

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

JOINT COMMITTEES ON TECHNOLOGY IN GOVERNMENT
and CONSUMER AFFAIRS and ON LAND USE

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HELD AT: Council Chambers
City Hall

B E F O R E:
GALE A. BREWER
Chairperson

COUNCIL MEMBERS:

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Melinda R. Katz, Chairperson
Maria del Carmen Arroyo
Tony Avella
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A P P E A R A N C E S (CONTINUED)

Mitchel Ahlbaum
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Peter Schwab
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CHAIRPERSON BREWER: Good morning.

I'm Gale Brewer, Chair of the Technology in Government Committee and we're here today to talk about cable franchise customers, cable television and service issues. I'm honored to be joined by Council Member Leroy Comrie, who is Chair of Consumer Affairs and we will soon be joined by Melinda Katz who is Chair of Land Use. We're also delighted to have Sara Gonzalez who is the Council Member from Brooklyn, Council Member Tony Avella from Queens and I saw Charles Barron who is from Brooklyn. I also want to thank two staff people who are terrific, Colleen Baxter who is the policy analyst and Jeff Baker who is counsel.

As you all know, cable franchise is an agreement between a cable provider and a local or state franchising authority that permits a cable provider to utilize public rights of way within a defined geographic area. The FCC, Federal Communications Commission, began regulating cable providers in 1959. And in 1984 Congress passed the cable communications act, which allowed local franchising authorities to establish and enforce customer service

requirements of the cable providers. In 1992 the FCC adopted federal standards for cable provider customer service that includes office hours and telephone availability, installations, outages and service calls, billing practices and communications between cable providers and customers.

The New York Public Service Commissioner, PSC, which is unfortunately not able to be here today but they had provided testimony which we will read into the record, regulates the franchising and operation of cable providers in our state by enforcing standards for cable provider customer service, maintaining the statistics on cable operator customer service and resolving disputes between customers and cable providers.

Our state law requires that cable operators obtain a franchise from the local government in order to operate their cable systems. The New York City charter allows the Mayor to submit a franchise authorizing resolution to the Council and the Council may then approve, approve with modification or disapprove the

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2 authorizing resolution. The most recent authorize
3 resolution for cable television service was passed
4 by the Council on September 14, 2006 and required
5 that any franchise agreement entered into by the
6 city contain provisions to ensure adequate
7 oversight by the city on the cable provider's
8 performance.

9 The New York City agency with
10 oversight and enforcement of the customer serviced
11 protection standards set forth in the cable
12 television franchises is DoITT also known as the
13 Department of Information Technology and
14 Telecommunications. I also know that Bruce Regal
15 is the real person behind all of this. He is a
16 wonderful attorney at Corporation Counsel who we
17 rely on constantly and appreciate him. DoITT
18 provides customer serviced assistance to residents
19 experiencing difficulties with resolving disputes
20 directly with the cable provider.

21 On March 26, 2008 City Comptroller
22 Bill Thompson proposed a Cable Consumer Bill of
23 Rights drafted with the assistance of NYPIRG, the
24 New York Public Interest Research Group and
25 Consumers Union. The Cable Consumer Bill of

Rights calls for increased customer service transparency, cable billing transparency, independent arbitration of disputes and an annual cable consumer report card.

On October 28, 2008 the Comptroller praised the franchise agreement between the city and Verizon and recommended that it be used as a model for ongoing negotiations with Time Warner and Cablevision. I know RCN is in the house today also. So I'd also like to now call on our wonderful co-chair, Council Member Leroy Comrie to say a few words, opening statement. Thank you very much.

COUNCIL MEMBER COMRIE: Thank you. I'm Leroy Comrie. I'm the Chair of the Committee on Consumer Affairs. I'd like to begin by thanking Council Member Gale Brewer. She has been raising all of our awareness on the issues dealing with cable franchise customer service problems. While the Department of Information Technology and Telecommunications and not the Department of Consumer Affairs has oversight responsibilities and enforcement responsibilities with respect to the customer service protection standards set

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2 forth in the cable television franchise agreements
3 in New York City, it is still the Council's
4 responsibility to pay close attention to consumer
5 protection matters in New York City and to keep an
6 eye on instances where the quality of customer
7 service is compromised.

8 As required by state law, cable
9 companies operating in New York City must obtain
10 an authorizing resolution from the city government
11 once every ten years, which ensures that the city
12 be given adequate oversight of the cable
13 provider's performance. Just last year the city
14 approved an authorizing resolution for Verizon and
15 is currently in negotiations for renewing the Time
16 Warner and Cablevision franchises. At this time,
17 therefore it is appropriate that we take the
18 opportunity to review DoITT's oversight process
19 and learn what steps DoITT and the city's cable
20 companies are taking to improve and/or preserve
21 the quality of customer service they afford their
22 customers. I'll turn the mic back over. We've
23 been joined by Council Member Helen Sears from
24 Queens and I'm now turning back the mic over to
25 Council Member Gale Brewer. I see Council Member

Tony Avella would like to make an opening statement.

COUNCIL MEMBER AVELLA: Thank you Chair Comrie. I sort of listened to Chair Brewer's comments and I just have to remind both Chairs that as Chair of Zoning and Franchises I was deeply involved in the cable negotiations. As Chair of that Committee, I also had a number of recommendations which I see the Chair failed to mention. I also am extremely disappointed that I was not consulted on this oversight hearing as the Chair of Zoning and Franchises. It would have been nice to know that this was going on other than seeing it on the agenda today. Thank you.

CHAIRPERSON BREWER: If you are interested in speaking, make sure that you fill out a form. We'd like to start with our two individuals from DoITT, I believe, and also from Corporation Counsel. So would the first witnesses like to join us? I think it's Mitch Ahlbaum and Stanley Shor and Bruce Regal. Please begin. Thank you.

MITCHEL AHLBAUM: Good morning Chairs Comrie, Katz, Brewer and Avella and members

of the Consumer Affairs, Land Use and Technology in Government Committees. My name is Mitchel Ahlbaum. I am General Counsel and Deputy Commissioner for Franchise Administration and Planning for the Department of Information Technology and Telecommunications. Joining me are Stanley Shor, DoITT's Assistant Commissioner for Franchise Administration and Bruce Regal, Senior Counsel at the New York City Law Department. Thank you for the opportunity to testify regarding the city's role in receiving and resolving consumer complaints related to cable T.V. service.

When they need assistance with their cable T.V. service the first thing subscribers should do is to contact their cable provider. The phone number is listed on all monthly bills. In addition, every monthly cable bill to subscribers whether by mail or online informs subscribers that if a service problem is not satisfactorily resolved by the cable company they may contact the city by phone at 3-1-1, by email via New York City.gov or my regular mail directly to DoITT. This information is also provided in the welcome brochures, subscriber

handbooks and other literature that each cable company makes available to its subscribers.

With respect to 3-1-1, call takers are equipped with scripts that enable them to receive complaints regarding cable service. The complaints are referred to DoITT's cable customer service staff who are dedicated on a full time basis to facilitating the resolution of these complaints. Cable complaints received by DoITT are immediately recorded in the agency's database and processed by our customer service staff.

Every business day our staff communicates by phone with the cable companies to ensure that the complaints are being fully resolved in a timely manner. Cable companies are required to make their best efforts to resolve all service related complaints within two weeks and to resolve all billing disputes within four weeks.

As reported through the bi-annual Mayor's management report, the percentage of all cable complaints resolved within 30 days has steadily improved from 90% of complaints having been resolved within 30 days in fiscal 2006 to about 96% having been resolved within 30 days in

each of fiscal years 2007 and 2008 and to a resolution rate of over 99% during the first four months of fiscal 2009. In the first four months of fiscal year 2009, the average time to resolve service related complaints was 11.8 days and the average time to resolve billing disputes was 24.1 days.

During calendar year 2008, DoITT cable customer service staff handled a total of 2,066 complaints. These complaints are categorized as follows: about 1,405 or 68% were service related, 393 or about 19% were billing related, 261, 12% were miscellaneous in nature and 7 or fewer than 1% were real estate related. I would note that under New York State law monthly cable bills also inform subscribers that as a further resource they may contact the New York State Public Service Commissioner. And from time to time the PSC does receive complaints from New York City subscribers and DoITT is, of course, available to work with the PSC to ensure that these complaints are promptly resolved.

I can sincerely assure you that DoITT staff makes every effort to obtain

satisfactory and timely resolution of issues that subscribers bring to our attention. We take this obligation very seriously and I believe that the statistics on timely resolution indicate that. We regularly consider ways at weekly staff meetings of improving our processes, as I think the numbers also indicate.

I'm very proud of our team. I have distributed a thank you letter which I'm happy to read into the record if necessary or if you don't have it, that one of our cable service staff members, Ken Mitchel received from a cable subscriber just last week. We're very proud of Ken and I think the letter, which is not unusual, as a more personal side to the processes and statistics I just recited. I would not be happy with Stanley and Bruce's help to answer any questions you may have. Again, thank you very much.

CHAIRPERSON BREWER: We've been joined by Council Member Inez Dickens from Manhattan. Thank you. Let me ask one quick question and then my colleagues may have some but I'll have more. What does it mean when a call has

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2 been resolved? That's one question and the other
3 question I have is the PSC in their testimony,
4 which we can enter into the record, indicates that
5 they also take complaints. I know you mentioned
6 that so my question is how do you work with the
7 PSC on resolving complaints?

8 MR. AHLBAUM: And I may turn this
9 over but with respect to whether or not a
10 complaint is considered resolved, as I mentioned,
11 every day our customer service staff communicates
12 with the cable companies to determine whether or
13 not a complaint has been resolved--

14 CHAIRPERSON BREWER: [interposing]
15 So in other words--

16 MR. AHLBAUM: And it gets entered
17 into the system.

18 CHAIRPERSON BREWER: So in other
19 words if you contact one of the cable companies,
20 do you talk later on with the customer to see if
21 the problem has been resolved or do you assume if
22 you don't hear back from the customer that the
23 problem is resolved?

24 STANLEY SHOR: What we--

25 CHAIRPERSON BREWER: [interposing]

You need to introduce yourself.

MR. SHOR: Sure. I'm Stanley Shor. I'm the Assistant Commissioner for Franchise Administration. What typically happens is we'll get something in writing, a copy of what is sent in writing from the cable company to the customer showing the resolution, showing that they have provided the service call and that things have been corrected or that the billing dispute has been corrected, et cetera. So if the complainant is still not satisfied after that, then they will call us again.

CHAIRPERSON BREWER: In other words, if the complainant doesn't contact you again you are assuming that it has been resolved?

MR. SHOR: Yes.

CHAIRPERSON BREWER: Okay. So that's an assumption. I know that in general the DoITT Commissioner has been hoping to have a better system of following up with complainants in general not just cable. So I guess what you're saying then is, your numbers look good but you don't know for sure that the problem has been resolved to the satisfaction of the customer.

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2 We're relying on complaint based to hear that it's
3 been resolved?

4 MR. SHOR: We send a letter to the
5 complainant to confirm that it's been resolved so
6 it's not that we just wait for them to call us.
7 We send something to them and that if they still
8 don't call us after we send something to them then
9 it's most likely that they don't have an issue or
10 it's not that important at that point.

11 CHAIRPERSON BREWER: Okay. Then
12 how do you work with the PSC in terms of
13 coordination. Because us customers, what we do is
14 we complain to everybody we can find.

15 MR. AHLBAUM: In my experience and
16 I [off mic] know whether anyone here from the PSC
17 feels differently. In my experience not an awful
18 lot of complaints have been directed to us from
19 the PSC. We get those complaints directly and
20 handle them as Stanley just described.

21 CHAIRPERSON BREWER: So you don't
22 have any coordination with PSC? Because what the
23 PSC says, Barry Bedrosian who is Chief Consumer
24 Assistance Office of Consumer Services, PSC, it
25 says we can assist customers with numerous other

1
2 billing, service and safety issues. Staff's
3 authority in resolving cable consumer complaints
4 is guided by Parts 12 and 890 and Title 16 of the
5 New York code Rules and Regulations. So it
6 doesn't say that one has to complain there but I
7 just wanted to know if they get complaints do they
8 discuss them with you. Have you ever had that?

9 MR. AHLBAUM: In my experience,
10 I've gotten calls but, again, it's not on a
11 regular basis. I personally have gotten calls
12 from the PSC about customer service issues and we
13 worked it through our ordinary process. I don't
14 know if Stanley, do you have anything?

15 MR. SHOR: Yes. Our staff hasn't
16 received anything in recent times from them.

17 CHAIRPERSON BREWER: Okay.

18 COUNCIL MEMBER COMRIE: Good
19 morning, gentlemen. I have a couple of questions
20 regarding to the time it takes to get service
21 restored. What level of service restoration do
22 you categorize an area? A person that has their
23 internet connection that is disconnected for a
24 reason that's outside of the home, it can take
25 them...what's the maximum time do you expect the

cable company to restore their service.

MR. AHLBAUM: I'm going to turn this over to Bruce to answer because there's a rule on substantial legal dimension to this.

COUNCIL MEMBER COMRIE: I'm trying to understand the--

MR. AHLBAUM: [interposing] When you talk about the difference between cable T.V. and internet. We continue to take internet related complaints. We continue to report those complaints to the cable companies but regulatory, and this is sort of to try to get to the answer to your question and maybe I should turn it over to Bruce now. There is some question as to the sort of time demands that we're able to put on the cable companies through our franchise agreements with respect to resolving internet complaints.

COUNCIL MEMBER COMRIE: So are you saying that the cable companies that are providing internet service, is that not under your regulation? Is that what you're saying?

BRUCE REGAL: I think the answer to the question is the city's role with respect to regulation of internet service provided by cable

companies is still an issue of some legal ambiguity that's evolving as federal law evolves and as interpretations of federal law evolve. That continues to be an issue that's outstanding. It hasn't been fully resolved yet.

CHAIRPERSON BREWER: Then it wasn't included in the recent Verizon agreement then? Is that what you're saying, that the regulation in how a consumer that has a problem with internet that's provided by Verizon, that's not covered in the agreement that was just finished?

MR. SHOR: The agreement that was signed last year with Verizon covers cable television services. Although I would note as Mitch pointed out, when the city receives complaints from subscribers concerning their internet service provided by Verizon we do follow up with Verizon to try to make sure that those complaints are appropriately resolved.

COUNCIL MEMBER COMRIE: But you're not tracking the number of complaints or the time that it takes to resolve them?

MR. SHOR: We do track complaints that we receive concerning internet service, cable

service, both of those kinds of services that we get with respect to Verizon. But the franchise agreement itself covers cable television services.

COUNCIL MEMBER COMRIE: But these statistics that you talked about today are just dealing with the issues with cable television service.

MR. SHOR: Actually those numbers include complaints that we receive about all the services the cable companies provide.

COUNCIL MEMBER COMRIE: I can't hear. Can you say that again?

MR. SHOR: In the miscellaneous category of complaints that Mitch identified in his testimony, included in that number are complaints that we get regarding internet service.

COUNCIL MEMBER COMRIE: So when you say that you're average time to resolve all service related complaints was 11.8 days and the average time to resolve all billing disputes is 24 days, that's including internet services as well or is that just the...

MR. AHLBAUM: The miscellaneous category which I included it in was the total

complaints received. It is not included in the complaints resolved. So we track how many are received, we pass them on to the cable companies and it's not though however, included in the statistics on resolution.

COUNCIL MEMBER COMRIE: It's not included in the statistics. Can you explain to me what the hindrance is to get the cable companies because they're using the same cable, aren't they, to provide internet service?

MR. AHLBAUM: Right. And to an extent it's probably not unreasonable to expect that if internet goes down it's because cable went down. So that if cable was fixed probably internet was fixed so it may be embedded in those statistics. It would be unusual for one to go down and not the other.

COUNCIL MEMBER COMRIE: Actually, oft times I'm hearing that it's worse than the cable for the television. When the internet goes down that it takes, there are longer repair times. It's an issue with most customers that they have to wait at least two weeks just to get a service call. If they find that it's not a problem or a

line problem but it's a home based problem.

And I was just trying to get a handle on that because it doesn't meet the statistics that you're putting here. But you just told me that those statistics don't deal with the internet provision so I'm a little confused as how a consumer would understand the difference. What does a consumer do to make a complaint or file, track a complaint if they're dealing with a cable provider that's also providing them their internet service?

MR. AHLBAUM: We are pretty persistent with the cable companies on all complaints. Internet is regulated by federal law. Let me back up. We follow up, we report everything including that. We're pretty diligent. I know we've had people actually show up at DoITT very upset, in person because they've lost internet service. Our customer service people who are, as I mentioned, very diligent have helped to resolve a lot of those complaints but it's not something that I believe we're reporting as part of our numbers.

I know that's the case for Verizon.

Stanley, is that the case for all the companies?

MR. SHOR: Yes. If the--

COUNCIL MEMBER COMRIE:

[interposing] I'm still confused. What are we doing to get the cable providers to put that? What are you doing to get that statistic as part of your normal reporting mechanism so that we can have a better handle on how effective those response times can be?

MR. AHLBAUM: I think the issue is, as Bruce said, it falls into a gray and somewhat disputed area of the law now. So the question of how much leverage or legal ability we have to insist on resolution within a certain amount of time or even to get a report back on it other than through a good working relationship, hopefully, with the cable companies. It's limited because of this gray area.

COUNCIL MEMBER COMRIE: And that's being resolved on what level, the state level, the federal level? Is there anyone trying to resolve this?

MR. AHLBAUM: It is working it way at the federal level both through FCC and through

1
2 court cases that are going on now. What the exact
3 limits and parameters of local versus federal
4 authority are.

5 COUNCIL MEMBER COMRIE: Okay. And
6 has the city taken any legal position or filed any
7 briefs?

8 MR. AHLBAUM: Yes, we have. I'll
9 let Bruce describe that.

10 CHAIRPERSON BREWER: Okay. I don't
11 need the details on that. My concern is that if a
12 cable company is providing a service with the
13 authority of the city to provide it through the
14 franchise agreement, I would think that the city
15 should be able to ask these providers to get back
16 to you since they're providing a service with
17 permission from the city to allow the city to also
18 monitor their internet providing service. I
19 understand it may be some legal provisions but if
20 they're looking to do customer service and provide
21 a level of customer of service that's detailed so
22 that they can be able to maintain a franchise
23 agreement, I would think that there would be some
24 way to convince them that they should provide
25 those statistics as well.

Because in my communities, the concerns that I'm getting along with the fact that the cable companies take two weeks to come out to your home on average is that it takes an even longer time to deal with the internet provisions. Which each company is trying to get the consumer to buy as a package. So if they're doing the package deal, they need to be as responsible to the city, I would believe, to at least report the statistics back on their service levels, regardless of what the federal mandates or the gray areas of the law may be.

I would hope that in the upcoming agreements that we work to try to make that as part of the understanding in the memorandum of understanding even if it's not technically for the law to provide that. I trust that the city is trying to work with the federal government to clear up those gray areas.

But I would think that in a service orientated business such as these cable companies are, and in the competition business, I think that it would prevail upon them to boast that they are having a better service record or a faster service

record or a more responsible type of service record to help people that their service is not working.

MR. REGAL: Chairman Comrie, the city's position and DoITT's position is that we agree with that approach that is the city's role in administering and regulating internet service provided by cable companies should be comparable to the city's role with respect to regulating cable television services provided by the cable companies.

And we have been using all aspects of our involvement at the administrative level, at the judicial level as well as in discussions with cable companies to try and advance that position. But it is, as I say, still a legally controversial issue that has not yet been resolved. But we have an ongoing effort to try and make sure that that's the case.

COUNCIL MEMBER COMRIE: I hope that there is a real push to make that understanding because, again, the main complaints I have along with the time and length of it and the fact that the companies you can never get an exact

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2 appointment time but you get a range of hours, is
3 the length of time that someone's service is down.
4 I think which is unacceptable.

5 I would hope that you are doing
6 whatever you can to convince them while you're
7 making these agreements for them to increase their
8 level of reporting to you about the internet
9 providing and that the types of service and the
10 time it takes to get a service resolved for that
11 issue also. Thank you. I know that Madam Chair
12 has other questions and I'll reserve the right to
13 come back again. Thank you.

14 CHAIRPERSON BREWER: I'd like to
15 call on the Land Use Chair Melinda Katz. We've
16 also been joined by Council Member Gioia, Council
17 Member Mendez and Council Member James and
18 Seabrook were here earlier. Council Member Katz.

19 COUNCIL MEMBER KATZ: Thank you
20 Madam Chair, Mr. Chair. I apologize for my
21 tardiness but I knew the hearing was in excellent
22 hands so I appreciate that. I want to thank you
23 for coming in, giving us an update on customer
24 service. As you gentlemen will remember, we spent
25 a lot of the hours together and working together

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2 towards the authorizing resolution to create
3 competition in the City of New York when it came
4 to Triple Play.

5 So I guess you might not be
6 surprised when I say I'd love a report on the
7 status of the Triple Play, of the contracts.
8 Whether or not you're keeping records on which
9 communities and how many of the folks in the
10 communities are switching because I'd be curious
11 to know that if you'd have any way of knowing
12 that. And what the status of the build out is
13 with Verizon as well.

14 MR. AHLBAUM: I'll take it in
15 reverse order. As you know the franchise
16 agreement contemplated a six year build out with
17 milestones in each year by borough and the build
18 out is on track. Staten Island is pretty much 98%
19 almost fully built out. Manhattan, I believe and
20 I don't have the numbers in front of me, but is
21 over 50% build out and I think the other three
22 boroughs are in the 30% range is my understanding.
23 So I think certainly the pace is on track with
24 what the franchise agreement.

25 COUNCIL MEMBER KATZ: What, Queens

is 30%. Can you give me a favor and just for the record explain--

MR. AHLBAUM: [interposing] I will get you the exact numbers I just didn't come expecting to--

COUNCIL MEMBER KATZ: [interposing] I think we know what we're talking about but I also want to make sure we're on the same page of what exactly build out means.

MR. AHLBAUM: That means homes passed.

COUNCIL MEMBER KATZ: Say again.

MR. AHLBAUM: Homes passed.

COUNCIL MEMBER KATZ: Passed?

MR. AHLBAUM: It doesn't mean by the network. What percent of the borough has five borough passing homes.

COUNCIL MEMBER KATZ: But my point is, and I'm asking I'm not arguing I just want to make sure I understand. The build out also just means that that's what's ready for customers as opposed to customers have bought...

MR. AHLBAUM: Exactly.

COUNCIL MEMBER KATZ: ...that

percentage of that instead of Time Warner Cablevision.

MR. AHLBAUM: It means that subscriber can then call up and subscribe in most cases, assuming no issue with landlords for example, which happens on an occasional basis. But barring that it means that subscribers in those areas can pick up a phone and order with Verizon.

COUNCIL MEMBER KATZ: I guess especially Manhattan and the other three boroughs; you remember we had the issue to which communities would be build out first, last, second, third, fourth. And that was an issue that we talked about. Is there documentation that shows us which communities are the 30% in the other boroughs?

MR. AHLBAUM: Yes. We in fact had Verizon in our offices I think two or three weeks ago and Verizon bought big maps to show us which communities and to ensure to us, to satisfy to us that the anti redlining provisions of the agreement are being conformed with. We've requested some follow up documentation along those lines. I think Verizon also has available and can

provide to you, I don't have it with me now, the listing of the neighborhoods where FiOS is available.

COUNCIL MEMBER KATZ: Okay. I see the Verizon representative in the back and they are very good about sharing information when requested so I will request that information just to see what the neighborhoods are. It sounds like if it's a six year build out plan and 98% of it's in Staten Island, 50% is Manhattan and the other 30% in Queens, can we first see that it's actually going to take six years to build out.

MR. AHLBAUM: Again, that is a question for Verizon. We will enforce it to the extent we can under the franchise agreement. But I think whether it's going to go any faster than that is a business and other decision that Verizon has to make.

COUNCIL MEMBER KATZ: I guess there are only two other questions. One is do we have any stats on the switch that people made from Time Warner and Cablevision to Verizon, number one, showing that we're actually promoting competition. And that's a good thing in our city. And the

second thing is do we have any stats on the prices in those communities that are built out, whether or not the prices have changed and whether or not the competition has been, let's say good for the consumer as opposed to the companies.

MR. AHLBAUM: On switching, it's my understanding that that's considered very proprietary by the cable companies, by Verizon. It's not statistics that under the franchise agreement the company is required to provide to us. There are some things that are proprietary which they show us confidentially like some of the maps. But again, it would really I think be up to Verizon if they chose to share that information. But my understanding is that they consider that to be proprietary.

COUNCIL MEMBER KATZ: And the pricing, do we keep track as a city the price of the cable? We authorize the resolution so I'm assuming that we have some authority to keep track on how much they're charging.

MR. AHLBAUM: Absolutely. We have to do that because we need to ensure that we are receiving our 5% of gross revenues so we receive

subscriber accounts as well as the revenues.

COUNCIL MEMBER KATZ: So can we get a report, especially in the communities that are built out, how much the cable company is charging and whether or not competition has proven to be lower prices either because of virtue of a package. Because a lot of times the savings aren't self evident, a lot of times they come, if you join us we'll save 10% in a year or whatever it is. Is there a way for us to keep track that the fact that the competition has been beneficial to New York residents? Otherwise we're just assuming.

MR. AHLBAUM: It's not the way that we sort of have so far sliced and diced the data that we've gotten. We've looked at it more from an auditing perspective but I'm happy to go back and look at that and discuss with Verizon and look at our franchise agreement again. Not to keep throwing this out but some things are proprietary, some aren't but to the extent we can provide it and format it in that way, I'm happy to do it. I'll make a note.

COUNCIL MEMBER KATZ: Okay. I

1 appreciate the information. I guess I'll look at
2 my own cable bill to figure out some of the
3 answers. But I think that it is beholden upon the
4 city to figure out if there are savings that are
5 truly evident from the competition and I think
6 that there should be. Again, I know that Time
7 Warner just came out with if you commit to two
8 years we'll save you money. So it might be very
9 difficult to calculate but I have faith in you
10 that you will be able to look over the numbers and
11 figure out whether or not there are actual savings
12 for constituents. Thank you.

14 MR. AHLBAUM: I agree with you, it
15 is incumbent on us.

16 COUNCIL MEMBER KATZ: Thank you
17 very much.

18 CHAIRPERSON BREWER: When we were
19 in Staten Island for the Broadband hearing which
20 is pretty built out, there weren't any yet, which
21 was a little frightening, from the testimony. And
22 that was a built out community because of the FiOS
23 going in there some time ago. Council Member
24 Sears.

25 COUNCIL MEMBER SEABROOK: Thank you

Madam Chair. Mr. Ahlbaum, I just have one question. In your testimony you talked about complaints that are real estate related. Can you just give me what that is, an example?

MR. AHLBAUM: Yes. Right now it's a small number. I think the number is about--

COUNCIL MEMBER SEABROOK:
[interposing] I know you said it was about 1%. It's small.

MR. AHLBAUM: Yes. I think there are only seven.

COUNCIL MEMBER SEABROOK: I just need clarification as to what that exactly is.

MR. AHLBAUM: It's primarily one of two things. It's either an inability for either the cable company is not getting in to a particular building perhaps because their landlord is presenting an obstacle to the cable company getting in, which it should not be doing. Or it's, and maybe he can give a better answer to this, but it's sort of not reaching the premises.

MR. SHOR: Yes. If a cable has to be trenched to go to that building, that will take longer. [off mic] for the cable company to

invest a lot of money in that location [off mic]
reason for it to take longer.

MR. AHLBAUM: Early on real estate
as Time Warner and Cablevision were building out,
those were a much larger number of complaints.
That's really diminished and continues to diminish
to the point where it's seven complaints in even
the last year.

COUNCIL MEMBER SEABROOK: Does that
mean that sometimes they may take their time in to
placing the cable into areas that they may not
wish to do? I realize maybe that's a difficult
question for you to answer. But the fact is that
people as for cable and--

MR. SHOR: [interposing] No. I
think it's more a situation where you have a new
development has come into an area. Maybe it has
been rezoned from industrial to residential and
they just weren't aware of it ahead of time that
they were going to have to request of cable
service. So then they do the build, which
obviously takes a lot longer than sending somebody
[off mic] cable from existing facility in the
street. If the street didn't have a facility it

has to be built in the street.

COUNCIL MEMBER SEABROOK: Are you saying that when a new development takes place that the idea that someone may be asking for cable and I'm thinking of these large developments, that's not taken into consideration.

MR. SHOR: No. I'm saying that sometimes it might not be taken into consideration.

COUNCIL MEMBER SEABROOK: All right. Well I think we need to look at that Land Use Committee. Thank you.

CHAIRPERSON BREWER: Council Member Dickens

COUNCIL MEMBER DICKENS: Thank you so much Chairs. Good morning. Mine is also a Land Use question and this is not about new development, this is about small brownstones in the Harlem area. The cable companies, do they put a main box in, say, one of the buildings and then cable is distributed to all the other brownstones? The brownstones are usually one to four families. Is that how it's done?

MR. AHLBAUM: There is different

technologies between the way Verizon and Time Warner and Cablevision provide their service. Verizon has what they call a fiber to the home design and in that case it does entail the installation of a box at the premise.

COUNCIL MEMBER DICKENS: To each premise or one big box in one building and then something is distributed.

MR. AHLBAUM: I'm not sure whether in a brownstone it would be on the outside. I know in a single family home the box is on the outside and then a large multi dwelling unit it's a box in each and every apartment. Maybe Bruce or Stanley will know. I'm not sure whether in a brownstone it's...

PETER SCHWAB: Peter Schwab with DoITT.

CHAIRPERSON BREWER: Please introduce yourself.

MR. SCHWAB: Peter Schwab with DoITT. On the Verizon build and the multiple dwelling they do need to put a box in each individual apartment or unit that a customer decides to subscribe to.

COUNCIL MEMBER DICKENS: All right. Well this is Time Warner I'm asking about. In Harlem specifically where apparently a main box or something had been put in one corner building and both sides of the block got cable service.

MR. SCHWAB: That is possible that is an active device, maybe what they call a node. And maybe they need to use that to activate that particular block. From that point it would be distributed to other brownstones as such is requested.

COUNCIL MEMBER DICKENS: Now in a case like that are owners reimbursed for the installation for housing it on their properties? That's number one. Is there a state law that mandates that owners must allow that type of installation, which could be a structural?

MR. AHLBAUM: With respect to state law, there is a state law which requires landlords who have tenants in their multiple dwelling buildings to allow the cable company access to that building to provide service to anyone in that building requesting service. So if a tenant in a multiple dwelling building says I want Time Warner

or I want Verizon, the landlord of that building is required to allow Time Warner or Verizon or both if it has tenants asking for both, into that building.

The landlord can require reasonable terms and conditions. For example there has to be care taken with respect to the design of the equipment that goes in, there has to be care taken to repair any damage that's done during work and so on and so forth. But the landlord has to allow the cable company into the building to provide that service.

Now with respect to a brownstone that is owned by the resident, there is no particular requirement under state cable law that would require the owner of the building, who happens to live there, to allow a cable company in. So if a cable company wanted to use that building as a location to place its equipment, there would have to be a negotiation between the cable company and the owner as to the terms and conditions of the cable company wanting to use that, as I would with any property owner that wanted to use their property.

COUNCIL MEMBER DICKENS: So then there's nothing to say that would be unethical for an owner to ask for remuneration, whatever that may be. It may be a dollar, it may be ten dollars, I don't know. Just ask for remuneration for the use of his property or her property for the installation, for the lack of the proper term, master box.

MR. AHLBAUM: That's definitely the case if it's not a matter of a landlord who's conditioning service to his tenants on payments from the companies. A landlord can't do that but an owner of a building who is being asked by the cable company to place equipment that serves the whole block, not tenants in the building, yes, that is negotiated. There is nothing wrong with a negotiation like that.

COUNCIL MEMBER DICKENS: Obviously I'm talking about smaller wonders, are owners apprised of this information? Because in addition to the installation on their property, it requires them to because they may go to work every day so it requires them, if something goes wrong to make their basement or whatever it is available for

1
2 whatever repairs that may be necessary, which may
3 entail them taking off from work or may entail
4 them not going to church on Sunday or whatever.
5 So are small owners apprised?

6 Large owners probably would know
7 they could negotiate that because their attorneys
8 would apprise them. But are small owners told
9 that they are able to do this if a cable company
10 comes in and asks to be able to install such
11 equipment on their property?

12 MR. AHLBAUM: It's certainly true
13 that DoITT occasionally gets calls from building
14 owners asking about what their legal rights are
15 with respect to their relationships with the cable
16 companies. When we get calls we describe,
17 essentially, what I've just described to you.

18 COUNCIL MEMBER DICKENS: So you do
19 give...

20 MR. AHLBAUM: Yes.

21 COUNCIL MEMBER DICKENS: ...a type
22 of a legal opinion to the owners when they do call
23 and make these requests?

24 MR. AHLBAUM: We do provide
25 information of the kind that I just described to

you, yes.

COUNCIL MEMBER DICKENS: All right.

The reason I was asking is because on my block there was such equipment that was installed at the building at the end of the block. And the owner, I guess, didn't know and he got tired and he took an axe to the equipment and none of us on the block had service so that's why I was asking. But it's true so that's why I was asking and being so insistent with my question because of a personal incident.

MR. AHLBAUM: That's certainly a situation that, I think, all the parties, the city and the cable company and the building owner would all like to avoid. So to the extent that we're asked about questions like the one you asked, we tried to provide as complete information as we can.

COUNCIL MEMBER DICKENS: Because that owner said he didn't know what his rights were. They just came and said hey wanted to put equipment. He didn't know he could say yes or no and so he allowed them access. He didn't know that he could charge and they were calling every

so whatever frequency demanding access to make whatever repairs and it became a problem and he resolved it. So that's why I asked that question.

MR. AHLBAUM: Maybe this is something that we can address and help clarify on the city's website through Q and A. We have a section devoted to cable issues for consumers and maybe we can--

COUNCIL MEMBER DICKENS:

[interposing] Unfortunately in my community not everybody has access to it or doesn't use it. All right. Thank you.

CHAIRPERSON BREWER: Thank you.

We've been joined by Council Member Simcha Felder and Council Member de Blasio was here. Council Member Felder.

COUNCIL MEMBER FELDER: I apologize but I was chairing my own committee across the street so I left to come late. I just wanted to raise another issue which you might be familiar with, which is not directly related but indirectly related. And we have a knack of pulling things in that we like to pull in even if they're not [off mic]. Your responsibility in terms of the streets

that you dig up, can you tell me--

CHAIRPERSON BREWER: [interposing]
Council Member is your microphone on or could you
talk into it because...

COUNCIL MEMBER FELDER: Hello? Can
you please tell me what you believe the
responsibilities are when you dig up the streets
to install the cable, what your responsibilities
are and for how long in terms of repairing the
streets and putting them back to their original
condition?

MR. SHOR: Basically the cable
companies have to go to the Department of
Transportation to get a permit. And the permit
terms are dictated by DOT so they might be
different in different parts of the city on more
frequently used streets versus lesser used
streets. They often have stipulations. We are
not from DOT so we don't have that handy with us.
We don't know what the actual terms are on the
permits.

COUNCIL MEMBER FELDER: No, I'm not
talking about the terms of the permits. I just
want to know from you how long you believe when

you dig up the street, you put in your wires and pipes and then you replace it, how long it's supposed to remain that way in good condition before it does what we see that it's doing to many places in the city.

MR. AHLBAUM: We're the city we're not the cable company so.

COUNCIL MEMBER FELDER: You're all DoITT?

MR. AHLBAUM: Yes.

COUNCIL MEMBER FELDER: I apologize.

CHAIRPERSON BREWER: Thank you. I have some questions. Picking up on Council Member Dickens, what are the build out requirements? Because I know that maybe because there is so much going on now it should be made more specific to customers. Picking up on what she said. In other words we are talking, obviously, about service issues but in addition to service issues we're also serving those who are having a box inside, outside, et cetera. How are we communicating that or how are we making that clearer to customers?

MR. AHLBAUM: I'm sorry.

CHAIRPERSON BREWER: The build out requirements, we started with Staten Island, understanding for FiOS that it's a box on the front of the building. But we're not multi families, we're going all five boroughs, we're also dealing with as she indicated smaller buildings that are part of sort of the horizontal as opposed to vertical block.

I think we've always heard that the build out is probably most challenging from the real estate perspective. You may not be getting the calls but it is a challenge for the builders. So what are the requirements? Is it required that the box be in a certain place in the building? Is it required, as she indicated, how does the smaller buildings in a neighborhood that might all be single family? What is the requirement? Obviously the issue is for the companies is they have to be ready for the fiber. But once somebody wants to go the home, as you state, are there build out requirements, visually or box wise, et cetera?

MR. AHLBAUM: I'll try to answer your question. In terms of visually and

functionally, this has been a big area of concern and you may know this, I think you do know this, for the State Public Service Commission. There was a proceeding which the city actively participated in, in which the Public Service Commission worked with Verizon both to determine the safety of the boxes. There were some issues around--

CHAIRPERSON BREWER: [interposing]
There was a National Electric Code issue.

MR. AHLBAUM: Right, exactly. So a lot of those issues of the specifications of the boxes, how they should be installed, how they should be grounded have been a very active part of the Public Service Commission's agenda. We've submitted comments I think in at least two or three rounds of that process as well as having met directly with Commissioner Cosgrave and Public Service Commission Chairman Brown face to face along with other commissioners to make sure that that's what's being done is being done safely in the city.

CHAIRPERSON BREWER: Okay. So the safety issue is being paid attention to but I do

1
2 think that the Council Member who mentioned some
3 of the remuneration issues needs--I understand
4 it's a negotiation between the carrier and the
5 block and the building and so on. But I do think
6 something should be thought about so that people
7 understand what their rights are in that respect
8 also.

9 MR. AHLBAUM: Okay. I appreciate
10 that. I honestly wasn't even aware that there was
11 confusion so this is helpful and we will think
12 about that.

13 CHAIRPERSON BREWER: The other
14 thing is that we obviously have a lot of seniors
15 in our low income households in our city. What
16 are we doing to assist them? I believe that over
17 time the phone company has a life line for those
18 who are low income and you can pay basic. What is
19 the way in which the city is working with low
20 income households and individuals to give them
21 discounts that would be appropriate to their
22 means?

23 MR. AHLBAUM: One thing that we are
24 trying to get the word out on and I believe this,
25 we wrote a letter to you to this effect in the

1
2 last week or so. Get the word out that there is
3 a, I think it's called, basic basic tier of cable
4 service. I was under the impression that it was
5 in the \$15 range, it may be a little bit higher
6 than that but we're trying to take it upon
7 ourselves at DoITT because we can't regulate
8 prices but we certainly can let consumers know and
9 low income consumers know what options are
10 available to them.

11 I think our role there is more in
12 trying to get the word out, especially now with
13 the DTV conversion and people having problems with
14 or may not wanting to go through the trouble of
15 changing their receivers and prefer to go the
16 cable route. As all of part of that effort, we're
17 trying to at different public forums and in
18 letters and on our web site, although I do
19 appreciate not everyone has access to the web.
20 Trying to let people know what their options are
21 in terms of affordability.

22 We don't have the ability to
23 subsidize or to dictate under law what the prices
24 are. But at least we can try to educate consumers
25 about their options.

CHAIRPERSON BREWER: Are you working with the Department for the Aging, for instance, HRA, et cetera?

MR. AHLBAUM: We work closely with the Department of the Aging on the digital conversion--

CHAIRPERSON BREWER: [interposing] I know that but I'm talking about this--

MR. AHLBAUM: [interposing] Right and as a part of that, that was part of our effort again through Aging it's my understanding to get the word out about alternatives including the basic basic tier.

CHAIRPERSON BREWER: Okay. I know you talked about this with Council Member Katz, but at the FCRC hearing I thought that DoITT said that the updates on the build out would be posted on your web site. I'm wondering if they're available. I know you mentioned earlier that some of that, the carriers don't want to mention. But you have the statistics of the 30% and so on, so what is available on the web site regarding the build out? Maybe I should know this but what do you put up there?

MR. AHLBAUM: To be honest I'm not sure we have statistics on the web site. We have the franchise agreement which obviously includes milestones. I don't know that we've posted anything--

CHAIRPERSON BREWER: [interposing]
I have a copy of it right here.

MR. AHLBAUM: And I do want to, after this meeting, circle back to Verizon and to our franchise agreement and, again, ensure just from a business confidentiality perspective make sure that anything we post is legal under the terms of our franchise.

CHAIRPERSON BREWER: Because it was stated at the hearing that that information would be available on your web site.

MR. AHLBAUM: Okay, I'll go back and check that, too.

CHAIRPERSON BREWER: My other question is regarding RCN, how does RCN fit into any of these discussions?

MR. SHOR: RCN currently operates under something called an Open Video agreement, which is something like a cable television

franchise agreement but operates under a separate provision of federal law. We are contemplating discussion with RCN and RCN has indicated to us an interest in moving to a standard franchise cable television franchise arrangement. We do anticipate having those discussions with RCN.

At the same time the open video form of agreement that we have with RCN is very similar to a cable television franchise agreement and has many of the same provisions in it with respect, for example customer service as the existing cable television franchise agreements.

CHAIRPERSON BREWER: We have P.S. 50 here, 5th grade class of Manhattan. Congratulations. Are you here P.S. 50? Thank you very much. So right now a person has an RCN customer service problem what do they do?

MR. SHOR: They should call the city, 3-1-1 just like they would with cable television.

CHAIRPERSON BREWER: And then you will resolve it.

MR. SHOR: We follow the same procedures with respect to RCN that we do with the

cable companies.

CHAIRPERSON BREWER: Because you know there has been--have you received at DoITT some RCN complaints recently?

MR. AHLBAUM: Yes, we do receive RCN complaints?

CHAIRPERSON BREWER: And what were those, how were they resolved? I think that people who have that kind of service were concerned about how they were being charged.

MR. SHOR: Their processed exactly the same way as the other cable complaints. The letter that Mr. Ahlbaum referred to before was sent by an RCN customer thanking us for helping them out.

CHAIRPERSON BREWER: Yes, but I have other letters that were not so nice.

MR. SHOR: About RCN or about us?

CHAIRPERSON BREWER: About RCN, not about DoITT about RCN. If there was a change in the way RCN did their service, in other words coming under franchise agreement, would that be a different way in which they operate? How would that change competition in any way, shape or form?

MR. AHLBAUM: I don't want to prejudge what the franchise agreement with RCN would look like because we haven't settled on that yet. But from a customer service point of view, the open video agreement we have with RCN now is very similar to a cable television franchise agreement. So there's not a whole lot of difference there.

CHAIRPERSON BREWER: The other question I have is regarding the 3-1-1 calls in general. Do you know how many--I know you talked about generally but is there an up and down flow? Let me give you an example. When the convertor box many of us received--I guess it's the wrong name but the new box so that we could get digital as opposed to analog, the digital box, there were many more complaints that I received because it is a fuzzier picture. It often freezes, et cetera. Is that something that can be resolved or is that something that is just ongoing and have you received any of those kinds of complaints? Because mine freezes every night, so on and so forth, and so do all my neighbors.

MR. SHOR: Those are service

1
2 complaints. We process them like the other
3 service complaints. They send out someone to the
4 house, sometimes they have to swap out the box.
5 Obviously with new technology there's a certain
6 learning curve with cable companies but they're
7 treated the same as any other service complaint.

8 CHAIRPERSON BREWER: Okay. Now the
9 Verizon Appendix A has a wonderful Consumer
10 Protection Standards. It's about three pages of
11 index and there's a report card. I know you're in
12 the midst and you may not be able to discuss this
13 of negotiating with the cable companies but is
14 that the kind of customer service that you're
15 looking for, for the future? Because that is, to
16 your credit, very extensive.

17 MR. AHLBAUM: Obviously we don't
18 want to get into the detailed--

19 CHAIRPERSON BREWER: [interposing]
20 No, I understand.

21 MR. AHLBAUM: --discussions about
22 negotiation. I think we can say that the cable
23 consumer report card innovation that was included
24 in the Verizon franchise agreements is something
25 we think was a good idea and therefore presumably

we would like to include it in any future cable television franchise agreements.

CHAIRPERSON BREWER: I think Council Member Katz has a question. We've been joined by Council Member Oliver Koppell and Council Member Elizabeth Crowley.

COUNCIL MEMBER KATZ: I don't want to take up too long. I came in late and actually I'm leaving early so I apologize. But very, very quickly, if RCN doesn't have an official contract with the city yet, first of all how is that going to work if you actually work it out? Wouldn't you have to come back to us for an authorizing resolution again? And second, if they're not doing the official contract, how is the level playing field issue working with RCN since they're working in our city, having the business of our city but it seems to me like the level playing field was the big issue as we were disseminating the contracts.

MR. AHLBAUM: Just to clarify, RCN does operate under a contract with the city. It's simply called an open video agreement rather than a cable television franchise--

COUNCIL MEMBER KATZ: [interposing]

So they work out the same issue of level playing field and making sure that they're all working on the same status? Is that part of the contract?

MR. AHLBAUM: The agreement that we have with RCN dates from 1999, 1998 so it predates the level playing field language in the authorizing resolution that was adopted by the City Council. But in any future cable television franchise agreement that we would be entering into with RCN that would be granted pursuant to the same authorizing resolution that covers Verizon and the renewals of Time Warner and Cablevision. So we would have to comply with the provisions of that authorizing resolution with respect to RCN or anyone else we grant franchises to between now and 2011.

COUNCIL MEMBER KATZ: So we wouldn't have to do another resolution.

MR. AHLBAUM: That's correct.

COUNCIL MEMBER KATZ: And we did an RFP after the resolution from this committee, right? That's how you got Verizon, Time Warner, Cablevision, the RFP?

MR. AHLBAUM: Under the charter the way the process works is the Council adopts an authorizing resolution. The responsible agency then issues a request for proposals or other solicitation and then companies respond to that--

COUNCIL MEMBER KATZ: [interposing]
As much as I appreciate the lesson my point is that you issued an RFP, they responded so how does that work now with RCN as you move forward? It would just be a sole negotiation with them already doing business? I'm asking; I'm not accusing. I'm simply requesting information from the city.

MR. AHLBAUM: The RFP that was issued that Verizon responded to remains as an open RFP; other people can respond to it. It may be that there are other terms and conditions not contemplated in that RFP that other cable companies or proposed cable companies would like to pursue. Therefore we may be asked to issue a different form of RFP but that will be part of negotiations going forward.

COUNCIL MEMBER KATZ: I'm not trying to be difficult. I don't know anything about this except for what you told us this

1
2 morning so why RCN would be working under the
3 former federal agreement? You say that they want
4 to work under the contract with the city the same
5 way that the other companies are yet the RFP is
6 outstanding and they haven't responded to the RFP?
7 What am I missing?

8 MR. AHLBAUM: Because RCN operates
9 under something called an open video agreement...

10 COUNCIL MEMBER KATZ: I got that.

11 MR. AHLBAUM: ...they are subject
12 to federal rules with respect to how they operate,
13 which other cable companies are not.

14 COUNCIL MEMBER KATZ: I got that,
15 too.

16 MR. AHLBAUM: They--

17 COUNCIL MEMBER KATZ: [interposing]
18 Why don't we start with what we haven't talked
19 about yet?

20 MR. AHLBAUM: They may or may not
21 want to continue to operate under those federal
22 law provisions. An RFP to which they respond may
23 need to reflect part of the additional federal
24 rules under which they operate. So, again, I
25 don't want to take positions on what the city's

negotiating position will be with a particular company but there are different conditions under which RCN operates today. Under federal law that may require the city to do something different than what we have done with respect to the RFP for Verizon. And if that's the case then we would have to do something else with respect to what form of RFP we use.

COUNCIL MEMBER KATZ: Okay. I don't want to dig up the horse to bury it again.

MR. SHOR: I don't even know if this helps but it might be worth recalling that for example the Verizon RFP was for citywide cable service.

COUNCIL MEMBER KATZ: Yes, I know that.

MR. SHOR: The RFP that eventually will hopefully be issued for renewal will probably be something that looks a little bit different. I think what Bruce is saying is that the RFP for RCN may end up looking something different than that. So it's not just one overall RFP. Maybe that's not helpful.

COUNCIL MEMBER KATZ: I was simply

trying to figure out if a company wants to do business under the same rules why they just haven't responded to the RFP. You understand that's a little bit contradictory so that's what I was just trying to figure out. If they really wanted to do business under the same rules why they just didn't respond? And from what you seem to be saying to me is that there's other issues involved with the federal law that they are required to adhere to.

So you're basically discussing with them now, without going into negotiations, how you could issue and they could respond to something that would bring almost everyone under the relatively same roof. That seems to be the answer. Okay. Thank you very much. I appreciate it.

CHAIRPERSON BREWER: We've been joined by Council Member Arroyo, Council Member Jackson and Council Member Ulrich. Could you help me to understand now that you have a franchise agreement with Verizon and they have a new way of working with consumers? Can you describe what the consumer situation was like previous and what it's

1
2 like now and whether you have seen any change in
3 people making complaints or if they are better
4 able to be handled? Maybe the franchise agreement
5 is helping people to solve the more readily and
6 less response that's needed from 3-1-1. Obviously
7 it's not completely built out so it's not a full
8 scenario but what are the--

9 MR. AHLBAUM: [interposing] What is
10 the question, that we have competition or are we
11 finding that resulting yet in a different--

12 CHAIRPERSON BREWER: [interposing]
13 Are there new standards that are available as a
14 result of Appendix A that help the consumer and
15 also just help flow better in terms of 3-1-1's
16 concerns.

17 MR. AHLBAUM: I was just going to
18 say and Bruce just whispered to me, it's really
19 two things. One is that it's very early in the
20 franchise agreement. Then the other is Verizon is
21 still accumulating subscribers. I think as they
22 get more subscribers we'll then be in a better
23 position to tell.

24 CHAIRPERSON BREWER: I know they've
25 been on Staten Island for a while but maybe people

in Staten Island don't complain about anything--

MR. AHLBAUM: [interposing] But not with cable. They've been on for a while with internet but not with cable.

CHAIRPERSON BREWER: Okay. They've got FiOS going. The final question I have and there may be others is, are you going to keep track of complaints online. I know this is something that in general 3-1-1 is working toward. But when would this happen? Are we doing it now, et cetera, for cable specifically?

MR. AHLBAUM: Yes. There is definitely an effort underway. I would like to be in a position to say exactly when it will happen but I can assure you it will be soon that we will be posting additional information on customer service, online.

CHAIRPERSON BREWER: If a customer does have a problem can you be specific for all of us as to what that customer is supposed to do? I see call the carrier but when one does that and it's not resolved one calls 3-1-1. But exactly what happens after that so we can be very specific. It could be everything from billing

issues and Council Member Comrie mentioned the internet juxtaposition issue. Obviously it could service about the box, the way in which the--and so on. What are the exact steps?

MR. AHLBAUM: The consumer calls 3-1-1 and then that information is recorded by 3-1-1. It immediately goes to our office. We immediately transmit the complaint over to the cable company and--

CHAIRPERSON BREWER: [interposing] What's the time frame there when you say immediately?

MR. AHLBAUM: You're talking about the same day.

CHAIRPERSON BREWER: Not the weekend, though.

MR. AHLBAUM: During the weekend, no. That's the next business day, just during business days.

CHAIRPERSON BREWER: Sometimes there are outages on the weekend. Go ahead.

MR. AHLBAUM: The company should be handling it themselves as far as an outage on weekends.

CHAIRPERSON BREWER: Okay. So you contact the carrier, the company.

MR. AHLBAUM: We contact the carrier, we give them all the information and then we follow up with them. We call them daily to find out what the status is of the different complaints that are pending.

CHAIRPERSON BREWER: Then you send this letter. Is there a certain time period that you wait until to send the letter to the customer to see if the problem has been resolved?

MR. AHLBAUM: We call the cable company until we get the resolution from them. Then once we get the resolution from them, then we contact the customer to make sure that they have gotten that resolution.

CHAIRPERSON BREWER: And you contact the customer by letter, by phone, by email?

MR. AHLBAUM: It's by letter.

CHAIRPERSON BREWER: By letter and then if you don't hear back from the customer then you assume that it's been resolved. That's what we talked about earlier.

MR. AHLBAUM: Yes.

CHAIRPERSON BREWER: So when you say resolved in your percentages you're talking about you haven't heard back from the customer within a certain time period. What is that time period?

MR. AHLBAUM: Ten days.

CHAIRPERSON BREWER: Ten days, so that's when it's resolved. What do you do when something's not resolved? You just keep working at it until it is.

CHAIRPERSON BREWER: Yes.

MR. AHLBAUM: Thank you very much. Any other questions? Thank you very much for all your time. I know that you are working hard on the next round of cable companies so we look forward to hearing more as time goes on. Thank you very much.

MR. REGAL: Thank you.

MR. AHLBAUM: Thank you. Chris Keely, who is with Common Cause New York. I want to mention for the record we have testimony from Anthony Antaverous, Vice President and General Manager of RCN and also we have testimony for the

record from Verizon. Also as I said earlier from the Department of Public Service, PSC State of New York. Good morning.

CHRIS KEELY: Good morning. Thank you Chairs Brewer, Comrie, Katz and Avella for hosting this hearing this morning. My name is Chris Keely and I'm Associate Director of Common Cause New York. Common Cause New York is a non partisan, non profit citizen lobby and a leading force in the battle for honest and accountable government. We also the coordinator of New Yorkers for Fair and Affordable Utility Service, a coalition of nearly 50 organizations from throughout the state that are fighting for regulations and oversight bodies that are responsive to the needs of the public.

The franchise renewal agreements that are being negotiated between the city and the incumbent cable providers offer a valuable opportunity for the city to push for new concessions, including improved service and expanded access to government information. I'll focus my testimony here today on two items, the city's ongoing negotiations with those incumbents

with an eye towards lessons learned from the recent negotiations with Verizon as well as broader concerns surrounding cable franchising in New York.

As a matter of background let's briefly touch on the Verizon cable franchise. In 2008 Verizon and the City of New York reached an agreement granting Verizon a franchise to provide cable service in New York City as we have discussed at length this morning. This franchise was to bring competition within the five boroughs for the first time and was approved by the city's Franchise and Concession Review Committee, the FCRC, in short order.

It was only then, when the agreement was forwarded to the New York State Public Service Commission for approval after the city had negotiated and after the FCRC had approved the agreement that the public first learned that Verizon had a high proportion of cable installations that were non compliant with the national electrical code. Months of debates and briefs followed to address these issues of non compliance. You can see some of our attachments

to my testimony outlining some of this conversation.

This was an eye opener.

Documentation through this process before the PSC brought to light that the city was unaware of Verizon non compliance throughout its own negotiation process. Throughout the 18 month negotiation process between the city and Verizon, it seems this information about a high proportion of cable installations that are non compliant with the National Electric Code was not shared by the PSC or Verizon nor is there any indication that the city requested such information.

To discuss oversight here today, we must first consider effective communication. With that in mind, I encourage the Council to ensure that the city's Law Department and the Department of Information Technology and Telecommunications, DoITT, have strong ongoing communications with the state Public Service Commission and its staff. As well as other local, state and federal regulators that may have access to information that is critical to an effective cable franchise agreement. Not the least of such critical

information is that which concerns public safety, as was the case with Verizon.

To briefly touch on the pending negotiations with the incumbents, there are three specific issues that I'd like to touch on briefly. First is that the public must be brought into the process. It's been years since there were the initial public hearings to discuss where New Yorkers stand in regards to their cable service regarding these incumbent cable franchises. That needs to go back out to the public. Depending on where it is with the Law Department, depending where it is with DoITT, when it comes back to the public we need to have a full vetting process. It's been years since people have had a chance to review it and the cable marketplace as changed, as we've talked about today. Now we have a five borough provider, that clearly changes the cable marketplace in New York City.

We need to protect and expand public education and government programming, PEG programming. A great deal of the government's business is conducted during the traditional working day. Putting video on demand, for

example, having hearings such as this on video on demand would greatly increase the public's ability to be informed of what's going on in city government, to participate in what's going on in city government. This hearing as well as the FCRC's approval hearing for the Verizon franchise are just two pertinent examples of day time hearings where limited public participation was caused largely due to the time constraints.

Also, now I wrote in here that there have been rumblings that the incumbents may be trying to single out PEG programming costs on a customer's bill. I say that this is pernicious. It's my understanding as of this morning that this is already happening, that one of the incumbents, Time Warner is already breaking out a line item on its monthly bill saying how much customers are paying for PEG access. I stand by the statement that this is pernicious but now it's already happening. This isn't rumblings. One of the incumbents is already breaking this out.

As some of the gentlemen from the previous panel have explained to me in the past that this is actually a matter for federal law.

That under federal law they are allowed to break this out. That said, maybe the city can also push if we're going to break out PEG channels maybe we should also break out ESPN, the seven different history channels I have and the Food Network so that people can decide which channels they do and don't want. If we're going to start itemizing, let's itemize.

That at its core Common Cause finds to be discriminatory and against the public interest. PEG channels were designed for a purpose and itemizing it in that way specifically discriminating against PEG channels is a discriminatory process that the city should do everything in its power. We'd be happy to work with the Council, the Mayor, DoITT and the Law Department to help combat that at the federal level as that's our understanding where that has to be addressed.

As was discussed in the introduction, it's very important for the incumbent cable providers' contract, franchise agreements to include the full array of information from the Cable Consumer Bill of Rights

as outlined by the comptroller and NYPIRG and Consumers Union. Those should act as a floor for negotiation. They shouldn't be the ceiling that we're striving for; they should be the bare minimum floor at which we're negotiating.

To bring it a little more broadly, I'd also like to talk about the city should be establishing a cable franchise oversight committee. Seattle offers a very interesting model for this as a way to bring citizens into the process to oversee not just cable but telecommunications in general. So in Seattle they study and make recommendations to the Mayor and City Council on issues of community wide interest, including cable, technology access and regulatory issues with the city's authority regarding wired and wireless access. Conduct hearings and workshops, encourage and promote affordable access, advocate, solicit and facilitate citizen participation which as I've highlighted earlier is critical to this conversation. And they measure and evaluate the effectiveness of the policies and programs as they're being implemented.

We've also talked a bit this

1 morning about 3-1-1 and its very important role in
2 this conversation. 3-1-1 is an amazing resource
3 that we have here in New York City but too many
4 New Yorkers don't realize that 3-1-1 can be used
5 as a way to help rectify cable complaints, that
6 that is a natural point of entry. It's
7 frustrating to deal with the cable company so the
8 next step as it says in the bill inserts can be to
9 go to 3-1-1, can be to go to the New York State
10 Public Service Commission.

12 It's important that some of the
13 Council Members this morning, I think it was Chair
14 Brewer, asked DoITT to define what does resolved
15 mean. When we have a complaint that is resolved,
16 what does that mean? And I would like to throw
17 out into the mix that there's the potential that
18 if they're just sending a letter to the customer
19 saying this is what the company said, here it's
20 been resolved. If the customer doesn't get back
21 in touch then it's resolved.

22 I would throw into the mix the
23 possibility that the customer is not reaching back
24 out to DoITT because the customer wasn't satisfied
25 with DoITT's response and the customer doesn't

1 think that DoITT is going to be able to take it a
2 step further. We've been having conversations
3 with DoITT, about 3-1-1, about their cable
4 complaints and we've had a very good experience
5 discussing this with them. They're clearly very
6 knowledgeable. They're clearly very interested in
7 making their complaint process as effective as
8 possible.
9

10 We look forward to working with
11 them on that but I think that that's one
12 particular aspect we might want to consider, what
13 does resolved actually mean. 3-1-1 in its
14 advertising should be sure that it includes cable
15 complaints as part of its outreach because New
16 Yorkers, that is going to be one of their top
17 every day complaints. When you ask what your
18 consumer complaints are, it's bank fees, it's cell
19 phone and it's cable; those are three of the
20 biggest things in the consumer realm that are out
21 there.

22 So I thank you once again for
23 putting together this hearing and inviting us to
24 testify today. I'll be happy to try to answer any
25 questions you may have.

CHAIRPERSON BREWER: Thank you.

We've been joined by Council Member Lappin and Council Member Garodnick. Questions? Thank you for all your advocacy, first of all. And second of all I know you submitted a lot of material that you and others have put together and I think I know what some of it is. But can you just summarize some of the correspondence that you have. I know it's about the electrical code and you mentioned, obviously, getting more access to public and having them participate. I'm really absolutely upset that NYCT TV is not here today, as an example of lack of public access. They usually come to all of our hearings. I don't know what happened today but we don't have any other way of communicating, which is a shame. So can you just talk a little bit about some of your suggestions in the appendixes and the letters?

MR. KEELY: Absolutely. And a quick note to work backwards there as far as NYC TV, I just like to put another plug in for Council Member Brewer's bill for web casting hearings, that that's another way that we could address a lot of this. We saw someone in the front row

doing that here today. That is a very effective way to get that information out to the public.

To go through our attachments, both of these attachments stem from the conversations that came to be through the Verizon franchise process, here at the city level as it followed up to the state. As I mentioned in my testimony, it wasn't until after the city negotiated a franchise agreement with Verizon, it wasn't until after the FCR approved it, it wasn't until after a City Council resolution that it went to the PSC. The PSC at its approval hearing said there are a high proportion of cable installations in New York State that are non compliant with the national electrical code.

We're not electrical engineers at Common Cause. We're not consumer advocates. We're talking about the democratic process in this. What the problem is here from our standpoint is it seems there is a breakdown in communication. It seems that the city should have known that this was going on. Now that might be on the PSC's side for not sharing the pertinent information. That might be on Verizon's side for

not sharing pertinent information. It might be on the city for not asking. Or maybe it was disclosed and it just got lost in the shuffle. The franchise agreement itself is as thick as the table so maybe that was in there somewhere and we just didn't have a full discussion about it.

But I think that that's something that the City Council should have known about. I think that's something that the FCRC should have known about. But, again, to underscore this isn't about Verizon. Obviously Common Cause is concerned about public safety issues or issues that may have implications on public safety but this isn't about Verizon. This is about proper communication between the city, the state, between local franchising authorities truly throughout the state. Because there were many other franchise agreements signed in previous years that that information wasn't disclosed as least as far as we can tell. That information wasn't disclosed to local franchising authorities.

What we did was take part in a public comment period before the Public Service Commission regarding these matters of non

compliance with the national electrical code. Verizon made very strong arguments saying that well it doesn't follow necessary the letter of the national electrical code. That FiOS is a different beast. It follows the spirit. It's not a Public Safety concern. Again, that's for the electrical engineers to hash out.

But what it comes down to is communications need to be stronger between the city and the state. The last attachment here, New Yorkers for Fair and Affordable Utility Service, what we're talking about there is reforms at the PSC, that the PSC needs to be more responsive. Council could take action in that regard as far as resolutions to open up that process, maybe public oversight hearings by the state legislature, annual reports that are more detailed. So that we can better understand what's going on in the cable marketplace here in the city. The PSC doesn't do just cable. The PSC covers a wide range of issues and could even have the authority to oversee the terms and conditions of cell phone contracts in New York State should they decide to exercise that.

What we're trying to do is follow this through all the way through this conversation, through this debate, through this negotiation to make sure that all the information that the Council should have at hand, that the public should have at hand is truly nearby.

Because we don't want to have to go through that process again with Time Warner, with Cablevision, if we're going to go through this new fangled process with RCN, if we're going to have a modified RFP for them. These are conversations that we need to make sure that the Council--

What we're trying to so is encourage the Council to encourage or mandate that DoITT would open up those lines of communication as best as possible. Again, I'd just like to quickly underscore these are matters of communication that these were not matters that we're going after one particular company or another.

CHAIRPERSON BREWER: I know earlier we talked about low income households and seniors. I don't' think that a lot of them know that there are other opportunities for more of a baseline

cost. Do you know if this has been publicized? Do you have a position on this? Do you think it makes sense to have something that's more affordable?

MR. KEELY: We think absolutely makes sense to have something more affordable. The life line telephone conversation, that's one direct analogy that I think makes a lot of sense. I think bringing more control to the local level, which is what I think Bruce Regal was discussing in the last panel. I think there is a place for local oversight for internet, for telephone so that the city is able to cultivate specifics for what they may need.

One of the larger underlying issues at the national level that would come down to the local level is obviously internet neutrality rules as far as how the data is processed through that. But that's a conversation for another day. We do think that those sorts of life line alternatives are very, very important. Some of our coalition partners here with New Yorkers for Fair and Affordable Utility Service, that is one of their primarily objectives, to make sure that there is

that sort of information that can get out.

Because having information is truly critical both in the democratic process realm and at a more basic level of emergency management. When things are up in the air, we need to make sure that people can get effective communication and television is one of the most effective ways to do that.

CHAIRPERSON BREWER: I want to thank you very much for your testimony. And say that this hearing will come to a conclusion; however I believe that we have brought some ideas to the city's DoITT and Corporation Counsel and I think it's clear that there's a change in terms of the way people are getting information. We have to be really, really careful that the consumer is first and foremost as that change takes place.

COUNCIL MEMBER COMRIE: I want to thank Council Member Brewer for continuing to do everything she can to monitor all of the issues around the cable franchise agreements. I think that there are some issues that came out today, especially regarding internet service and whether or not the city can make sure that the cable

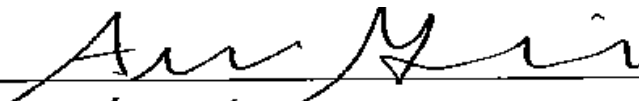
companies are getting back to us in a responsible time frame as far as the provision of internet service. Which they are all touting as part of their package to make sure that we have a good service record on that as well.

I want to thank Council Member Brewer and her staff and my staff and the Land Use Committee for everything that they're doing to make sure that his topic stays in front of the consumers and in front of the city. Thank you.

CHAIRPERSON BREWER: Thank you Council Member Comrie. Council Member Katz and colleagues, this hearing is concluded.

C E R T I F I C A T E

I, Amber Gibson, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature 

Date _____ April 24, 2009 _____
