusnierz disagreed with Mr. Mucha that there are federal and state forces that preclude local government's involvement into having a meaningful input into these contracts, because local governments have five key items that they can negotiate in these contracts. He recited three of them, working on build out numbers, franchise fees and working to extend service to areas not currently served. He said he received the build out numbers to extend service to the rural part of the Town and they are big numbers.

Mr. Mucha stated that they are big numbers that Time Warner would have to pay for. He said they have had many conversations over the years and Time Warner received a proposal from the Town a couple of years ago to share the cost to extend service and for some reason that never moved forward and Time Warner was prepared to share the cost.

Councilman Kusnierz remembered that conversation and he was very interested in that. He asked Mr. Mucha if there was correspondence from the company on this or was it verbal.

Mr. Mucha replied that there were lots of meetings and he told Councilman Kusnierz that he was in attendance at some of them. He provided the figures to the Town on what the costs would be and what the Town's share would be and what their share would be and there was a plan where they would begin and that was the Fortsville Road area and there was a Part 2 and 3 after that. He said they are following the regulations that the PSC has set forth and they are cost sharing in areas where there is not cable and their franchise agreement clearly stipulates the process for that and that is what they are following here in Moreau and in every Town, City and Village where they operate.

Councilman Kusnierz told Mr. Mucha that he understands that, but they have the ability to go further than that and Mr. Mucha replied of course.

Mr. Mucha said capital is tight in his company just as funds are tight in every organization today. The economy is not what it was two or three years ago so they are very careful how they invest funds. It is the nature of the world they live in.

Supervisor Jenkins said the last estimate he received from Time Warner to extend service 14 miles was \$400,000.00 and the reason Time Warner gave that number was because they were looking for funding through the USDA and that funding is now virtually non-existent. He said he has seen in the past where the number of people participating would affect that number.

Mr. Mucha explained that they come up with an average cost per mile and then do the multiplication to come up with a project cost, but then when they break it down into areas and they look at the build out to specific homes and roads then they could be more specific in the costs and then it would be possible to use

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the PSC's cost sharing formula to actually calculate the share that Time Warner Cable would pay and the share that local residents would pay/the Town.

Councilman Kusnierz asked Mr. Mucha if he had an idea what the per aerial mile of cable would be.

Mr. Mucha replied it depends on what has to be built, but an estimate would be \$25,000.00 to \$30,000.00 per mile and underground would be more.

Councilman Cumm stated that Time Warner basically has a monopoly on cable here in the Town and if there was competition he thought that Time Warner would loosen up the strings and service the areas that aren't served right now and there will be competition sometime within the next few years. He asked Mr. Mucha if there was competition would Time Warner loosen up the strings as far as the 20 homes per linear mile.

Mr. Mucha replied that it was tough to predict the future. As for the word "monopoly" they are not a monopoly in the sense that the franchise agreement with the Town allows the Town to enter into a franchise agreement with another company like Verizon or any other company. The density number they use has been consistent through the years and it was in the agreement from 1996. He said if another cable operator came into Town they would start putting in cable where they were going to get their greatest return and it wouldn't be on Fortsville Road or Clark Road. That is the nature of business.

Councilman Cumm asked Mr. Mucha if another cable company came into Town and obtained a franchise agreement from the Town what would happen to the infrastructure that Time Warner put in.

Mr. Mucha replied that there would be two sets of cable plants at the pole. He added that unless the Town revoked Time Warner's franchise agreement then there would be two cable companies providing service in the Town.

Councilman Cumm said he was talking about when Time Warner's contract ended not necessarily revocation.

Attorney Auffredou stated that they would have the right to remove the equipment.

Mr. Mucha stated in his opinion the contract with Time Warner doesn't end until the Town revokes it or denies a renewal. It doesn't just end because the Town hasn't renewed it.

Supervisor Jenkins asked if Time Warner provides wireless service.

Mr. Mucha stated that Time Warner is beginning to provide 4G wireless mobile broad band in certain areas.

Supervisor Jenkins asked why that wouldn't be a possible solution to where we lack cable in our Town.

Mr. Mucha said he didn't know when it would be available in Moreau. It isn't available in Albany yet.

Supervisor Jenkins asked if anyone from the public wanted to be heard.

Harry Gutheil spoke up and said he wanted the record to show that they were 20 minutes into the public hearing and the public was just now being given the chance to speak and the public hearing started three minutes early according to his cell phone so he hoped the Town Board wouldn't shut him down too soon.

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Harry Gutheil stated that he hoped that the Town Board wasn't ready to consider adopting a resolution approving the franchise agreement, because in his opinion some of the language in the agreement takes us backwards instead of forward. When he was supervisor it was his experience that there were very little substantive negotiations. They came in with a template of a contract and that was it. He saw next to nothing as far as any movement to try and resolve the problems in the Town with cable.

He went down through the proposed franchise agreement and pointed out the following:

Page 1 - 4th whereas clause that reads in part "Company's plans for constructing and operating the cable television system".

Harry Gutheil said that if the Town Board in good faith is satisfied with what they offered then they are agreeing to approve their plans according to that whereas clause.

Page 1 - 6th whereas that reads in part "the company respectfully, fulfills and will fulfill the needs of the Municipality".

Supervisor Jenkins stated that Councilman Kusnierz already mentioned that clause.

Harry Gutheil told Supervisor Jenkins that he has heard it from a resident now and not a councilman. If this board feels that is the case and agrees with this clause then the board is letting the people down.

Harry Gutheil pointed out a typo in the 3rd whereas, next to the last line, the word "grant" should be "granting".

On page 2 under Section 1 (b) "Cable Mile" they identify cable miles and it is by dividing the number of residential dwelling units. He asked if this means that if there is a business then it wouldn't count in the 20 so it would be 20 plus any businesses. He also pointed out in that section the wording "provided that tension is technically feasible". He didn't see any discussion about what it "physically" means as far as their ability to provide cable service.

On page 4 under Section 2 (c) and (d) he said it is almost like a "Most Favorites Nations Clause" whereby it is all in their favor. If these changes happened or if another company comes into Town they would be offered the same benefits that are in any other franchise, because it was a non-exclusive franchise.

Section 4 – Term – "The term of this agreement is 10 years, and shall take effect and be in full force from and after the issuance of a Certificate of Conformation/Order of Approval by the PSC." He said there is no way to tell how long that might take. It is almost like an open date. It wouldn't be unreasonable to state "a date no later than".

Section 5 – Revocation – He said it gives Time Warner a lot of rights and it doesn't protect the Town enough in that section.

"Upon execution of the agreement and annually thereafter the company shall provide the Town with a copy of the certificate of insurance." He said that in the previous contract they would defend the Town and hold harmless and indemnify the Town. He suggested that we be named as an additional insured on their certificate of insurance.

Page 7 – Section 7 (c) – He said there is a question of overhead and underground and it may be an escape clause where they can't put in overhead cable in certain places.

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Page 8 – Section 8 – Relocation of Property – 1 paragraph – last sentence - “In the event a public utility is compensated for such relocation or reinstallation, then in such case the Company shall be similarly compensated.” He assumed this was in the event of relocation of lines and the utility would be compensated and the company would be similarly compensated. He wasn’t sure who the “utility” was and who would compensate them.

He referred to the second paragraph in Section 8 that reads in part “The Company, shall, on request of a person holding a building or moving permit issued by the Municipality, temporarily raise or lower its wires or other property or relocate the same temporarily so as to permit the moving or erection of buildings.” He said that in the previous contract there was a requirement whereby they had to give a clearance of 18 feet.

His biggest complaint he said was on Page 10 – Section 12 (c) – it reads in part “20 residential dwelling units per cable mile”. That doesn’t satisfy the needs of the community. Over an eleven year period when he was supervisor there were people who lived in the rural areas who called and complained about the lack of cable service in their areas or affordable access to cable. He thinks the Town should follow up and find out how much plant they have invested in each of the areas in this part of the North Country and find out what their investment has been in these communities as far as cable miles and plants.

Page 10 – Section 14 – Rates – He stated that in some communities there are discounted rates for seniors and he isn’t sure what their structure is on this today.

Page 11 – Section 15 – It reads in part “The Company shall provide a single outlet of Basic Service(s) to each school, firehouse and municipally owned building which is occupied for governmental purposes.” He said he didn’t know if they did that or not at this point.

Page 13 – Section 17 (a) – It reads in part “There shall be applied as a credit against the Franchise Fee the aggregate of: (i) any taxes, fees or assessments imposed on the Company or any Subscribers, or both, solely because of their status as such or any tax, fee, or assessment of general applicability which is discriminatory against the Company or any Subscribers.” This is new language he said that wasn’t in the previous contract.

He asked if we have a copy of their application to the PSC under this renewal contract.

Supervisor Jenkins said he hasn’t seen one. He has had several discussions with them.

Harry Gutheil stated that in the old agreement on page 3 there was language about gross revenues and he didn’t know if this language was in the proposed agreement or not, he didn’t find it. There is a change in the consumer protection complaint resolution from the old contract to this one. He asked if this means the people would have to go directly to the PSC with complaints and he asked if they had a list of recorded complaints received during the term of the last franchise agreement and the hold over period.

He went on to state that in Section 12 of the old agreement there was language about “defense” and he read from same. He asked if this got negotiated out and what the Town got for it or was it something proposed and the Town is considering it.

Supervisor Jenkins said Attorney Auffredou has reviewed the contract and the Town Board has had several drafts of the contract over the last 2 ½ years and they have had several discussions with the PSC and there isn’t any help there. All they want to do is settle the agreement and that is all they have offered.

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Harry Gutheil said he would like to see the pros and cons, the old vs. the new. He didn't think the PSC standard of 35 homes per mile was realistic in New York State and he mentioned Montana and the mileage between houses there.

Councilman Cumm stated that every time we get a letter from PSC it doesn't seem like they are there for the public interest. It seems like we are always under pressure to sign the agreement and he stated he didn't care if we never signed it. He didn't like the way this has been heavily handed down to us. There has to be some give to the 20 homes per mile. They are a public entity and they are a monopoly, because there is no cable service that can come in and replace what Time Warner does at this time. We are basically stuck with them until a new cable service comes in and gives them some competition.

Harry Gutheil stated that the only extension of cable service since the last contract was on Mott Road and Time Warner had to, because there was cable service on one side already and they bought out Harron Cable and they had to count the houses on both sides of the road and extend the service to their plant up by the railroad tracks.

Harry Gutheil stated Mr. Mucha does a good job representing his company and their stockholders and it is up to this Town Board to do an equally good job representing their constituents.

Elizabeth Lanfear stated she was one of the residents who do not have cable access. She stated that she just left her son's soccer game where she was talking to Tammy Thomas who lives on Mott Road. Her neighbor has cable and she does not. She was told it would cost \$3,000.00 to get cable from her neighbor's house to her house. Elizabeth stated that she lives on Route 32 before you get to Mott Road and she was told it would be \$3,600.00 for her to get cable from Route 197 south to Route 32. She didn't understand how that was possible when she can stand on her front porch and see the corner of Mott Road and Route 32 where there is a pole with cable on it. She keeps being told that they can only bring cable to her house down Route 32 from Route 197. She said she didn't know if it was "irony", but she finds it humorous that Mr. Mucha stated that capital is tight in his company. She also noted the comment from Harry Gutheil when he said that Mr. Mucha did a good job representing his company. She stated that she represents herself and her family. Capital is tight everywhere for people. She can't afford \$3,600.00 and it isn't 1996 anymore. She asked Councilman Cumm how many times has his wife who is a teacher has told her students to go to the school's website and play the games and practice their math facts. Her children don't have that ability. They have dial up and it is too slow to download the program. There are people in this Town whose children are at an educational disadvantage, because Time Warner won't give or work with the Town to get cable to areas of the Town not served. This is 2010 and times have changed dramatically since 1996. There needs to be something done. She is glad the Town Board chose to hold a public hearing and seek public input and discuss it. She thinks it is ridiculous for a person to have to pay for satellite just because they chose to live in an R-5 zone and not in the village and it shouldn't put their children at an educational disadvantage.

Councilman Cumm stated the Town doesn't even have cable in the rec. park.

Elizabeth Lanfear asked Mr. Mucha to comment on Mr. Gutheil's question about commercial businesses. She has a business across the street from her. Are they not counted?

Mr. Mucha said that is a question for the PSC. It is their rule that states "residence". Businesses are separate, because their services are different than residences.

Adele Kurtz asked if the rec. park would get cable under this proposed franchise agreement since it does state that all municipal buildings will have cable.

Councilman Cumm said that is the way he interprets it.

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Adele Kurtz asked how many miles are unserved in the Town and the answer was 14.

Adele Kurtz asked how many residences that would be.

Supervisor Jenkins replied around 180 or less.

Elizabeth Lanfear said it is current residences not parcels that could be developed right?

Supervisor Jenkins replied this was correct.

Supervisor Jenkins said it never made sense to him why Time Warner wouldn't extend cable down Route 32 to Clark Road where they would easily meet the requirements except "there is a gap". He could ask why Mott Road has service and not Clark Road. We have properties on the market right now to build more units even though they are five acre parcels. It is hard to understand why it is not an affordable service. He has seen the calculations, but doesn't understand them.

Mr. Mucha said he explained before it is calculated based on residences and distance.

Supervisor Jenkins said he understood that part. He doesn't understand the business sense. Wireless will be available in the future for our rural areas. It is happening in some of the counties up north of us. How do we help people now? That is the question. As Elizabeth stated children who live in a rural area are at an educational disadvantage. He knows that sometimes it is thought that if you live in the country you don't get infrastructure and there may be some truth to that, because they don't have public water and sewer. However, they have private wells and septic systems to take care of the lack of public water and sewer, but there isn't anything to replace cable and that is really critical. It seems to him that Time Warner is being very stoic in their approach to the future. They have an opportunity to grab these people now and they may not in the future.

Harry Gutheil stated for the record that the Town did express an interest in investing funds that could have been recovered over a long period of time from a portion of the franchise fees to help meet the needs of our people and that should be pursued and recognized in the formula and the number of residences per mile.

Councilman Kusnierz stated that the way the proposed agreement has been drafted it leaves parts of our community at an educational and economic disadvantage. He does want to work out a franchise agreement. Time Warner wants to put it to bed and we want to have something in place that provides a greater opportunity for expansion to our residents. He will not support the agreement the way it is drafted. He has said this before. He said that if Mr. Mucha was willing to meet with the Cable Committee or the whole Town Board and was willing to look into possibly using some franchise fees and putting language in the agreement whereby Time Warner over a three or five year period will provide build out to unserved parts of our Town then he thought they could come to an agreement. He asked Mr. Mucha if he was willing to do this.

Mr. Mucha stated that Time Warner was always willing to sit down and talk. He has been working on this for four years and has met with Harry many times, Preston a number of times and even Councilman Kusnierz. He was certainly willing to sit down and talk. He said there was a plan to actually do the build out with some Town funds and their funds. It didn't happen and he doesn't know why. It wasn't because of their rejection of it. They didn't need a franchise agreement to do that. They were happy to go ahead and do it. He couldn't guarantee what he could do in terms of the density of 20 homes per mile.

Councilman Kusnierz stated he was aware that he couldn't guarantee a change in the density figure, because that number doesn't change across the state especially in the new agreements. He stated that we

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can counter that if we can come to an agreement on the agreed upon build out of linear cable overhead served. He can provide Mr. Mucha with copies of the contracts he has from other communities that he mentioned at the beginning of the meeting. They were negotiated by Time Warner.

Supervisor Jenkins advised Attorney Auffredou that the board needs a State Comptroller's opinion on whether or not they can use some of the franchise fees for this purpose, because they are a general fund item.

Councilman Kusnierz stated that there are ways to structure that so they don't leave the company and we wouldn't have to follow statute.

Supervisor Jenkins asked for a motion to close the public hearing.

Attorney Auffredou suggested that the board leave the public hearing open. It is very possible there may be changes to the proposed franchise agreement. It is the board's call however. He said clearly the board isn't ready to make a decision tonight and before the board makes a decision the board will want to give the public time to comment on this agreement or a revised agreement. He said the board might as well keep the public hearing open and that way the board isn't indicating that they are ready to do anything.

The public hearing was kept open, but adjourned at 7:14 p.m.

Respectfully submitted,

Jeanne Fleury
Town Clerk