COUNCIL OF THE CITY OF PHILADELPHIA
PUBLIC HEARING BEFORE COUNCIL COMMITTEE
ON PUBLIC PROPERTY AND PUBLIC WORKS

- - -

Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, October 31, 2000
2:08 p.m.

- - -

BILL 000452 - An ordinance granting permission to RCN Telecom Services of Philadelphia, Incorporated to construct, own, operate, maintain, replace, and remove a telecommunications system in, over, and under the public rights-of-way and streets of the City of Philadelphia, and operate and maintain a video programming service over such telecommunications system, pursuant to the provisions governing open video assistance in the Telecommunications Act of 1996, under certain terms and conditions

PRESENT: COUNCILMAN JAMES F. KENNEY, Chair
COUNCILWOMAN JANNIE BLACKWELL, V. Chair
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK DICICCO
COUNCILMAN WILSON GOODE, JR.
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILWOMAN DONNA REED MILLER
COUNCILMAN RICHARD MARIANO
COUNCILMAN MICHAEL A. NUTTER
COUNCILMAN ANGEL ORTIZ
COUNCILWOMAN BLONDELL REYNOLDS BROWN
COUNCILMAN FRANK RIZZO
COUNCILWOMAN MARIAN B. TASCO

- - -

VINCENT VARALLO ASSOCIATES, INC.
Registered Professional Reporters
Eleven Penn Center, Suite 600
Philadelphia, PA 19103
(215) 561-2220

10/31/00 PUBLIC PROPERTY & PUBLIC WORKS COMMITTEE

I N D E X

10/31/00 PUBLIC PROPERTY, BILL 000452

P R O C E E D I N G S

COUNCILMAN KENNEY: Good afternoon, ladies and gentlemen, the Committee on Public Property is now in session.

I'd like to make one statement prior to the beginning of testimony. The issue of cable competition is an important one for the future of the City. Better cable television, phone service, and Internet access are all critical elements if the City wants to be able to attract more residents and keep those that may be considering leaving. As a government, we must ensure that all of our residents have available to them the most up-to-date technology and the greatest diversity of services at competitive prices.

Deregulation ultimately provides only benefits to the consumer, and I am very hopeful that this hearing will result in better services and lower prices for all Philadelphians. But at the same time, we must ensure that a level playing field is created for everyone competing so that there is no competitive edge given to any specific company or service. Further, the City must be adequately compensated for its use of its public

10/31/00 PUBLIC PROPERTY, BILL 000452

rights-of-way.

Our current cable franchise holder should be commended for the quality of service they have provided over the years and for the impressive commitment they have shown in helping make our city a better place to live. We should demand nothing less than this high standard for many future service providers.

I thank everyone present for participating, and I hope that this hearing will resolve all questions about this very critical issue.

This committee has been convened to hear testimony on Bill No. 000452, which is an ordinance granting permission to RCN Telecom Services of Philadelphia, Incorporated to construct, own, operate, maintain, replace, and remove a telecommunications system in, over, and under the public rights-of-way and streets of the City of Philadelphia, and operate and maintain a video programming service over such telecommunications system, pursuant to the provisions governing open video assistance in the Telecommunications Act of 1996, under certain

10/31/00 PUBLIC PROPERTY, BILL 000452

terms and conditions.

Would you please for identification for the record and proceed with your testimony.

MR. BURNSIDE: Mr. Chairman, my name is Scott Burnside and --

COUNCILMAN KENNEY: Mr. Burnside, even though this system is -- it's not as high-tech as the stuff you brought with you, even though it's new. Would you pull the microphone a little bit closer to you. Thank you very much.

MR. BURNSIDE: How's that?

COUNCILMAN KENNEY: Very good, thank you.

MR. BURNSIDE: Thank you again, Mr. Chairman. I'm Scott Burnside, Senior Vice President for Regulatory and Governmental Affairs for RCN Corporation. And to my right is Mr. John Pitts, Vice President, Area Manager in the Philadelphia area for RCN.

Our formal testimony has been filed, our written formal testimony has been filed, and what we would like to do here today is start our presentation with -- and I'll run through just our agenda -- the video, and then we have a little bit more detailed Power Point presentation on the terms and conditions and details of the agreement as proposed.

COUNCILMAN KENNEY: Please proceed.

MR. BURNSIDE: Okay, so the first order of business for us is about a four-and-a-half-minute video followed by a Power Point presentation that Mr. Pitts and I will go through. So let's begin with the video.

(RCN video shown.)

COUNCILMAN KENNEY: Thank you very much, Mr. Burnside, for the additional part of your presentation.

MR. PITTS: Thank you, Chairman Kenney and members of the Philadelphia City Council Committee on Public Property. My name is John Pitts, and I am the Vice President and Area Manager for the Philadelphia market, and although RCN is new to this market, I have been a part of the Philadelphia telecommunications industry for over ten years. I was the Vice President and General Manager of Greater Media here in Philadelphia from 1994 to 1999, and that's after being the Director of Engineering for four years prior to that. As Vice President and Area Manager's for RCN's Philadelphia market, my goal is to deliver the same high-quality service that I did in my previous role.

I'd like now to begin with a short presentation. What I plan to cover is who we are, talk a bit about our services, the idea that Philadelphians want choice, and then follow up with RCN and our commitments to the community.

Let me start with who we are. Basically, we are the first and largest single provider of cable TV, local and long-distance telephone, high-speed Internet, all over our state-of-the-art fiber optic network. And one of the driving forces behind us being able to offer and deliver this revolutionary service is the substantial capital backing that we've been able the achieve over the years.

This map depicts the areas where RCN is currently in operation, already offering service. The residents in these areas are enjoying the benefits of competition, and as you can see from the map, we are located in seven of the ten most densely populated markets in the United States.

And it's important to note that in each of these markets, we are funded through profitability.

In this market, residents are already enjoying the benefits of competition. The towns that you see listed there are Folcroft, Ridley Township, Eddystone, and Sharon Hill and already have the benefit of having competition because of RCN. We currently have other towns under construction in that area and our reach is expanding every day.

Now that you know who we are, let me talk a little bit about our services. We brand our packages as:

Resilink, and Resilink is more than just cable TV; actually, it's a package of cable TV, high-speed Internet, and local and long-distance telephone, as you see there.

Our cable component -- the cable component as a package is 85 basic channels, and the basic includes Disney, an 18-channel digital tier (we brand that Digitalvision), 45 channels of CD-quality music, multiplex premiums, and over 35 pay-per-view channels.

And we've decided to include the map

that depicts our phone territory, just because it's such a powerful visual. You see the area codes listed there, 610, 215 and into Delaware 302? All of our customers can call into those areas for a flat fee, no extra charge. We feel that that provides a significant savings to our phone customers.

Our bundles come in four different varieties. We have them branded as bronze, silver, gold, and platinum. Each of the packages have a different combination of two or three services with a variety of feature sets, and they range in price from $69 to $139. And there are details of these packages in the written testimony that you all have. (RCN literature not provided to stenographer for attachment hereto.)

I've touched on the prices of our bundles; now I want to talk a little bit how competition affects prices. I'm sure many of you have seen this headline and most of us know here that competition and price have been a hot topic in the City lately. As you can see from this front page from the 15th of this month's Philadelphia Inquirer headlines outlining cable

10/31/00 PUBLIC PROPERTY, BILL 000452

prices, noting that Philadelphia has amongst the highest cable rates in the country. Now, we're going to demonstrate later in this presentation that competition does in fact lower rates. And that's only one of the benefits of RCN coming into Philadelphia, and this article is also in your testimony.

Now let me show what the network looks like and describe how it works. Our local network originates with a mega pop that you see here, it's located in Montgomery County. The mega pop houses our Lucent five-year (unintelligible) switch, which controls all of our phone products, a digital (unintelligible) and Internet routing equipment for our cable modems. There's a self-healing fiber optic silent ring that circles the entire metropolitan area.

We then strategically place hub sites near large pockets of homes. Now, these hub sites are actual structures, usually between 5 and 10,000 square feet in size. And in those hub sites, we house local video equipment for local video insertion. It also acts as a sort of a central office for our telephone product. There's also equipment that controls cable modems just for the pockets of homes that they serve.

Once fiber leaves, the hub site, it travels through the neighborhoods, either aerial or underground, depending on the area that we're in, feeding fiber optic notes. Those are the devices that you see there. That's actually the transition point from fiber or glass to RF, or coaxial cable.

It's important to note that from the hub site up until those fiber nodes, it's all fiber. And those nodes are no more than 900 feet from any house that we serve, so we're driving fiber deep, very deep into the system.

From the fiber optic nodes, we go with coaxial cable to telephone poles or to a pedestal right in front of the home that we're going to serve. And then using drop-cable, the typical drop coaxial cable that the incumbent cable companies use, we feed all of the homes in the neighborhood.

Once we're at the home, we place a device on the side of the home called the "remote subscriber unit," or RSU. And this is a smart device that is used to control all of the services in the home. From that device, we feed coaxial cable, and generally, it's the same cable that's already in the home, to feed the computer in the home for high-speed Internet service on the same coax to the television for our video product or cable television product. And then using twisted pair, it's still fed from this RSU, but twisted pair, and again, it's typically the wire that's already in the home, and we feed the telephones in the home for local and long-distance telephone service. And it's important to note that that's a full-featured telephone set, all of the features that customers are used to hiring.

Now let's talk about competition, a core element of RCN as corporate philosophy, and I can tell you that the people of Philadelphia want the competition. According to an independent study that we commissioned by TNS Intersearch, a well-respected research firms, and the full results of this study is in your testimony, Philadelphians are strongly in favor of choice.

As you can see from the top line results here: 79 percent feel that competition will increase a variety of programming; 81 percent feel that competition will improve customer service; 83 percent feel competition will improve overall cable service; and amazingly, 84 percent favor just having a choice of cable companies.

Now, is there any wonder why the incumbent cable operators would prefer that we not enter the market with these kind of numbers? We realize that no monopoly gives up their power voluntarily, but I think this is a clear indication that Philadelphians would like to have the opportunity to have choice.

It's not just -- the Philadelphians are not alone in their belief of what competition will bring; the FCC has actual findings that mirror these responses. The sixth annual FCC report, which you see here a quote from it -- and actually, the report is included in the testimony -- clearly states that when incumbent cable operators are faced with competition, they do a number of things. They respond by lowering prices, adding channels at no additional cost, and improving customer service. It's important to note that this finding from the FCC is based on what actually points happens where competition exists. This is not theoretical.

Let me talk for a minute now about how we will actually bring competition to the citizens of Philadelphia through our construction plan. This map depicts our build schedule, and we plan to construct our network in cable franchise areas originally designated as Areas 4 and Areas 3. That is, the northeast, north, and northwest sections of the City. You see the numbers that start from the upper right and sort of work their way down from 1 to 7 are actually the years that we plan to construct each of these neighborhoods. And by the end of our third year of construction, we will be providing services to areas including Lexington Park, Bustleton, Torresdale, Holmesburg, Feltonville, Hunting Park, and Juniata Park.

COUNCILMAN KENNEY: I'm sorry, Mr. Pitts, that's at the end of seven years?

MR. PITTS: Those that I just listed are at the end of three years.

COUNCILMAN KENNEY: Three years, thank you.

MR. PITTS: Yes. We project the entire

10/31/00 PUBLIC PROPERTY, BILL 000452

project --

COUNCILMAN KENNEY: I'm sorry. So we understand the presentation --

MR. PITTS: Yes.

COUNCILMAN KENNEY: -- the numbers that exist in here are the 1, 2, 3, 4, 5, they represent years?

MR. PITTS: Yes.

COUNCILMAN KENNEY: Okay. So as we move down from far Northeast down, the first year, second, third, and so on?

MR. PITTS: Exactly.

COUNCILMAN KENNEY: Okay, thank you. Please proceed, I'm sorry.

MR. PITTS: Can we go back to that slide.

COUNCILMAN ORTIZ: Could you go back to that map there?

COUNCILMAN KENNEY: Here it is.

COUNCILMAN ORTIZ: Yeah. Do you cover North Philadelphia at all?

MR. PITTS: Yes. Area -- you see the number 3 between the two 5's, that actually is Juniata Park, Huntington Park, Feltonville.

Actually, the area that we are projecting to build is the exact same area that Comcast operated for the existence of their first term here in Philadelphia. So it's down to Susquehanna Avenue, all of the Areas 3 and 4.

COUNCILMAN ORTIZ: So the other parts that are not numbered, those areas you don't plan to cover at all?

MR. PITTS: The areas that have Areas 1 and 2?

COUNCILMAN ORTIZ: No, the gray areas.

MR. PITTS: The gray areas are Franchise Areas 1 and 2. Those areas are not included in our build schedule.

COUNCILMAN KENNEY: At this point.

MR. PITTS: At this point. Those are areas that are -- right, they are included in this application.

COUNCILMAN KENNEY: Please proceed.

MR. PITTS: But it is important to note that this is the exact -- this is the identical area that Comcast operated, I guess, for the first ten or fifteen years.

Let me move on to talk about

facilities. We plan to set down roots in the City. We need -- in order to operate, we've projected that we will have 60,000 square feet of technical operations space, occupying two centers, employing -- or housing 200 employees. In terms of hub sites, the hub sites that I showed you, the 5 to 10,000 square-foot buildings, between 4 to 6 sites, totaling 60,000 square feet, with probably 30 people working, and general office space for positions such as sales, marketing, and provision and things of that nature, another 20,000 square feet in 2 sites, or 120,000 -- I'm sorry, 120 people.

By entering Philadelphia, we will create many business and employment opportunities I'd like to talk a little bit about those right now.

We project that to build our network, we will spend somewhere in the area of $250 million, employ 50 to 60 small-business contracting firms, that will, in turn, give jobs to 400 to 500 individual subcontractors. And that's for the areas you see listed there -- engineering, make-ready network construction, and hub site construction. And there are obviously significant wage tax -- positive wage tax implications there.

And we're very committed to partnering with MBEC, the Minority Business Enterprises Council, to use approved vendors in construction in the Philadelphia area for the areas that you see -- you see most of the construction hub site suppliers. In fact, we've already started to utilize their approved vendors list for our Delaware County operation.

In the area of other jobs, we project, in order to support the Philadelphia market, we will hire somewhere in the area of 350 jobs -- that is, 350 new jobs -- in areas that you see listed. There is installation and repair, maintenance, sales, marketing, engineering management, some back office, with a projected payroll of $14 million per year. And we just calculated the wage tax calculation there of $680,000 per year. And these are not low-paying jobs; these are management jobs in all of the areas that you see listed there, high-tech positions.

10/31/00 PUBLIC PROPERTY, BILL 000452

Now, we're committed to diversity. It's another one of our core principles. Thirty percent of all of our jobs in all classifications -- and this is in the testimony, in the OVS agreement -- will go to minority employees, and 20 percent of all jobs will go to women. As we stated before, we are committed to partnering with MBEC, and we've discussed these goals with them, and we are all working together.

Now, to speak about our commitments to the City and also to the community, I'm going to turn the mike back over to Scott Burnside.

MR. BURNSIDE: Thanks, John.

There's a requirement in the 1996 Telecommunications Act that when a competitive over-builder like RCN enters a city or a market, the license to provide service must contain terms and conditions that keep the city whole. You can go ahead and flip the next one.

So customers who choose to go from one cable company to another can do so without causing any financial harm to the City. The terms and the conditions of the RCN-Philadelphia agreement must exceed those level playing field requirements, and

10/31/00 PUBLIC PROPERTY, BILL 000452

specifically they include:

A $1.875 million commitment consisting of a $1.125 million commitment to area public access capital support;

(Applause.)

MR. BURNSIDE: A $250,000 grant -- I'm sorry, a $250,000 commitment to government access capital support;

A grant of $250,000 for educational access;

Employment training and subcontracting contribution of $250,000;

And the PCDC loan fund of $250,000 for the benefit of MBEs and WBEs.

Go to the next one.

In addition, as you can see from this particular slide, the commitment contains:

A five-channel public access;

A five-channel educational access;

And a two-channel governmental access commitment, in addition to leased access channels, as needed;

(unintelligible) programming for municipal services and institutional services.

10/31/00 PUBLIC PROPERTY, BILL 000452

Now, I would like to make the following statement with respect to public access. We've set aside a total of 12 channels, 5 of which are for public access. We did so because the incumbent cable operator has a similar commitment. RCN believes that the commitment of channel capacity and the supporting capital commitments are real; therefore, we want to acknowledge Philadelphia Community Access Coalition and tell you that we view those dedicated channels as a viable way to attract customers to RCN.

(Applause.)

MR. BURNSIDE: Working with the City and in accordance with the City's procedures, establishing an access corporation, RCN will have publicly provided programming on the air for our customers' enjoyment when we provide service.

(Applause.)

MR. BURNSIDE: Now, with respect to our commitments to the community, I want to say -- and actually, I want to echo, Mr. Chairman, what you said at the outset: RCN, we all have great respect for our competition, they've set a high standard for good corporate citizenship. And RCN, as we build our business in Philadelphia, will do our very best to meet or exceed that kind of corporate citizenship because I think that's what will help us gain market share and a foothold in this market. And you can see from the various overheads that are rolling through what we have committed to.

So in conclusion, we're just going to wrap up by sort of summarizing what we've talked about here for the last few minutes.

A $250 million commitment in construction for people, facilities, and the delivery of network:

Several hundreds of new jobs;

A $1.875 million contribution to public education and government service;

And we thoroughly believe that we, on one hand, have demonstrated our capability and our sincere interest to compete here in Philadelphia, and we believe that Philadelphia is absolutely ready for competition.

And that concludes the formal presentation.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Thank you very much for your presentation. It was well-organized and very interesting to watch and listen to.

Before we go to questions from members of the committee, I have a few requests for information that I want to give to you now so you'll have an opportunity to try to get this information.

And I would suggest that any individuals here working for you at RCN or Comcast or any other interested department, when questions are asked for information, that someone be responsible for kind of taking those notes and making sure that we can get this information, whether it's written information or verbally responded-to information as soon as possible.

From my perspective, there's a couple things I would like to see that you may or may not have access to. First of all, I'd like to get copies of all the agreements that RCN has with all of the surrounding communities -- Folcroft, Ridley Township, Sharon Hill -- if they are, in fact, able to be provided from any proprietary standpoint. I'd like to see what similar relationships and deals have been made with those communities.

I'd like, if you have access to, the demographics by race and income of areas -- the proposed areas for Service Areas 3 and 4. And also, if you have it, because of your planning in the future, the race and income demographics for Service Areas 1 and 2.

Additionally, I'd like to know if you could possibly provide us with a list of your current subcontractors, what services they perform, and where they are located, as it relates to your regional business here already in Philadelphia.

And if you could provide for the Chair some diversity and demographic information on employment in cities like -- comparable cities to Philadelphia -- Boston, Chicago, not necessarily Seattle, but some cities that -- four or five cities that are comparable to Philadelphia in its diversity and in its ethnic breakdown, okay?

So the Chair -- I think Councilman Clarke had a question, and then we'll go through, and I have some additional questions to ask.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. BURNSIDE: Excuse me, Mr. Chairman. Several, but not all, of those issues, as I was writing them down, I think we can and are prepared to address here now. So if you want to go through that list, fine. If you want to go to other questions --

COUNCILMAN KENNEY: Well, let me give you a chance to mentally prepare to answer the questions that you can answer today, and then we'll go through some of the Councilmembers' questions now. So I'm sure you have enough staff back there to work away at it, unless you have this all up here.

MR. BURNSIDE: Okay.

COUNCILMAN KENNEY: Okay, I didn't think so.

COUNCILMAN CLARKE: Thank you, Mr. Chair.

Mr. Chair, accurately, you touched base on a couple of questions that I was going to ask with respects to the demographics. Could you also include the current usage by any individual in the two areas in question with any cable franchise. I'd like to see what's going on there in those particular areas as it relates to subscribers currently.

MR. PITTS: We wouldn't have that information.

MR. BURNSIDE: I'm not sure if --

MR. PITTS: If the question is current subscribership to cable TV in those areas that the incumbent operator has?

COUNCILMAN CLARKE: Yes. You have no idea of that?

MR. PITTS: I think that the City would have a better feel for that than we would.

COUNCILMAN CLARKE: All right. So what you're telling me is that when you made a decision to select these two areas, you had no sense of what the current subscriptions were in that area?

MR. PITTS: Generally speaking, but I wouldn't have a number that I would want to give as testimony.

COUNCILMAN CLARKE: You have no idea?

MR. PITTS: I said, generally speaking -- as I said at the outset, my history is, I've been in cable TV in this market for ten years, so I have a general feeling for the level of penetration, and some of the business decisions we've made were based on some of those things.

But in terms of how many customers, the cable companies that exist now have, that would be a better question for them than for us.

COUNCILMAN CLARKE: So the answer is you don't know.

MR. PITTS: The answer is specifically I do not know.

COUNCILMAN CLARKE: You do not know, okay.

And in terms of your selection of those initial areas for a fit-out, what was the basis for that decision?

MR. PITTS: (To Mr. Burnside.) Do you want to answer?

MR. BURNSIDE: Yeah.

There were a number of things that went into that decision. I think it's fair to say that we arrived at that decision jointly during the negotiations process with the City. And I suspect that when they have time to testify, they will give their own opinion.

But we selected two franchise areas

because we thought that it was reasonable to expect us to build at least two. It is probably unreasonable to expect any one company to build all four at the same time, in a timely fashion. So rather than try to do a citywide franchise with build-out schedules that could, in fact, extend beyond a reasonable time frame, we scaled it to and used the existing segmentation of the City in four franchise areas.

COUNCILMAN CLARKE: So it had nothing to do with your ability to wire above-ground? I mean --

MR. BURNSIDE: Well, there are -- you want to --

MR. PITTS: Yes. There are aerial and underground areas as well as backyard -- I mean, rear attachment in all areas. So, no, it wasn't. And we do aerial and underground builds in other cities. So it. . .

And if I understand your question correctly --

COUNCILMAN CLARKE: I mean, I'm just trying to get a sense of your business decision, and if you're saying that the City essentially

10/31/00 PUBLIC PROPERTY, BILL 000452

told you to go to those two areas initially, then so be it, and then I'll have ask those questions of the City as to why did we make those determinations that you should go there.

But you kind of gave me the impression that you kind of just threw a dart on the board and decided to go in those two franchise areas. It has nothing to do with, you know, current subscriptions, it has nothing to do with above-ground or below-ground wiring? I mean, it's just an area that you decided to go in?

MR. PITTS: Well, one thing that -- from our aspect, the fiber sonic ring that we're going to use to feed into the City is coming from the north, and it would extend down. So whether we were building Areas 1 and 2 or Areas 3 and 4, we would still have to build through Area 3 and 4 to get to Area 1.

COUNCILMAN CLARKE: So it was closer to the electrical outlet, in other words?

MR. PITTS: Well, I mean, that's --

COUNCILMAN CLARKE: You need an extension cord to get down to the other area.

MR. PITTS: I mean, there were many

facets to the decision. From our aspect, that was one thing that did look at, but it was sort of a mutually-decided thing on which areas we would build, after deciding that we weren't in a position or it didn't make sense to build all four, we had to choose two. And it wasn't underground -- it wasn't for any of the reasons that you mentioned -- underground, arterial, or -- I mean, a technical consideration that made sense to us. Once we came to that decision, okay, now we will be starting an area that is directly connected to our (unintelligible) that feeds the area. So technically, it does make sense.

COUNCILMAN CLARKE: Okay.

COUNCILMAN KENNEY: A question that --

MR. BURNSIDE: I --

COUNCILMAN KENNEY: I'm sorry, go ahead.

MR. BURNSIDE: I just want to add one other thought to that process. And, again, I think that there certainly is room for your own administration's input into how we collectively came to this agreement because, obviously, there were two sides at the table. But originally, we, from a regulatory perspective, filed an OVS application, which does not require --

COUNCILMAN KENNEY: Can I ask you another question, 'cause there's three of us at least, and maybe more, at the table. And as you answer that question, what we don't understand is why this is an OVS development and not simply a franchise agreement. And what -- and the City has the same question to answer when they come up, why this is an OVS agreement and not a franchise agreement, as all other operators that have served cable service in the City have done.

MR. BURNSIDE: Well, it's actually an interim OVS agreement that transitions to a franchise. It has many of the same properties -- this agreement has many of the same properties, including full build-out of each of the two franchise areas.

COUNCILMAN KENNEY: What's the advantage or disadvantage -- well, what's the advantage to the company by having an interim OVS agreement as opposed to a full-blown franchise discussion? I mean, obviously, these discussions have been going on for quite some time, back into the last administration. Why would it not simply have been done as a franchise as opposed to an interim agreement?

MR. BURNSIDE: That's -- that really is a question that I cannot answer, except by saying that for all intents and purposes, the content in this agreement is a franchise agreement. There is very little difference. And we're prepared to do and meet all of the obligations of a franchise. In fact, most of them have already been pounded out in this agreement, so --

COUNCILMAN KENNEY: You're speaking to novices here about the details. I wasn't here during the last go-round cable discussion. In the Public Property Committee, we did some stuff with Comcast and came in to take over these -- purchase these other companies.

But the issue of -- considering the length of time that's gone on in this discussion and considering the fact that you say you have no problem doing a franchise agreement, why is it an interim OVS agreement and not a franchise agreement? And you said you can't answer the question, so I guess it will have to be a question for the Department of Public Property to --.

MR. BURNSIDE: I think it's a fair question. It's not that I can't answer the question. I think it's a question that really, really resides -- the answer resides with the City.

COUNCILMAN KENNEY: Okay, that's fair.

COUNCILMAN ORTIZ: Could you ask him for really -- as I, just on the record, for those of us who are not into the technology, could you define what an open video system is and then what is that difference between that and the cable system that we're not obviously not here to discuss. And --

MR. BURNSIDE: I will try to do that in as short of time period as I can. OVS was a concept that made part of the '96 Telecom Act. It was designed actually to encourage the very thing that's happening here -- competition in the cable market. It was designed and separated distinctly from the franchise concept.

In theory, it gives an OVS operator the right to come into a city and, in effect, start offering service. It doesn't require a full build-out, it does not have all of the same properties that a franchise has.

COUNCILMAN KENNEY: By nature, then, I would suppose -- and correct me if I'm wrong. By nature, then, an OVS agreement is an easier and -- could it offer an OVS -- a party to an OVS agreement more of an advantage over a franchisee? I mean, there are certain things that are beneficial to the OVS agreement-holder that is distinctly different and less than official to a franchisee, whether they're existing or new.

MR. BURNSIDE: Well, Mr. Chairman, I would say that what was intended in the Telecom Act for OVS and what is real are two separate things, because you would presume that in reading the Act and the following rules promulgated by the FCC governing OVS that an OVS operator, whether it be RCN or someone else, come barging into a city, say, Here we are, we're ready to do business, get out of our way. And that's, obviously, inside-the-beltway thinking and not practical reality.

So in terms of the content of our agreement, our proposed agreement with the City, even though it is described as an OVS agreement or an interim OVS agreement transitioning to a franchise, it is, for all intents and purposes, a franchise. It includes a full build-out, it includes all of the commitments to keep the City completely whole. And I think that the distinction is one without a difference.

COUNCILMAN KENNEY: Just hold on one second, please.

Councilman Nutter has a question.

MR. BURNSIDE: There is -- may I just finish one last thought on that process, Councilman?

COUNCILMAN NUTTER: Okay, I'm just hanging out. Go ahead.

COUNCILMAN KENNEY: Please proceed.

MR. BURNSIDE: Okay. With respect to the interim nature of this OVS agreement, again, I don't presume to answer for the City; they will undoubtedly have some answers of their own on the subject.

But one thing that the interim agreement does is, it gives you, the City of Philadelphia, the opportunity to see if RCN is in fact measuring up to its commitments in this agreement. Obviously, it requires us, from the very beginning, to start pooling capital and employ people from the beginning to build the network. We're not going to do that on a simple two-year agreement. It --

COUNCILMAN KENNEY: I guess the question is, then, why would -- why would not this have been the attempt to get a franchise agreement from the very beginning? Because I understand this discussion has been going on as long as since 1996, and all of that discussion, whether it's with the last administration or with this particular regime of public property, many of whom, if not all, were a part of the last administration's public property department, that this would be a regular franchise. I mean -- and then you have the commitments necessary and the long-term opportunity to build out at a pace that you felt was comfortable and lucrative enough for you to stay in the business.

For example, I guess the question is, if you were to come in here and, over a two-year period on an interim agreement, could you then just pull the plug and decide that you're not going -- it's not worth it and that you move on? As opposed to signing a regular franchise agreement for a specific length of time, more than two years?

I mean do you have an exit, do you have the ability to exit with an OVS agreement as opposed to what you would have with a franchise?

MR. BURNSIDE: The -- no. The -- the liabilities in this agreement, and I think they are in Section 4, Page 53 of the OVS agreement, liquidated damages are, I believe, exactly what they would be in a long-term franchise agreement and will, in fact, be --

COUNCILMAN KENNEY: I'm sorry, where, where --

MR. BURNSIDE: It would be in the OVS agreement itself, Section 4, Page 53.

COUNCILMAN NUTTER: Where is that document? Where is that document?

MR. BURNSIDE: It's Article 2 in your --

COUNCILMAN NUTTER: Where is the document, in the book?

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. BURNSIDE: Yeah, it's in the binder. Yes, sir, in the binder.

I can quickly summarize.

COUNCILMAN NUTTER: Which tab?

COUNCILMAN KENNEY: What was the page?

MR. BURNSIDE: It's Page 53 of the agreement.

COUNCILMAN NUTTER: And which tab is that?

MR. BURNSIDE: Oh, I'm sorry. I have to correct that. Just one second.

MR. PITTS: The entire agreement is not in your binder, but we have our copy hear, and we can distribute it.

COUNCILMAN KENNEY: And I have a copy that I've had for a while.

MR. PITTS: Right.

COUNCILMAN KENNEY: But I would hope that we could get additional copies to either Public Property, or RCN could give the members of the committee and Councilmembers present copies of the OVS agreement.

COUNCILMAN NUTTER: Mr. Chairman?

COUNCILMAN KENNEY: Yes?

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN NUTTER: I'm sorry. So for the moment, they're saying that the agreement is not in all of the materials that we've received, it's not in the binder?

COUNCILMAN KENNEY: Mr. Pitts?

MR. PITTS: The entire agreement is not, but we can get that to you very quickly.

COUNCILMAN NUTTER: Is there a particular reason?

MR. PITTS: No. We've distributed the agreement prior to this distribution, and I'm not --

COUNCILMAN NUTTER: I'm sorry. I'm having trouble hearing you.

MR. PITTS: I said we distributed the entire agreement previous to our distribution today. And for the members of Council that do you not have it, I will see that you get it before the meeting's over.

COUNCILMAN KENNEY: Could you just --

MR. BURNSIDE: Let me just -- I can quickly summarize it and you can see the details later on. But, for example:

Failure to complete the construction

carries a $2,000-a-day liquidated damages statement;

Failure to comply with any other rules or any other components of the -- in the agreement, $1,000 a day;

Failure to provide data and documentation, $250,000 a day.

So the liquidated damages, the overall liquidated damages section which is 4, I think, is exactly what it would look like in a franchise.

COUNCILMAN KENNEY: I mean, hate to keep beating a dead horse here, but if it looks like a franchise, acts like a franchise, competes like a franchise, why is it an OVS agreement? Again, I mean, I'm sorry, but you happen to be sitting at the table, and I guess it is a public property question. But, I mean, if all the elements you contend in your testimony are, in fact, a franchise-like agreement, I see no -- then I can't understand the reason why we're considering an OVS agreement as opposed to a franchise.

And if there's some legal -- I mean, if there's people here that can answer that question or -- I'd be happy to -- I just want to try to --

MR. BURNSIDE: Mr. Chairman --

COUNCILMAN KENNEY: -- get a record that people read and make sense of.

MR. BURNSIDE: Maybe we can add a little bit to the answer by asking -- I'm going to call up Mr. Tom Steel (ph.) --

COUNCILMAN KENNEY: Please.

MR. BURNSIDE: -- from RCN, who was responsible, in a large part, for negotiating the agreement with the Public Property Department.

COUNCILMAN KENNEY: Thank you.

(Witness comes forward.)

COUNCILMAN KENNEY: Could you please identify yourself for the record.

MR. STEEL: My name is Thomas K. Steel, Jr. I'm Vice President and Regulatory Counsel for RCN.

COUNCILMAN KENNEY: Have you heard our line of questions?

MR. STEEL: I certainly have.

COUNCILMAN KENNEY: Thank you.

MR. STEEL: We've negotiated a number of interim OVS agreements in other cities; for

10/31/00 PUBLIC PROPERTY, BILL 000452

instance, the City of Boston, The city of Washington, DC. In New York City, you had a longer-term OVS agreement.

I can't speak for the City directly, but I know during our negotiations what was particularly attractive to the City was the idea that they would essentially have two bites of the apple. They could create a franchise -- we move very quickly in OVS agreement into a franchise negotiation, 120 days we're committed to starting a franchise negotiation process, so we move quickly into a franchise process.

While we're doing that in over a period of a year or how ever long it takes to negotiate the franchise, the City was intrigued with the idea of having an opportunity to evaluate our performance, and I think that was the key. They saw an example of our -- of an interim OVS in other cities and thought it might work well here.

But in every way when we negotiated this, and you'll see that in the appendices, Appendix I has franchise terms. In every way, we've negotiated a franchise pretty much to be able to move quickly into that mode early in the process, depending on how well we do, I suppose.

COUNCILMAN KENNEY: Okay. Councilman Nutter?

COUNCILMAN NUTTER: Thank you.

MR. STEEL: But, again, I can't speak for the City.

COUNCILMAN KENNEY: No, your answer is fine.

COUNCILMAN NUTTER: We'll have the City and we'll take them through probably the same questioning process.

Do you want a franchise?

MR. STEEL: Yes. We fully expect to have one very soon.

COUNCILMAN NUTTER: Well, why didn't you just negotiate a franchise agreement, then?

MR. STEEL: We were ready to go either way. And we essentially did negotiate a franchise agreement, even though it's called an interim OVS and it has these added terms.

COUNCILMAN NUTTER: And it has what?

MR. STEEL: And it has these added terms of, you know, two years, and then the other terms for folding it into a franchise.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN NUTTER: Mm-hmm. From your perspective, what are the pluses and minuses of either an OVS versus a full franchise?

MR. STEEL: In these other markets I spoke of in particular, there is a layer of state regulation that would delay our ability for our speed to market. So what the advantage there was that we would have an OVS and then move into a construction mode much more quickly than we would under a state process.

COUNCILMAN NUTTER: But you don't have those restrictions here, right?

MR. STEEL: No.

COUNCILMAN NUTTER: So what's the plus to you and to the City?

MR. STEEL: It's really seamless to us. We could go either way; it was the call of the City.

COUNCILMAN NUTTER: I didn't hear the last part of what you just said.

MR. STEEL: It was the call of the City as to which way they would like us to approach competition.

COUNCILMAN NUTTER: But you have no

objection to going the franchise route.

MR. STEEL: No. As I said before, we expect to be involved very much in the franchise negotiation with pretty much the terms that are already set in about four months.

COUNCILMAN NUTTER: And under this particular agreement, are there any television services involved in what you will be doing over the next few years should this go forward?

MR. STEEL: It's principally construction.

COUNCILMAN NUTTER: Construction of what?

MR. STEEL: We have to build out our network.

MR. BURNSIDE: Was the question, are there any television services included in the agreement?

COUNCILMAN NUTTER: Yes.

MR. BURNSIDE: The answer is yes.

COUNCILMAN NUTTER: Okay. Does it involve any other services?

MR. BURNSIDE: This development does not. It involves the ability for RCN to provide cable television or video services in these two market areas or franchise areas.

COUNCILMAN NUTTER: Right. And the agreement is for two years, and what will be constructed in the course of that two-year time period? The graphic of the City is not back up on the --

MR. BURNSIDE: If you can put the graphic of the City back up, you can read in the presentation the -- are we going to get the map back up? Okay. Then where you see 1 and 2 --

COUNCILMAN NUTTER: Mm-hmm.

MR. BURNSIDE: -- that will delineate Year 1 and Year 2 of our construction program so that during the interim agreement, we begin construction in 1 and 2 up in the Northeast section.

COUNCILMAN NUTTER: And in that time period, at what point in time during the two-year period would someone actually turn on the television set with RCN in service?

MR. PITTS: Within Year 1.

COUNCILMAN NUTTER: So it only takes a year? How long does it take to build --

MR. PITTS: Well, our plan would be to -- and this is how we deliver service in all the areas that we serve. We would begin construction, and then after a certain portion is built, we would start to offer service while we're building beyond that. So I would suspect that six months into construction, we may be able to service our first customer, while we're moving on with construction.

COUNCILMAN NUTTER: In Year 2, how many customers would you anticipate would either be in the coverage area? Obviously, that doesn't mean you sign up everybody whose house you go past, but how many people are you talking about that point?

MR. PITTS: I could probably tell you homes better than customers. That will probably take a second for me to get for you.

COUNCILMAN NUTTER: Okay.

Mr. Chairman, I think questions my have gone beyond the yield that I asked for. It's a new train of mind: I'm actually keeping track of what I'm doing.

COUNCILMAN KENNEY: Just in fairness, Councilmember Rizzo has been waiting for a couple

10/31/00 PUBLIC PROPERTY, BILL 000452

times and we got off on a couple different areas.

COUNCILMAN RIZZO: Thank you, Mr. Chairman.

COUNCILMAN KENNEY: So the Chair recognizes him.

COUNCILMAN RIZZO: I'd like to go back to the slide where you basically laid out what this means for Philadelphia in the areas of jobs, et cetera. I want to make sure for the record that it's clear that all of the jobs that you indicated and the construction jobs, et cetera, will directly benefit Philadelphia.

And my question is, what other support outside of the City will support this construction and permanent jobs that RCN will allegedly bring to Philadelphia? I'd like to know beyond Philadelphia, what is not going to be located and housed here within the City limits?

MR. PITTS: Our -- the mega pop that I described in the graphic, that has our five-year (unintelligible) switch and our digital (unintelligible), that is actually in Trooper, in Montgomery County.

So those -- the functions surrounding

the support of that will still -- will not be in the ear. My office is in that -- is in that facility. All of the technical support field service, dispatch, sales provisioning, that's the group that actually deals with the phone numbers for our phone products, those will all be inside of the City limits.

MR. BURNSIDE: And also I guess it's fair to add, in anticipation of the question later, our corporate headquarters will remain in Princeton.

COUNCILMAN RIZZO: I could understand, you know, your corporate headquarters being wherever you want them to be, but I can't figure the Trooper part. Could you -- why are you -- why Trooper and not Darrell Clarke's district or some other Councilmatic district or Councilman DiCicco's district?

(Applause.)

MR. PITTS: Well, we will place facilities inside of the City limits. A technical operation center, which actually I had a picture up of a typical one, we'll have to have one of those per each area that we serve, and that's the sort of central point.

COUNCILMAN RIZZO: But technically is there any reason you need to be in Trooper?

MR. PITTS: Well, if you looked at a map of the entire five-county area, Trooper is pretty much dead-center. And technically, when we looked at this whole market, it made sense for our (inaudible) and central switch to be somewhere that was centrally located. Based on growth, it's going to make sense.

And besides, we didn't have a franchise there, we didn't have an OVS or a franchise here, we have no operations here. And as we have an operation and we start to gain customers, it would definitely make strategic business sense for us to place the people close to where the work happens, so that's what we'll do.

COUNCILMAN RIZZO: Is Trooper a done deal?

MR. PITTS: Trooper's up and operating, and it's been operating for over a year now. The services in Delaware County, the customers that we're serving right now, they're fed. Their phones are being fed from being Trooper, their video is being fed from Trooper.

But those -- that main site that feeds hub sites, and those are actually -- I mean, they're not minor structures; these are major pieces of technical real estate that we'll have to get and we'll place those throughout the market that we serve.

COUNCILMAN RIZZO: My final question for this round is, the seven-year construction schedule, if I can remember, I believe that the cable companies accomplished the build-out in a shorter period of time, in seven years, maybe it was five. So why --

COUNCILMAN KENNEY: Two, two to four.

MR. PITTS: Two to four.

COUNCILMAN RIZZO: Two to four? Okay. Why is it going to take you seven years?

MR. PITTS: Well, we're projecting to take five years per area with overlapping years, that's how get the seven years. We're starting Area 4 in Year 1, and for the first three years that we're building, primarily in just Area 3, and in the third year, we start building in Area 3. So in each area, we're building -- it's taking us five years to construct, and that's similar to the time frame that the original builds took.

MR. BURNSIDE: May I also add to that, sir, that if my history of the original build is accurate, no one company actually built multiple franchise areas in the City of Philadelphia at the same time. There was business acquisitions, but no one constructed. You divide the City into four and you were awarded four separate franchises to four separate companies.

And if you equate that -- and I don't want to put words in anybody's mouth, but if the question is, if we had one franchise area, could we build it in four years? the answer is clearly yes.

COUNCILMAN RIZZO: The financing, the dollars to put this system together, is that a factor? And could you just describe briefly? And, again, this is the first time I've had an opportunity to review. And if you've sent other members of City Council documents, I haven't received anything, so I'm working on this cold today.

The amount of money that it's going to

take to accomplish that today, is all that financing in place to build this entire system?

MR. BURNSIDE: The answer to your question is, yes, it is.

RCN is funded to profitability on a corporate basis. We expect that to occur sometime in 2002. Now, at the present time -- and we also say that we have not ever, and continue to say, we have never entered and will not enter a new market without the ability to fully build it out.

So in answer to your question, even in theory, if the financial markets stayed closed, as they are right now, on a temporary basis, that RCN would be able to internally fund the build-out beyond 2002.

Now, it's highly improbable that financial markets would stay closed for a full seven years, so we will be able to continue on our growth and expansion plan in new markets. But Philadelphia, to RCN, is not a new market. And I -- let me repeat again, we have never come to a market where we couldn't fully build out our plan.

So the answer is, yes, the funding is

fully in place to build out in Philadelphia and in all of the suburbs.

COUNCILMAN RIZZO: Thank you.

Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Before I recognize Councilmember Brown, I want to add -- make an addendum to the request for information I had made earlier. Councilmember Tasco is interested in the diversity record in cities like Chicago, Boston, and similar cities to Philadelphia. She would like the employment complement to be broken down into management, operation, sales, and secretarial so that we have an idea as to within that diversity of employees, where people fall in management and in lower levels of the company.

Councilmember Brown?

COUNCILWOMAN BROWN: Thank you, Mr. Chairman. Good afternoon, gentlemen. Good afternoon.

MR. BURNSIDE: Good afternoon.

MR. PITTS: Good afternoon.

COUNCILWOMAN BROWN: My questioning is in line with what Councilmember Rizzo has mentioned but also more directly in line with what

Councilwoman Tasco has requested and related to the composition and makeup of your workforce.

You indicated in your presentation that you anticipate 350 new jobs. Help me understand how you arrived at 30 percent -- and I have a blank here because I don't remember what that was -- and 20 percent women. What moved you to that decision; based on what you've done in other cities or based on what Philadelphia looks like?

MR. PITTS: Well, those numbers mirror the targets that the incumbent cable companies have right now. And I can tell you that currently, just using good equal-opportunity employment practices, we're exceeding those numbers right now for our operation in this region.

COUNCILWOMAN BROWN: What strategy, or strategies, do you have in place for ensuring that low- and moderate-income residents ultimately end up with opportunities at RCN?

MR. PITTS: We're going to extend the current things that we're doing, the job fairs in different neighborhoods, advertising in multiple newspapers, neighborhood newspapers, that sort of

10/31/00 PUBLIC PROPERTY, BILL 000452

thing, making sure that people know that opportunities exist. We have training programs. We bring people on for our technical jobs that don't need to have the technical skills, but we give them to them.

So I think if we continue to act to hire and using the practices that we're using now that we will remain, and continue to be, a diverse something.

MR. BURNSIDE: And may I just add to that?

COUNCILWOMAN BROWN: Please.

MR. BURNSIDE: If you note in the actual agreement, so that it's committed to hard dollars in that area, there is a provision for employment, training, and subcontracting for $250,000.

COUNCILWOMAN BROWN: In this document you shared with us today?

MR. BURNSIDE: Well, it is in -- I thought it was in the binder, but it will be in the details of the OVS Agreement, when we get it to you. But it calls for $250,000 of training, for employment training and subcontract training and a PCD loan fund.

So that there are provisions in the actual agreement that address -- if not entirely, certainly address your issues and your concerns.

COUNCILWOMAN BROWN: My third question was very much related to recruitment training that ultimately lead to employment, so you have addressed that.

Philadelphia is a union city, as quiet as it's kept. What provisions, what strategy do you have in place for ensuring that RCN honors the tradition of the City?

MR. PITTS: We met with Local 98 of BIBW, and we've reached an agreement in principle to utilize Local 98 workers to build our network. And that's a substantial amount of work over the seven years of the build.

COUNCILMAN ORTIZ: Could I follow up on that?

COUNCILWOMAN BROWN: Sure.

COUNCILMAN ORTIZ: Are you current -- what -- of your companies throughout, which ones are utilized right now?

MR. PITTS: Unionized contractors?

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN ORTIZ: RCN, yeah. Where are you unionized right now?

MR. PITTS: We utilize different locals in different cities, like Local 3, we work with them in New York. You may want to add to that.

COUNCILMAN KENNEY: Local 3 is IBW or CWA or --

MR. BURNSIDE: I can't answer that.

MR. PITTS: Boston Edison's, the --

COUNCILMAN KENNEY: Local 3 in New York is what trade? I think it's IBW.

MR. PITTS: IBW, yes.

COUNCILMAN KENNEY: Thank you.

MR. BURNSIDE: And also, as John said, the construction in Boston is also IBW, most of it being down by a partner in that market, the electric company Boston Edison.

COUNCILMAN ORTIZ: I'd like to -- are you in current litigation for unfair labor practices?

MR. PITTS: In our Lehigh Valley system, there is a -- we contested how an affiliation vote was handled by the CWA.

COUNCILMAN KENNEY: Let -- I just want

to -- don't mean to interrupt the line of questioning, but there is a witness specifically for that issue, and we can have them respond when that witness gives his testimony.

COUNCILMAN ORTIZ: I just wanted to record that so that's on the record.

COUNCILMAN KENNEY: Councilmember Brown, are you finished with your questioning?

COUNCILWOMAN BROWN: One final question. You did mention that you're very committed to working with MBEC, and "committed" is a nebulous word. But then you were somewhat specific in what that meant. I would only like to suggest and advise you with regards to your goal to ensure equity at all levels, in terms of a diverse workforce, that you consider, talk to, speak with and/or connect with the African-American Chamber of Commerce and the Hispanic -- help me out, Councilman Ortiz. The correct name is what?

COUNCILMAN ORTIZ: Latinos.

COUNCILWOMAN BROWN: The Latino Chamber of Commerce, to ensure that all of those worlds are touched.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. PITTS: We have started that process.

COUNCILWOMAN BROWN: Very well. One final question.

COUNCILMAN KENNEY: Sure.

COUNCILWOMAN BROWN: I did not grasp how you arrived at the decision for the franchise areas that you ultimately selected. So what data or what research, what logic moved you to ultimately select the two areas that you did? Explain that once more so I can get it.

MR. PITTS: Well, as Scott Burnside said, we fully agreed that we would do two and not four areas until it makes sense. There are technical reasons why, coming from the north makes sense, because that's where our silent ring comes from. Most of the residential homes -- in Areas 1, there's a large commercial area, and it would not really be in -- the R in RCN stands for "residential." We're not a -- primarily commercial is not -- even though we do have a commercial product, we're primarily a residential company. So we're sort of --

COUNCILMAN KENNEY: I'm sorry, you're

going to have to -- 'cause I live in Area 1 and I don't understand the characterization of that area as being primarily commercial.

MR. PITTS: No, I'm not saying it's primarily commercial. Center City, that is a business area. Again, it wasn't really -- we weren't really avoiding any area, or we weren't -- you know, we wanted -- obviously, we want to get into Philadelphia, we want to serve the communities of Philadelphia.

Since it made sense not to do all four, we had to choose two and we chose two.

COUNCILMAN KENNEY: Okay.

MR. PITTS: And it's not -- again, we weren't avoiding anything or choosing something over something else and looking at -- in looking at the shaded areas there and the years that we build them out, it seems like that's a representation of the City of Philadelphia in those areas.

COUNCILWOMAN BROWN: Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Thank you.

Councilmember Blackwell?

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILWOMAN BLACKWELL: Thank you, Mr. Chairman.

You mentioned entering other parts of City, and when -- many of us have a severe problem with talking about this as if it's a franchise agreement. We've been through a cable before, and we're not used to having such little information in writing about such an important area.

You're planning to move into other areas of the City. What's your timeline for that expansion?

MR. PITTS: Other areas?

MR. BURNSIDE: Let me take that.

MR. PITTS: All right.

MR. BURNSIDE: The resources to build this entire city in a timely fashion are simply not available to any one company. We chose what we thought would be -- and I say "we," I mean collectively the City and the company, chose two franchise areas that we think and strongly believe are strong enough to support competition. The City gains some flexibility.

It is entirely possible that in this new age of competition that another company, like

RCN, of which by today's count, there are 30 or 40, could come to the City tomorrow or the next day and say, We'd like to construct, we'd like to compete in those areas that exist right now, Areas 1 and 2. So the City retains some flexibility, knowing full way that the time frame and the resources to build out the entire city simply were unrealistic to ask of one company.

And I assure you, from the company's perspective, we fully agree. I mean, $250 million of construction -- in 7 years to construct in these two areas is a daunting task. And we're anxious to be able to build out the entire city.

But my suspicion is that there will be someone else that beats us to it, because competition makes sense, it's good. Prices come down, service quality goes up. And I see no reason why the City won't be -- there won't be an advantage to the City to award that franchise to someone else if they so choose, just like what happened in the early '80s when you awarded four franchises to four separate companies.

COUNCILWOMAN BLACKWELL: Well, you're relatively new to this industry. What are your

10/31/00 PUBLIC PROPERTY, BILL 000452

future plans? Do you plan to stay, do you plan to sell? We've had that experience as well.

MR. BURNSIDE: Well, I -- I -- I can only address that question by saying that there is absolutely no intention on RCN's part to traffic in franchise holdings or to sell its business. We are committed to building this business over the long haul. We've, I think, demonstrated that by our ability to raise capital and have large investments in our business plan.

This is not a fast-buck turnaround. We are committed. I think there are a million other ways we could invest money and make profits quicker than engaging in building this kind of a network in the markets that we're in. So, no, there is no plan to sell this company whatsoever.

COUNCILWOMAN BLACKWELL: Many of us will be listening very carefully when it comes to the union discussion. And there's been a lot of talk and a lot of rumors around with regard to RCN and with regard to the role that District Councilpeople would play in this and what our level of interest should be.

So we will be watching and listening

closely, and especially with a lot of material now that it's really not a franchise agreement and not a serious commitment on paper that we see so that we're comfortable what our role should be.

Thank you, Mr. Chairman, I won't delay.

COUNCILMAN KENNEY: Thank you very much.

I want to give you a hypothetical about the issue of competition. And while, from a philosophical standpoint, I would agree with you that when there's more than one entity providing the same service, that there's a competitive nature to that relationship; and, therefore, the prices would either perhaps stabilize or even go down.

Wade -- Area 2 is served by Wade Cable, correct, Area 2?

MR. BURNSIDE: Correct.

COUNCILMAN KENNEY: They're not, at this point, in competition with, or would not be in competition with RCN because there's no request to be able to service Wade's franchise area. But Comcast, which serves Areas 3, 4, and 1, what happens when the competition kicks in in 3 and 4

10/31/00 PUBLIC PROPERTY, BILL 000452

and the prices begin to go down? That's hypothetically.

Does that not risk the possibility that Area 1 could potentially experience an increase in rates due to Comcast's needs to compete with 3 and 4. Without the competitive edge in Area 1, I'm not saying that Comcast would -- I'm going to ask them the same question, but I don't see that they would definitely raise their rates, but the economic pressure on them to maintain a competitive edge with you, or a fair race in 3 and 4, could potentially jeopardize the subscribers in Area 1 who have no competition to seek out if their cable rates are raised as a result of that war.

MR. BURNSIDE: They could not and would not do that.

COUNCILMAN KENNEY: Why?

MR. BURNSIDE: The law prohibits it.

COUNCILMAN KENNEY: The law prohibits increases in cable rates?

MR. BURNSIDE: If they reduce cable rates to compete with RCN in Areas 4 and Areas 3, the benefit of that rate reduction will occur in

Area 1 as well.

But more importantly, in addition to that, I think you need to understand that stabilization or a reduction in prices occur when competition comes in the market, but also quality of service improves. That's a huge benefit. I think we've seen already some indications of that effort here, in anticipation of competition. And perhaps our friends in the incumbent cable provider will testify to that fact.

They've made investments, and they're going to continue to make investments to upgrade their systems, to anticipate competition. And that is done on an area-wide basis.

They are not going to determine, when your call comes in about a service-quality standard issue, that you're in Area 1 so you get this set of answers as opposed to the same question being answered and the same response being given in Areas 3 and 4.

So there are some overlying benefits to all areas of the City, even though there would be no direct competition in Area 1.

COUNCILMAN KENNEY: But we would have,

as a resident of Area 1 or -- as a resident of Area 1 or a resident of Area 2, would certainly have a more level and equal competitive pricing advantage compared to Area 4 and Area 3 over the next seven years.

MR. BURNSIDE: I'm not sure I understood.

COUNCILMAN KENNEY: If you guys were building out 1 and 2 while you were building out 3 and 4, just hypothetically, the residents and customers of 1 and 2 would have a direct advantage of competitive pricing as the residents of 3 and 4 would.

So I guess my question is and my concern is that we somehow give competitive pricing and high-quality service to two areas over seven years and then do not do the same -- you say someone may come in and do the same thing, but right now -- I mean, since 1996, I'm not aware of anybody else besides RCN that's asked to do anything else in the City Area 3, 4, 1 or 2. So, I mean, it's been four years of this ability to compete. And while, you know, you say there's 30, 40 companies out there that could do it, no one yet has requested 1 or 2.

So, I mean, my concern is, as we see that line of demarcation over seven years from the northeast and northwest to southeast and southwest, I have a general concern that those individuals will not be able to experience the competitive pricing, the varied service, the high-speed Internet access, and the competition in telephone service.

I mean, that's not your -- RCN's direct problem, but it is a concern for us when we're trying to treat everyone in the City equally and give everyone equal access to lower prices and better service.

MR. BURNSIDE: I understand.

COUNCILMAN KENNEY: Okay. Are there Councilmembers who have other questions? Councilmember Rizzo?

COUNCILMAN RIZZO: Just a question about the actual service itself. To be competitive, are you suggesting that you're going to be able to offer to your customers pretty much a mirror of what the other cable -- the incumbents already offers? Are you going to come in with

10/31/00 PUBLIC PROPERTY, BILL 000452

something that will appeal to people that don't want to spend the dollars that they spend? Or will you be able to go head to head with them and offer all of your potential customers the same level of service with all the bells and whistles if they would want them?

MR. PITTS: Well, the basic package -- I can tell you by our experience in Delaware County now that many people are choosing our Resilink bundle and getting the savings that the bundling provides with either phone and cable or phone and cable and high-speed Internet. And the details of those bundles are in the written testimony that we handed out.

But our basic package, we think, is a very competitive package with a very robust basic lineup. But I think that by taking most of the services -- it's the more you buy, the more you save.

COUNCILMAN RIZZO: Let's just talk about video now.

MR. PITTS: Yes.

COUNCILMAN RIZZO: Which I'm familiar with. Will you be able to provide to a customer without bundling all of the service that the incumbent has available right now and at a lesser price?

MR. PITTS: I think that our price for comparable services is very competitive, yes. I wouldn't want to say on the record that I know for certain that our price is less than theirs.

COUNCILMAN RIZZO: I really don't want to talk about -- I shouldn't even have brought price into it. I'm asking that if you put your video service, your cable service or whatever, your RCN service, will you be able to provide all that is presently provided by Comcast?

MR. PITTS: Is there a specific question or a specific channel that you're asking about?

COUNCILMAN RIZZO: No.

MR. PITTS: We have a full lineup, as they do.

COUNCILMAN RIZZO: But you're using the words here today that you're competitive, so I'm asking you a question. If you're competitive, are you able to provide customers with all of the services presently provided by Comcast?

MR. PITTS: I'm going to say the answer is yes. But unless there's a specific channel, that's --

(Unintelligible, parties talking over each other.)

COUNCILMAN RIZZO: But -- so you're saying that you'll be competitive with the cable company.

MR. PITTS: Absolutely.

COUNCILMAN RIZZO: Okay. Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Could you possibly fix this microphone?

(Laughter.)

COUNCILMAN KENNEY: Could you talk in some specifics as to what you think would be the direct advantage to the consumer in reduction in cable rates? Can you compare for the record what is going on today if Comcast is offering some pricing and what you guys would ensure happens as soon as you're in the market? What kind of reductions would we see? I mean, how much of a percentage of reduction would we expect to see in areas -- I'm sorry in Areas 3 and 4 in the first two years, three years of operation?

MR. PITTS: Well, this question is not for you, but just a general question. In the last three years, how many rate increases have there been in this market? I know the answer to that, and I'm sure you do also.

COUNCILMAN KENNEY: No, I don't. I just -- my wife just pays the cable bill.

MR. PITTS: There have been a few. And I can tell you in Delaware County where we're offering service now, in Folcroft, prior to us launching there, Comcast announced a rate increase. And in the areas that we've upgraded, they circulated some information offering to not raise rate for customers that stayed with them if they signed a contract. Now, that was in direct response to us competing with them.

So stabilization of the rates is something that I'm sure will be seen in this market, and it's not just here; there have been studies of competitive markets. And, typically, rates are around 15 percent lower than they are in places where there's not competition for similar channel lineups. So there's no reason to believe that that would not be the case here, especially since the incumbent is already sort of using those practices in this general market.

COUNCILMAN KENNEY: Which practices? I'm sorry.

MR. PITTS: Of not raising rates, in response to competition.

COUNCILMAN KENNEY: Okay. Does anyone have questions on rates? As long as we're on rates, we might as well --

COUNCILMAN ORTIZ: I thought competition was supposed to bring rates down.

MR. PITTS: And I think that they do. I think that they lower -- they do a number of things. They lower rates, they stabilize rates, they increase channels, they increase variety when we get to the point where new services are being offered.

Just like in any other business, if you know that your competitor is offering a new service, you want to bring it to the market as quickly as you can but you have no incentive to do that now -- there might be some, but there would be more if there's competition in the market. So

10/31/00 PUBLIC PROPERTY, BILL 000452

this is built-in incentive that's there. Competition does a number of things.

COUNCILMAN ORTIZ: I think consumers are interested in looking at competition and looking at competition to bring the current set of rates down, not stabilize them at the high level that they are at right now.

MR. PITTS: Well, I agree with you, but I also know that --

COUNCILMAN ORTIZ: If competition doesn't do that, then we might as well have a monopoly.

MR. PITTS: I understand your point, but I know that one of the things that customers do complain about are rate increases. That's a true statement, I would imagine. And I can tell you that an incumbent would be very -- they would think very carefully about whether or not to raise their rates if there is a competitor in the market. I think that that is a definite benefit that customers will very much be in favor of.

COUNCILWOMAN BROWN: Could I follow on rates?

COUNCILMAN KENNEY: On rates?

Councilwoman.

COUNCILWOMAN BROWN: Yes.

COUNCILMAN KENNEY: Councilmember Reynolds Brown.

COUNCILWOMAN BROWN: Thank you, Mr. Chairman.

Can you share with us what your experience has been in other markets as it relates to rates, and what is the bottom line achieved, which is the lowering of rates?

MR. BURNSIDE: Councilwoman, we have evidence in our markets, in our (unintelligible) markets that, in fact, rates do come down. I'll give you one example. Probably with some research, I could come up with some additional -- I will come up with some additional ones.

But one the in particular that comes to mind is the town of Sommerville, which is a suburb immediately adjacent to the City of Boston, where we first began to build our network. The incumbent operator, who was announcing at the time a statewide increase in their rates made the following rates: We will increase rates by blank percent -- I forget what the number was, but let me just fill in, without being held to it, 10 or 12 percent -- except in the City of Sommerville, where we are faced with a competitive environment. And, ultimately, they reduced rates in that city.

So there is overwhelming evidence, and the FCC has been the collection point on a wider scale, where competition exists both in wire-based and in direct broadcast, satellite dishes, if you will.

Competition drives prices down, expands service. There is no doubt about that. And any economist that would tell you differently, I think, is reading the wrong books today. I mean, there is absolute experience that prices come down and service gets better, and less complaints flow to City Hall about issues concerning price and service, because people vote with their decision to change.

And let me give you one other closer-to-home example. In the Allentown, Pennsylvania market, where there are two completely overbuilt -- RCN happens to own one. A couple of factors in that market. There's a higher penetration rate in total. The penetration rates exceeds 90 percent, where the where average is about 60 throughout the country. So more people take cable services from one or the other. Prices on average are 10 to 15 percent lower than the national average. And, as I said a moment ago, customer service complaints are dealt with by the customer choosing to go to the other guy rather than complaining to you all.

COUNCILWOMAN BROWN: Thank you.

MR. BURNSIDE: So in small laboratory, if you will, environments, where competition, for one reason or another, has existed, it is absolutely irrefutable, irrefutable that prices come down and service gets better and technology improves.

COUNCILMAN KENNEY: Would that be with the OVS agreement?

(Unintelligible, parties talking over each other.)

COUNCILWOMAN BROWN: Was that a yes or a no?

MR. BURNSIDE: The answer is yes.

COUNCILMAN KENNEY: We could

memorialize that in the agreement, that prices will come down and service will improve?

MR. BURNSIDE: I think that there is no question -- there is no questioning that that will happen.

COUNCILMAN KENNEY: Let me ask you a little bit more an issue of more subjectivity. Comcast, you're the incumbent, has a pretty good reputation within the community. Certainly not as specific issues as rate reduction and stabilization and service enhancement, but just talking about being good corporate citizens, having a good reputation within the City, being involved in numbers of philanthropic and charitable and educational issues well beyond their requirements on their franchise agreement. You just get kind of a good feeling about them generally because they've been around and they're visible.

Mr. Pitts, you'd be running the company?

MR. PITTS: Yes.

COUNCILMAN KENNEY: And you'd be running it from Trooper for the reasonable short term?

MR. PITTS: Yes.

COUNCILMAN KENNEY: How do you ensure that the same kind of hands-on, in-the-community, in-the-civic-affairs, in-the-cultural-affairs things kind of take place with you guys, similar to what Comcast has done since it's been here? And I'm not even talking about the headquarters being here; I recognize you're not moving your Princeton headquarters to Philadelphia, as Comcast has their headquarters here.

However, how do you really maintain that kind of connection with the community here and what its needs are if you all go to work every day in Trooper?

MR. PITTS: Well, overall, our goal -- my goal and, again, I've been -- I mean.

COUNCILMAN KENNEY: I know, yeah, you're familiar with Philadelphia.

MR. PITTS: I've been in this area for some time, and our goal is to become good corporate citizens of Philadelphia also. We've already tried to start that process.

I would meet with the members of City

Council, community members -- we've already started to do that -- and other organizations and find out what types of things are important to the community and get involved with those through money, through participation, through volunteerism, all of those things.

And I can tell you that even though my office is in Trooper, I probably will spend a great deal of time -- I will have to spend a great deal of time in the City of Philadelphia, and I look forward that. And Trooper is sort of our regional office and it's based on where activity is now. But as activity moves, I think if we're able to be successful here, most of our customers will be skewed more towards this side of our region. Again, I could see us spending more time in the City than in other areas of the region.

COUNCILMAN KENNEY: If a cable subscriber under an approved RCN agreement with RCN has a complaint about service, billing, or anything else and they dial the RCN number, who will answer the phone and where will that person be?

MR. PITTS: Well, right now, we have a

10/31/00 PUBLIC PROPERTY, BILL 000452

centralized customer service area in Dallas, Pennsylvania, which is where our customer service center has been for a number of years. They dial that number 24/7/365 days a year and they'll get a live body there that will answer their questions.

COUNCILMAN KENNEY: And will there be offices that people can come to to pay their bills in person?

MR. PITTS: Absolutely.

COUNCILMAN KENNEY: And to see someone or complain to someone or get information from some live person in Philadelphia?

MR. PITTS: Absolutely. There will be tech centers, walk-in centers.

COUNCILMAN KENNEY: Could you give us information on where those sites would be located? Do you know specifically where they are right now?

MR. PITTS: We do not. One of the -- the part of the process -- the process would entail starting construction. We know we've designed the system so we know how it's going to be laid out. We would start looking for real estate. We have idea where our hub sites might

10/31/00 PUBLIC PROPERTY, BILL 000452

be. We'd look for sites for walk-in centers, and they're easier to find and easier to -- I mean, they don't have to be -- the parameters aren't as tight as with our technical facilities. We can place them in shopping malls or in high-traffic shopping areas.

So we'll locate those areas and find places and purchase real estate and open them up for business.

COUNCILMAN KENNEY: Well, myself and other members of Council and on this committee would be interested in knowing if -- without giving specific addresses, if you could kind of give us locations, how many you expect to have, and where you suspect they'll be located in Year 1 2, 3, 4, and going out.

Philadelphians, it's my experience, enjoy complaining, but they enjoy complaining to someone in person, to be able to go to an office, to go to the bank, to go to places like the phone company, to be able to go and talk to someone individually as opposed to doing it by telephone. I mean, some of us operate by telephone and the computer all the time. We have a cohort of residents age-wise and income-wise that need the ability to go to someplace that's accessible by public transportation, that is safe, that has parking, those kinds of things.

So those -- even though it may be a longer-term decision for you guys, we would really like to know those things because it helps us to be able to sell or to make constituents and potential customers of yours understand that there's going to be a presence in your community so that they can go somewhere and see someone.

MR. PITTS: Oh, absolutely.

COUNCILMAN KENNEY: Okay.

I'm sorry, Councilmember Brown, you had a follow-up?

COUNCILWOMAN BROWN: Yes, I do.

COUNCILMAN KENNEY: Thank you.

COUNCILWOMAN BROWN: The issue of corporate responsibility raised by my colleague is an important one. And since you're not, at this hour, able to let us know what your anticipated plans are, give us a sense of what you've done in other markets, a couple of examples that speak to corporate responsibility.

MR. PITTS: You mean in terms of donations, activities, that sort of thing?

COUNCILWOMAN BROWN: Yes.

MR. PITTS: Okay.

COUNCILWOMAN BROWN: And not just donations, but being actively engaged and integrated into the fabric of the community that you're serving.

COUNCILMAN KENNEY: If you could supply the Chair and the members of the committee with a list of things you've done in Boston or in Chicago and the organizations and events you've been involved in, you know, you've got to kind of know what we're asking for.

MR. PITTS: We can provide that.

MR. BURNSIDE: We will do that.

COUNCILWOMAN BROWN: And if you can asterisk those items where you're actively engaged with the public school system.

MR. BURNSIDE: Okay.

COUNCILMAN KENNEY: Councilmember Rizzo?

COUNCILMAN RIZZO: You use the -- you use the state -- you said about being successful, if you're successful. Has RCN not been successful anyplace? Have you had to pull the plug?

And if you're not successful, when do you know that? When do you know when you're successful or not? And what do you do if you're not?

MR. PITTS: Are referring, Councilman, to my comment about being successful?

COUNCILMAN RIZZO: Yeah.

MR. PITTS: Well, what I meant was being successful in getting into the City. We have not pulled the plug anywhere. And I think that our experience is showing us that if we're able to build and offer service, that our product lines are attractive to enough customers for it to make sense for us to continue to do business.

COUNCILMAN RIZZO: But in your agreement with the Department of Public Property, is there something in there in the event you'd want to pull the plug?

MR. BURNSIDE: Well, as I said, Councilman, early on, there is a fairly substantial section that relates to liquidated damages, so that when you read that section, you'll be able to see what, if, in the hypothetical, RCN, quote, pulled the plug, unquote, what the financial responsibilities it would incur in doing so, what the penalties would be, what the damages would be.

But just to reiterate what John just said, we have met and exceeded -- met and exceeded -- our expectations for penetration in markets where we are building and offering our service today.

COUNCILMAN RIZZO: So the answer to your question, there is something in the agreement that in the event this is not a successful venture, that there are penalties associated with that.

MR. BURNSIDE: Very much so, very much so. There is a whole section. And John just mentioned to me that there are also bonds that govern the construction process.

So the answer is, there is a substantial amount of written material covering damages, penalties, et cetera.

COUNCILMAN RIZZO: Well, I'm sure we'll ask the Department of Public Property to tell us what they are. Thanks very much, I appreciate that.

COUNCILMAN KENNEY: Councilmember Nutter.

COUNCILMAN NUTTER: Thank you, Mr. Chairman.

I do look forward, Mr. Burnside, to one day being able to read the provisions that you're talking about, whenever it is that we get a copy of the agreement that you've been talking about.

How long has RCN been in the business?

MR. BURNSIDE: RCN's been in business since 1997.

COUNCILMAN NUTTER: 1997, did you say?

MR. BURNSIDE: Right.

COUNCILMAN NUTTER: Okay. And you presently operate in what major cities on the east coast?

MR. BURNSIDE: On the east coast, we operate in -- I'll talk in terms of markets as well as cities. Going from north to south:

Boston;

New York. We have an agreement in New York to provide service in all five boroughs.

We're currently doing that in two of five right now, soon to be three;

The Philadelphia market, where we are providing service in the suburbs right now;

And through a partnership with the power company in Washington, DC, we have a joint venture providing service in the greater Washington area -- Washington, DC, northern Virginia, and the Maryland suburbs.

COUNCILMAN NUTTER: That covers the east coast?

MR. BURNSIDE: That covers the east coast, yes, sir.

COUNCILMAN NUTTER: Okay. And when did you enter the Boston market?

MR. BURNSIDE: We entered the Boston market -- actually, we entered the Boston market prior to 1997. As we began to deploy the plan and it looked like the 1996 act was finally going to become a reality, which essentially was the gating issue with respect to competition, we began to plan and compete for competition in Boston in '96. We've actually been providing service there since mid- or late '97.

COUNCILMAN NUTTER: Okay. And when did you begin service in New York?

MR. BURNSIDE: Our agreement in New York was completed in December of 1997, and we began to provide service within six months in New York City through, I will guess, the first -- either the first or late in the first quarter or early in the second quarter of 1998.

COUNCILMAN NUTTER: And when did you start in the Philadelphia suburbs?

MR. BURNSIDE: John, I think you can answer that one.

MR. PITTS: I'm sorry?

MR. BURNSIDE: When we began service in the first Philadelphia suburbs.

MR. PITTS: In March of this year.

COUNCILMAN NUTTER: And are you currently providing service in the Washington, DC and Virginia-Maryland area?

MR. BURNSIDE: Yes, we are. We are providing service in the City -- in the district, I should say, in parts of Montgomery County, and just beginning to provide service -- no, I'm sorry. We've just completed our agreement, our franchise agreements in a few communities and counties in northern Virginia. The licensing is done a little bit differently in Maryland and in parts of Virginia, where the counties, rather than the city, are the licensing authority.

COUNCILMAN NUTTER: Okay. And you probably know that Philadelphia is a city and a county?

MR. BURNSIDE: Pardon me?

COUNCILMAN NUTTER: You probably know that Philadelphia is a city and a county.

MR. BURNSIDE: I certainly do.

COUNCILMAN NUTTER: Okay. Now, in Boston, do they have franchised areas in Boston, or is it just the entire city? Or what's the Boston situation?

MR. BURNSIDE: No, sir. In Boston, unlike here in Philadelphia, there is one franchise area that covers the entire city.

COUNCILMAN NUTTER: Okay. And you've got a franchise in Boston?

MR. BURNSIDE: We have a franchise in Boston. We actually started very much in terms of the regulatory or legal agreements as we are proposing here, or has been proposed here, an interim OVS agreement and a transition to a franchise shortly thereafter.

COUNCILMAN NUTTER: Does your interim agreement require a build-out citywide or various?

MR. BURNSIDE: Well, the agreement that's enforced today is a franchise and it requires a franchise in Boston and the agreement requires the full participation of the city.

COUNCILMAN NUTTER: And how far along are you in that process?

MR. BURNSIDE: If you'll excuse me for one moment, let me consult with my Boston expert.

(Mr. Burnside confers off the record with colleague.)

MR. BURNSIDE: He tells me it's 30 percent.

COUNCILMAN NUTTER: 30 percent?

MR. BURNSIDE: About.

COUNCILMAN NUTTER: Okay. Tell me a little bit about -- we've had discussion about this agreement and I know you're going to get us a copy of it. My best recollection either from the testimony or the Q-and-A that's happened so far is that this agreement is for two years; is that correct?

MR. BURNSIDE: That is correct.

COUNCILMAN NUTTER: Okay. And if this is approved, and it's the agreement, the OVS agreement that's in front of us today, is that correct?

MR. BURNSIDE: Yes.

COUNCILMAN NUTTER: Not a cable agreement.

MR. BURNSIDE: It is an OVS, and I think the proper terminology is it's an "interim OVS agreement."

COUNCILMAN NUTTER: That allows for cable service?

MR. BURNSIDE: That allows for cable service.

COUNCILMAN NUTTER: Okay. But I also either read or came to understand that should this be approved, you then have 120 days to then apply for a franchise?

MR. BURNSIDE: That is correct, that is correct. We would move immediately into the franchise for a franchise.

COUNCILMAN NUTTER: Okay. Now, excuse me, during that time, naturally, you would be in construction, you'd be going through all of your areas, the map that was up earlier. And simultaneously, you would be negotiating a franchise agreement; is that correct?

MR. BURNSIDE: That is correct. Fortunately, the guys who do the construction and the guys who do the negotiations for the franchise are not the same guys.

COUNCILMAN NUTTER: That's probably fortunate for your customers.

MR. BURNSIDE: Absolutely.

COUNCILMAN NUTTER: Now, what happens if you don't come to an agreement on a franchise? What happens to the OVS agreement or what controls or what allows you to continue to continue to operate? What are the provisions?

MR. BURNSIDE: Well, I would say that that is almost an imponderable situation. I mean, first of all --

COUNCILMAN NUTTER: Well, let us ponder the imponderable. Give me an answer to the

10/31/00 PUBLIC PROPERTY, BILL 000452

question.

MR. BURNSIDE: Well, fine, but let me explain what I mean. The -- and perhaps -- if you'll excuse me.

(Mr. Burnside confers off the record with colleague.)

MR. BURNSIDE: Since Mr. Steel has already identified himself, we'll refer to the specifics in the agreement, but I was specifically going to say that the overall agreement has in it virtually all of the difficult issues with respect to franchising, so I doubt very much if the condition that you've just described would very likely, but let's be specific if we may.

MR. STEEL: What would happen if the parties could not agree on a franchise, then we could mutually agree, each of us, to continue the OVS agreement for a period up to ten years. So we would be -- that would be the option. That would have to be the agreement of both parties.

And if we fail or have a material problem in construction or we otherwise triggered the sections (unintelligible) as penalties, and we would have to deal with those.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. BURNSIDE: May I --

COUNCILMAN NUTTER: I'm sure you'll give me more formal language than just deal with those.

But what actually happens? I mean, what is the City's recourse? What happens if both parties don't agree to continue the OVS agreement for this upward of ten-year period of time? What actually happens? I wish not to speak in hypotheticals.

MR. STEEL: Well, in practice, we have had -- in the Boston market alone, we have had six interim open video system agreements that would move to a franchise in four --

COUNCILMAN NUTTER: I'm sorry, I'm sorry.

MR. STEEL: We have never had a problem where we haven't delivered on a franchise.

COUNCILMAN NUTTER: I asked my question; I'd like it answered in the form that I asked the question. We talked about Boston already; we're now talking about Philadelphia. You have an agreement. I asked you what happens if the parties don't agree to keep the OVS agreement in place? That's the one question.

What happens if they do agree to keep it in place? That's the second question.

I would like those questions answered specific to Philadelphia in what you've negotiated with the Department of Public Property.

MR. STEEL: In the first instance, we worked toward the franchise and we signed a franchise agreement beyond the OVS. If we cannot agree on that for whatever reason, the option is there for to us agree to extend the open video system agreement for a period up to ten years.

COUNCILMAN NUTTER: Now, what does that mean? What are your requirements, what are your responsibilities, what are your obligations, what are your commitments?

MR. STEEL: The same that you see before you now, which is virtually the same as the franchise.

What we have done in this instance, which, I think, gives Scott some comfort in saying that it's very, very unlikely that we will not reach agreement is because we have negotiated a franchise during this long period. And so all of the terms are there, there's very little for to us really negotiate beyond this.

What I --

COUNCILMAN NUTTER: Clearly that presupposes that you're going to have a franchise agreement approved, doesn't it?

MR. STEEL: It presupposes that?

COUNCILMAN NUTTER: Yeah.

MR. STEEL: Well, yes. I mean, we very much have worked between the parties to negotiate towards a franchise agreement, yes. So the terms are here; there's very little for us to debate about.

And when you see the agreement, I'm sure you'll agree.

COUNCILMAN NUTTER: Well, if I had the agreement, maybe I wouldn't be asking these questions.

MR. STEEL: I thought it accompanied the ordinance, but I could be wrong.

COUNCILMAN NUTTER: Okay. Well, it's very difficult to discuss a document that only you've seen and I haven't seen.

What happens in the event that -- we've

discussed not reaching an agreement on a cable franchise. Now, your obligations, under the OVS, in terms of either participation with PCDC, the school system, various hiring goals and the like are what? What's in the agreement on those issues?

MR. STEEL: They're all spelled out either in the agreement or in the appendices to the agreement.

COUNCILMAN NUTTER: Do you know what they are?

MR. STEEL: Specifically for? I'm sorry.

COUNCILMAN NUTTER: In the agreement, have you agreed to terms relative to either contributions to the School District, the minority hiring goals?

MR. STEEL: Yes, yes.

COUNCILMAN NUTTER: PCDC contribution, a whole host of the issues.

MR. STEEL: Yes.

COUNCILMAN NUTTER: What are they? And are those the terms, the conditions that you're saying would stay in place for upwards of ten years if you're not able to reach an agreement.

MR. STEEL: Yes. They're virtually the same as those agreed to by Comcast in their latest renewal.

COUNCILMAN NUTTER: Mm-hmm.

MR. STEEL: Because we are very sensitive to level playing-field concerns.

COUNCILMAN NUTTER: If you have an extended OVS period, what are the requirements or rules around the issue of franchise fees?

MR. STEEL: The same as they would be under a franchise, 5 percent.

COUNCILMAN NUTTER: So even though you don't have a franchise agreement --

MR. STEEL: They're still -- even in a pure OVS, one of the requirements under federal law is that we match the franchise fee and also the commitment to public access. So you're protected on two levels.

COUNCILMAN NUTTER: Okay. We've had a number of, from time to time, meetings around the issue of cable television, and I think the question was asked earlier about either stability of the company or what your long-term future is here in Philadelphia.

We had an occasion a couple years ago, where a company was in for franchise renewal. The franchise was renewed and subsequently unbeknownst to us, they were in negotiations for the sale of that particular franchise, and subsequently, three months later, the renewed, now more valuable franchise was sold.

As a result of that experience, some of us who went through that, try to pay certainly a lot more attention to the details of what the companies lay out and what their commitments are and what they say in these public hearings.

MR. STEEL: I know that while we were negotiating the agreement, the City was sensitive to this particular circumstance. And in the OVS agreement, subsequently in the franchise, there are three to four pages that deal with a transfer of ownership of control. And I know that before that can take place, we have to be back here before this Council for approval by ordinance.

COUNCILMAN NUTTER: Thank you.

That's it.

COUNCILMAN KENNEY: Councilmember

Ortiz?

COUNCILMAN ORTIZ: Do you have any collective bargaining agreements with any unions in Philadelphia?

MR. BURNSIDE: John, you want to take that?

MR. PITTS: Well, we're not building our network in Philadelphia yet. So the answer is no.

COUNCILMAN ORTIZ: You don't have any collective bargaining agreements? The answer is no?

Do you have collective bargaining agreement -- a record of collective bargaining agreements with other unions that you might furnish to this Council?

MR. PITTS: We've used unionized labor to build our networks in other cities, so I would say the answer is yes.

COUNCILMAN ORTIZ: Outside of building the network, how many of RCN companies in other cities are unionized? And who are the unions that you have collective bargaining agreements with those unions?

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. PITTS: Well, in general, our philosophy is to let the employees decide --

COUNCILMAN ORTIZ: I can't hear you.

MR. PITTS: I said, in general, our philosophy is to let the employees decide to elect representation or not, and --

COUNCILMAN ORTIZ: I didn't ask that question, whether you let employees decide or not. I asked the question as to what collective bargaining agreements you have in other cities and who are the locals that you have collective bargaining agreements with?

MR. PITTS: For employees out -- for employees around the country for RCN, there are no collective bargaining agreements, except for, in the Lehigh Valley system, between county operating employees, it's a committee, it's an old union, they are covered by a bargaining union. And, obviously, there's going to be some testimony related to that later today.

COUNCILMAN ORTIZ: So you don't have any collective bargaining agreements with any local anywhere in the United States?

MR. PITTS: Well, for --

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN ORTIZ: You're a nonunion corporation.

MR. PITTS: In terms of building the network, constructing --

COUNCILMAN ORTIZ: That we understand, if you come to Philadelphia. But once it's built, I want to know whether your employees have collective bargaining agreements in any of those cities where you're at.

MR. PITTS: They've chosen not to.

COUNCILMAN ORTIZ: They have chosen not to?

MR. PITTS: We do not. The answer is -- the answer is no.

COUNCILMAN ORTIZ: Have you had complaints about anti-union practices in any of those cities, and has there been litigation for the National Labor Relations Board?

MR. PITTS: We have a -- a -- a ruling that is under appeal now in Allentown, and that is with the CWA.

COUNCILMAN ORTIZ: I can't hear you.

MR. PITTS: We have a ruling that is on appeal now involving a -- how an affiliation vote was handled in Lehigh Valley, and that is with the CWA.

COUNCILMAN ORTIZ: That's with the CWA?

MR. PITTS: Correct.

COUNCILMAN ORTIZ: In any other cities, have you had any other complaint filed against you, in any other cities, for anti-union practices?

MR. PITTS: No, not to my knowledge, no.

COUNCILMAN ORTIZ: Thank you. Mr. Chairman, thank you.

COUNCILMAN KENNEY: Are there any other questions for this panel either from members of the committee or from Councilmembers in general?

(No further questions at this time.)

COUNCILMAN KENNEY: And you gentlemen will be able to stay?

MR. BURNSIDE: Absolutely. I thought it's been --

COUNCILMAN KENNEY: I'm sorry.

MR. BURNSIDE: It was just pointed out to me, Mr. Chairman, that with the ordinance, the

10/31/00 PUBLIC PROPERTY, BILL 000452

OVS agreement, the interim OVS agreement was, in fact, given to all members so that just for the record, all of you do have it.

COUNCILMAN KENNEY: I mean, there's no one's disputing that it was kept from anybody. Large volumes of information come into Council regularly, and sometimes -- put it this way, if any Councilmember on the committee hasn't read it, it's as good as them not having gotten it.

So now -- I mean, they need it -- if they didn't know if it was in their office for whatever reason, through some fault of delivery or through some fault of staff, the fact is that they haven't read it and they're still at a disadvantage, so --

MR. BURNSIDE: I understand, but the inference was clearly that we did not provide it, and I want to correct that for the record. It has been provided along with your --

COUNCILMAN KENNEY: I understand. And I have no dispute 'cause I had it and read it. The other issue is that some people claim that -- and, you know, has no right to claim that they didn't get it. So I appreciate you clarifying it for the record, but the fact still remains is that they need to get it.

MR. BURNSIDE: True.

COUNCILMAN KENNEY: Councilmember Cohen.

COUNCILMAN COHEN: Thank you, Mr. Chairman.

Earlier in the testimony, I don't know which of the two gentlemen referred to it. You referred to feeling the responsibilities to the community and having good relations. And I recollect a part of it dealt with public access and how you would cooperate to make public access a reality. And that sounded good. We have not succeeded in Philadelphia in really having what many of us regard as genuine public access.

Do you feel the same way about your employees? Do you feel it necessary to have good relations with your employees?

MR. PITTS: Oh, absolutely.

COUNCILMAN COHEN: And among the reasons you feel that way, would it have something to do with the fact that if employees are satisfied, it affects their productivity and their efficiency?

MR. PITTS: That's one of the reasons.

COUNCILMAN COHEN: Would that be among the reasons?

MR. PITTS: It would be among the reasons, yes.

COUNCILMAN COHEN: And that if there is a lot of contention between the company and employees, it may very well affect the quality of the work?

MR. PITTS: Is there tension between the employees and management?

COUNCILMAN COHEN: Yes.

MR. PITTS: I don't know of any tension.

COUNCILMAN COHEN: You don't of any tension. Well --

MR. PITTS: Maybe I misunderstood your question, Councilman.

COUNCILMAN COHEN: Well, in this labor proceeding that you alluded, which you said is on appeal, were there charges made by employees indicating that they felt the company was in violation of the law?

MR. PITTS: The -- that dispute is between the CWA and RCN of the Lehigh Valley, and it surrounds the -- our having an issue with how an affiliation vote was handled. It's not concerning -- it's not.

COUNCILMAN COHEN: Could you speak, sir, more directly into the microphone?

MR. PITTS: It's not concerning treatment of the employees; it's concerning an affiliation vote. And we -- we've appealed that decision, and currently, we are abiding by the existing or the pre-existing labor agreement with the twin-county operating employees committee.

COUNCILMAN COHEN: But isn't there a dispute between a pre-existing labor agreement and an allegation that there is a successor organization that alleges that it really represents the employees and is a successor to the previous group?

MR. PITTS: That is the affiliation vote question.

COUNCILMAN COHEN: Well, isn't the affiliation a matter between the employees themselves? And isn't it something that the

10/31/00 PUBLIC PROPERTY, BILL 000452

company ought not to have anything to do with?

MR. PITTS: Well, that's true, but some employees -- many employees have told us that they didn't like the way that the vote was taken and didn't know that that's what was going on. So, you know, if the question is, are we trying to act on behalf of the employees in their best interests? we think that we are. And the answer is yes.

COUNCILMAN COHEN: Well, I guess everybody who acts paternalistically always says, I'm doing it for the benefit of, you know, the child or whoever they're being paternal to. But isn't affiliation really a matter of choice by the employees?

MR. PITTS: Oh, absolutely. And if under the NLRB auspices, if a vote is taken and the members of the employees there decide that they want to be represented by the CWA, we're not an anti-union company, we have no problem with recognizing them as being members of the CWA.

Our only issue is in how they --

COUNCILMAN COHEN: Could you wait just a minute.

10/31/00 PUBLIC PROPERTY, BILL 000452

Go ahead, sir.

MR. PITTS: Our only issue is with how the vote was taken and --

COUNCILMAN COHEN: But why would the company be concerned as to which affiliation the employees choose?

MR. PITTS: Because the employees are concerned about it.

COUNCILMAN COHEN: Well -- and we understand that whatever it is, I'm not sure what point you're making about the company's involvement, but it just doesn't kind of seem healthy for a company to be involved in a matter that's a choice of the employees.

Why -- I understand the company made all of its statements to the Labor Board, to an administrative law judge that has hearings and represents the employees' bid. And wasn't there a ruling by the administrative law judge that dealt with violations of labor laws by your company?

MR. PITTS: There was a ruling and we're appealing that ruling and --

COUNCILMAN COHEN: Well, why are you appealing the ruling?

MR. PITTS: You're saying that we should not appeal the ruling?

COUNCILMAN COHEN: Well --

MR. PITTS: We had reasons that we felt that it was appropriate to appeal the ruling. And when the disposition of that ruling is determined, we have to decide whether we want to appeal it further or not. I mean, we want to do what we feel is in the best interest of the company, the employees --

COUNCILMAN COHEN: Well, why are you so determined to put obstacles in the way of your employees deciding with affiliation they ought have?

MR. PITTS: Well, see, none of this is actually involving the employees; this is happening outside of them. It's the administrative law judge. It is the process of appeals that we're dealing with. The employees are telling us -- some employees have told us that they didn't want the affiliation to happen, and I believe that they're telling me the truth.

COUNCILMAN COHEN: Well, the way to resolve those matters is to go to an election and to go to an election quickly.

MR. PITTS: I agree, I agree.

COUNCILMAN COHEN: And perhaps the issue raised by the employees that they were seeking to have a determination quickly, and wasn't there an objection by the company?

MR. PITTS: I'm not aware of that. I'm in favor of us resolving this matter properly in court, I'm in favor of that.

COUNCILMAN COHEN: It's a matter of concern because you talk, you know, in a way that some of like to hear about cooperation and about your concern for the community interests, about your desire to make your company available for public access. They're commendable achievements.

Yet on the record in the one case that we can test how you feel about your relations with others, we find that there is a serious question as to what your action is toward your own employees. And my experience of a long lifetime is that you can rely much more on workers who are satisfied, that feel they're being treated properly by the company. You can rely on their productivity, on the quality of their work much more than you can where there is a labor force that feels it's being treated unfairly and is being denied rights. And that's a concern that I express.

Why can't you and the people who are talking about representation get together quickly and make it possible for employees to express their opinion?

MR. PITTS: I think those are valid questions and valid concerns, and let me just point out that you can judge us by our employees and how they feel about us. And the Lehigh Valley is actually the unit -- or the bargaining unit in questions is 90 employees out of about 6500 that we have company-wide. And that's the only area in the company where we have an issue like this, and we're trying to work through it.

Also, I would that many companies -- I would venture to say good companies, like RCN, have labor disputes that they have to work through. And you work through them and sometimes it's painful, but when it's over, you try to get back to the work of the day and do what you have to do.

So I don't that think it would be fair to characterize our -- a lack of feeling about our employees because we have a labor dispute. Good companies have labor disputes, and they try to work through them.

COUNCILMAN COHEN: Well, there's always a suspicion, when a company makes it difficult and very time-consuming to have a decision on labor representation, there's always a suspicion amongst workers in the community at large that the company's doing it for selfish reasons. They don't want to have to engage in bargaining at an equal level with the employees because it may mean changes in working conditions, it may mean higher wages, that kind of thing.

So that when the company engages in the kind of procedures you are and there's hearings and then appeals from unfavorable recommendations, and then you said and then you're going to have to decide when the next decision is made whether you're going to appeal that decision, it sounds to me that you're projecting something that may indicate years of labor strife.

And Philadelphia has a long tradition

of believing that companies and workers ought to be able to get together of there's good faith on each side. And I have to say that from my point of view, it doesn't appear as if you are introducing the elements of good faith in your relationship with the employees.

Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Councilmember Rizzo.

COUNCILMAN RIZZO: Thank you.

I apologize if you've already covered this, but were you referring to the labor dispute with North Hampton County?

MR. PITTS: Excuse me?

COUNCILMAN RIZZO: Were you just referring --

MR. PITTS: North Hampton?

COUNCILMAN RIZZO: Yes.

MR. PITTS: Yes, Councilman.

COUNCILMAN RIZZO: Could you -- did you reveal the fact that the National Labor Relations Board issued a statement about what went on there? Did you elaborate on that?

MR. PITTS: I did not.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN RIZZO: Would you please (unintelligible) on there on what you were accused of or charged with, whatever the proper terms are? May I read something that I have and just tell me if this is accurate?

MR. PITTS: Okay.

COUNCILMAN RIZZO: "In a decision, a judge found that RCN engaged in wholesale violations of the National Labor Relations Act, beginning in September 1998, with an independent union, which then represented certain RCN employees in North Hampton County, Pennsylvania, affiliated with the CWA. The result of that affiliation was to set off what can only be described as a campaign of terror in which RCN" -- and then there are many points listed here.

Could you just describe what was described as a campaign of terror?

MR. PITTS: What are you reading from, Councilman?

COUNCILMAN RIZZO: Just some information that I received.

MR. PITTS: From. . .?

COUNCILMAN RIZZO: From someone that's

going to testify here today.

MR. PITTS: Okay. Well, those phrases are not familiar to me.

COUNCILMAN RIZZO: Well, I'm not suggesting that. They were a judge's phrase, and this is a --

MR. PITTS: Okay, we have not engaged in any campaigns of terror.

COUNCILMAN KENNEY: And I don't mean to interrupt, but when we have that witness testify, they'll still be here and they can rebut whatever's been said, rather than jump ahead, 'cause we still have the City and we have a number of people left.

COUNCILMAN RIZZO: I was just asking the question because I thought, obviously, you were accused of this type of activity even before the person wants to testify. And since we're talking about the labor relations --

COUNCILMAN KENNEY: Well, they haven't be accused on the record yet, so as soon as that happens, we'll allow them to respond. I just want to make sure we don't get off in -- 'cause they'll all be here anyway.

10/31/00 PUBLIC PROPERTY, BILL 000452

Any other questions for these witnesses?

(No further questions.)

COUNCILMAN KENNEY: Thank you very much.

The Chair now calls Mr. Perez, the Public Property Commissioner, but also would ask that any other support staff that he has with him to please also accompany him to the table for backup.

(Witnesses come forward.)

COUNCILMAN KENNEY: Good afternoon, Commissioner. How are you?

COMMISSIONER PEREZ: Good afternoon.

COUNCILMAN KENNEY: Thank you. Please identify yourself formally for the record and proceed.

COMMISSIONER PEREZ: My name is Andres Perez, A-N-D-R-E-S, P-E-R-E-Z, and I'm the Commissioner of the Department of Public Property.

COUNCILMAN KENNEY: Do you intend to read your testimony or would you like to summarize it? We probably have a number of questions for you and Mr. James, and you could probably submit

10/31/00 PUBLIC PROPERTY, BILL 000452

your --

(Unintelligible, parties talking over each other.)

COMMISSIONER PEREZ: Because much of the prepared testimony is factual information that's already been repeated a number of times during the course of your questioning.

COUNCILMAN KENNEY: Why don't you highlight what you think is important to your testimony.

I'm sorry, Councilman Cohen, do you have a question?

COUNCILMAN COHEN: I was just wondering whether it would be shorter if he read it rather than summarize it?

COUNCILMAN KENNEY: Are you intimating that the Commissioner is long-winded?

COUNCILMAN COHEN: I'll rely on his judgment.

COMMISSIONER PEREZ: In English or Spanish?

COUNCILMAN KENNEY: He can do it bilingually, thank you.

Please proceed, with the ad -- as you

know, we're under time constraints.

COMMISSIONER PEREZ: Certainly.

As I indicated earlier, I'm the Commissioner of the Department of Public Property, and present with me today, Mr. Chairman, is: Deputy Commissioner Joseph James; Mr. Vincent Costello, of our Communications Division; and Mr. (unintelligible) and Mr. Sutton from the Law Department. Those gentlemen have been the principal negotiating team representing the departments in the City's interests throughout the course of the development of this agreement.

Bill No. 452 was originally introduced in June of 2000. It remains -- the agreement remains substantially the same. There is an amendment which clarifies certain aspects of the build-out plan, which I'll ask Mr. James to summarize.

MR. JAMES: Good afternoon.

COUNCILMAN KENNEY: Good afternoon.

MR. JAMES: My name is Joseph James, Deputy Commissioner, for the Department of Public Property. We have submitted an amendment to Appendix J, which further clarifies specific aspects of the build-out construction in the Center City area based upon some recent plans that we received from RCN. We have submitted them to the Chair for consideration with this bill.

COUNCILMAN KENNEY: You can proceed. I'm just trying to have staff try and find it for me an. Is this an addendum as far as a map is concerned or is it an amendment to the bill?

MR. JAMES: It's an amendment -- it replaces Appendix J that was originally submitted with the bill back in June, and it replaces that bill entirely. And it further articulates the Center City section of their construction, which deals more in relationship to their telephone side of the operation as opposed to their video programming side. And it spells out specific sections of the original OVS agreement that applies to those sections of the Center City area that is just telephone-related.

COUNCILMAN KENNEY: Could you give me a general idea as to how old this amendment is?

MR. JAMES: It was just developed over the last couple of days.

COUNCILMAN KENNEY: Okay.

MR. JAMES: Yeah, it's fairly new, and we apologize for not having it to you earlier.

COUNCILMAN KENNEY: Okay, thank you. And during the course of your testimony, could you give a relatively comprehensive description of its need and what it does?

MR. JAMES: Okay, if I can comment on that for you very quickly.

COUNCILMAN KENNEY: Sure, thank you.

MR. JAMES: In the original OVS agreement, and understanding that the OVS agreement was designed to provide a method for RCN to be in the right-of-way, to be authorized to provide telephony-related service in addition to video programming services throughout the entire county. And in those sections of the City that are not going to be applied for as a traditional cable franchise, RCN will begin the right-of-way as an OVS operator, basically providing a bundle of telephony-related service, local service, long-distance, and Internet services.

The normal mode of operation for the City in dealing with a company who wants to be in the right-of-way is to have a right-of-way ordinance, which is a separate ordinance that basically just says you're authorized to be in the streets, you're authorized to lay cable fiber optics, and you're authorized to go on a certain route of maps throughout the City as you designate where you want to be. And it just has certain provisions that protect the City's interests.

The interim OVS agreement is much more comprehensive and it extends beyond a traditional right-of-way agreement, and this is more to the question that's been asked several times today as to why an interim OVS agreement versus a traditional cable franchise.

So if we just -- for the second (unintelligible) discussion regarding Areas 3 and 4, which are part of the traditional geographic area that identifies the cable franchises and look out through the other areas of the City that RCN is offering service, there is a specific area of Center City that they plan to construct -- there was a set of maps that were included in the original package.

Based on discussions that RCN had with the Streets Department over their specific routes that they wanted to lay Center City area, which allows them to connect much of their corridor service, which is a traditional telephony model, there are specific sections that were, let's say, restricted from them going into the market - in particular, let's say, Chestnut Street -- that was just done under a federal grant. There is a five-year moratorium on construction in the excavating into that right-of-way. So in the discussions we had with RCN, they had alternate plans to not go onto Chestnut Street so they wouldn't excavate that. They would not go into parts of South Broad Street that were also recently redone. So what was in the original Appendix J spelled out that corridor in Center City District.

What the City recognized and in its review of their plans was, there are certain aspects of the interim OVS agreement that provides the City protections about how they would provide services in those areas that we wanted to incorporate into the document. There are certain specific areas that are cable-related that we wanted to exclude.

10/31/00 PUBLIC PROPERTY, BILL 000452

So in the second page of the Appendix J in the lower portion of it, it list specific numbers of sections of the interim OVS agreement that would apply specifically to the Center City or the corridor area. And that was the reason for the appendix and the revision of the original Appendix J.

COUNCILMAN KENNEY: Now, let me try to say back to you what you just said to me, 'cause I'm not really sure.

There are certain areas outside of 3 and 4 that they need to get into in order to complete their plans for 3 and 4. So they're the lease equipment, lease right-of-way from -- not right-of-way, they're the lease conduit and other material that's outside 3 and 4, it's in basically Area 1?

MR. JAMES: It's basically in Area 1, it's in the Center City area. It is conduit, either leased or built conduit --

COUNCILMAN KENNEY: Right.

MR. JAMES: -- in the Center City corridor, which really is the Center City business district that they will be in as part of connecting their overall system, which extends of the Philadelphia area.

COUNCILMAN KENNEY: But with not cable television, only Internet and telephone.

MR. JAMES: That's correct.

COUNCILMAN KENNEY: Why not the cable television?

MR. JAMES: Their original plan, as part of their Philadelphia, was not to go into those markets right now and offer video programming. What I understand from all of our discussions is that they needed to connect their fiber that transverse outside of the Philadelphia County to collect into the Philadelphia systems so that they provide the bundle of services in areas -- not only in 3 and 4, but offer telephony service in other areas of the City, because they are different and distinct from any other provider that we've had before you, is that they are a competitive local exchange company and a video provider. So they're unique in certain areas, they're a telephone company.

COUNCILMAN KENNEY: Why wasn't this amendment a part of the original OVS agreement?

Was the opportunity to partner with this organization not known at the time?

MR. JAMES: No. The reason for the amendment was the original Appendix J that we include in the bill was based upon the maps and the designs that we had for the areas of the City that they wanted to construct. What we didn't have was the benefit of having the discussions with the Streets Department to include those moratorium areas in areas that they plan to do in their construction over the next couple of years so that RCN had to alter the design of their plan. When that was submitted to us, it was apparent to us that we should also kind of codify into the agreement the specific protections to make sure that people understood that in those areas where they're only offering telephone service, certain parts of this interim OVS agreement does apply. The ones that are cable-related would not apply, but the other ones do, and that's why we spelled out specific sections.

COUNCILMAN KENNEY: In this particular section of Area 1, will -- RCN is proposed to be

10/31/00 PUBLIC PROPERTY, BILL 000452

able to offer competitive Internet and telephone service?

MR. JAMES: Yes.

COUNCILMAN KENNEY: But not cable television.

MR. JAMES: They have the capability. It's up -- again, it's at their option whether or not they want to offer it.

COUNCILMAN KENNEY: And it was their choice not to do television there but to simply do Internet, and is that due to the nature of that particular part of Area 1, that it's not -- it's primarily and predominantly office and not as residential as other areas?

MR. JAMES: I don't want to put words into RCN's mouth, but I would say that based upon the map of the design, it's mainly the Center City commercial corridor, which is either high-rise apartment buildings or office buildings, office towers, and commercial businesses.

COUNCILMAN KENNEY: So the residents of the high-rise apartment building in that particular part of Area 1 will have the ability to theoretically get competitive phone and Internet service but not television.

MR. JAMES: Not without getting a cable franchise. So if they decide as part of the Center City area that they provide telephone service to, let's say, the Rittenhouse Plaza and decided tomorrow that, you know, they would like to provide video programming into those folks as well, they would have to come by, and that's why it's identified in the agreement, and apply for a traditional cable franchise.

COUNCILMAN KENNEY: For Area 1?

MR. JAMES: For Area 1, they would have to build out the entire Area 1.

COUNCILMAN KENNEY: So I guess that leads me to my next question, which is, we've been discussing this OVS agreement versus franchise most of the afternoon. If it's good for Area 3 and 4, why is the not good for Area 1?

And I'm not suggesting that anybody get it, but I'm saying, it seems on one hand the OVS agreement is in the best interest of the RCN, and you're going to testify, I assume, in the benefit interests of the City, when in this portion of Area 1, it's not in the best interests of the franchise, the potential OVS, the potential -- RCN and the City.

MR. JAMES: Well, I would answer it a little different than as you phrased it. I would say that from the times the initial discussions with the City when RCN first came to the City was that we were, you know, as part of their FCC filing to become an OVS, we were served notice that they are now certified by the Federal Communications Commission to be an OVS operator in the Philadelphia market. That means that under the Telecommunications Act, they have to come to the City and enter into an OVS agreement with the City.

COUNCILMAN KENNEY: And that has to be an OVS agreement or could it have been a franchise? Can we cover ourselves under federal requirements by granting a franchise as opposed to an OVS agreement?

MR. JAMES: Well, that's why I wanted to be specific, is that under the federal communication regulations, as an OVS operator, they enter an OVS agreement. It's their option if they want to take the traditional model of a cable franchise.

COUNCILMAN KENNEY: Not our option.

MR. JAMES: It's not our -- we do not mandate that; that's why they apply at the federal level, not at the local level, for that application and certification. And the federal communications certifies whether or not they're financially and technically able to provide this type of service. It was designed for telephone companies who want to get into the cable business.

COUNCILMAN KENNEY: So that unilateral choice of the company is certainly in their best interests, not necessarily in the City's best interests.

MR. JAMES: It may be, depending on the economics. It's something that they decide. They come in, they say, This is our certification, we want to enter an agreement. And the regulations are somewhat limited because it hasn't really been as developed as a traditional cable regulations, so there are some certain uncertainties about what would apply and what not would apply. The only things that were specific is that the federal government says that cities have right to get a franchise fee, you have a right to get paid commitments. And that's pretty much it. I mean, it kind of limits what things we can ask for.

COUNCILMAN KENNEY: In your opinion, is it better for the City to have a franchise agreement or an OVS agreement despite what the federal government has said about the requirement for OVS?

MR. JAMES: I think in the areas where they are going to video programming, the traditional cable franchise agreement works. And I would say that --

COUNCILMAN KENNEY: For Areas 3 and 4.

MR. JAMES: Well, in any area of the City that they wanted to offer video programming, the best model that provides a lot of certainties for both RCN and for the City is a traditional cable franchise. We've incorporated it into this agreement to allow that to occur and they offer that service.

COUNCILMAN KENNEY: And you believe we're in that position because the federal law mandates that the company coming in makes the choice -- OVS or a franchise.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. JAMES: Well, the company has an option -- has a right under the federal act to come in and be an OVS operator and not enter a cable regulation. But then they are open to whatever the vagueness of the regulations are. And I think a company of RCN or any company that wants to come in and expend the amount of dollars that's required to construct in that area needs a lot more certainty, and that's why the traditional cable franchises are attractive.

What we've tried to do in this bill was to recognize their federal status, to recognize their public utility status as a competitive local exchange company, and also to identify those requirements that would be important to the City; if they never got a cable franchise, what things would the City value. The City would want to value the same things that we got under the traditional cable franchise, and that's why much of what's in the agreement is what looks like a cable franchise.

As you said earlier, it looks like it, it smells like it, why isn't it a cable franchise? What we tried to do to is just limit ourselves to the discussion of, let's acknowledge the fact that they're an OVS operator, let's do what's been done universally. And so far in what we have seen in other major cities is, given the status as an OVS operator, but we -- both parties agree to an interim period where they were allowed to be able to function under that, but to identify areas where they would want to offer video services and move out of that document and move into the traditional cable franchise.

But for those areas of a city where they're going to offer telephone service and be a regular telephone company, their rights are protected under the Public Utility Commission as a competitive local exchange provider and under the FCC as an OVS and that OVS. And that OVS status allows them at a future time, based on the economics and based on a lot of the other drivers, to leap into the video service. And then we then have the right, and then Council has a right, for them to come back before you and apply for a traditional cable franchise that would be under the scrutiny and the questions and concerns that we would normally ask of anyone who wants to have a came franchise and ask them for those obligations.

COUNCILMAN KENNEY: Or under this proposed agreement, just continue to extend the OVS contract out for ten years.

MR. JAMES: Yes. They could stay -- and that would allow them to stay in the right-of-way, because without that, they would not have the authorization to be in our right-of-way in those areas where they don't have a cable franchise.

COUNCILMAN KENNEY: Then what's the motivation to become a franchisee? I mean, if you can extend this two-year OVS agreement for ten years, where is the advantage of ever becoming a franchisee?

MR. JAMES: Well, if you follow what the RCN -- what they say is their value is a bundle of services, and that bundle includes video services, then the advantage to them is that this document preserves their right at a future time and date that they determine to be where they are able to provide that service and ensure that they can meet the obligation to transfer into that.

Without that, there is no preservation of that right other than a traditional right-of-way.

COUNCILMAN KENNEY: If we're giving them video ability now in 3 and 4 and they can continue doing that work for 10 years, where's the motivation on their part to be a franchisee? They can just continue on over a 12-year period and stay an OVS.

MR. JAMES: They can stay an OVS provider as long as they don't offer video services.

COUNCILMAN KENNEY: Well, they're offering video service in Years 1 and 2.

MR. JAMES: And 3 and 4.

COUNCILMAN KENNEY: Right.

MR. JAMES: And as part of this agreement, in 120 days from the day that they are going to provide video service, they are going to move out of that document and apply before you for traditional cable franchise for Area 3 and 4. They will not be able to stand under the OVS agreement and offer video services.

COUNCILMAN KENNEY: In the ten years? In the ten years after 2?

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. JAMES: At all, at all. It's specific in the document that the moment they offer video services to a customer and to a particular franchise area, they have to apply for a traditional cable franchise.

COUNCILMAN KENNEY: By when?

MR. JAMES: Within 120 days from the day they offer video service, so if they offered video service --

COUNCILMAN KENNEY: If people are going to be under their timetable, people in the first year of Area 3, I guess, is that the Northeast? To 3 or 4?

MR. JAMES: 4.

COUNCILMAN KENNEY: The first year of Area 4 build-out, six months into that, people will be receiving video, high-speed Internet, and other services. AND every year following that, more people will be hooked up to the video and other services.

I understood from their testimony and Councilman Nutter's line of questioning that, in fact, if there's no agreement between the City and RCN at the end of two years, that the OVS agreement, including video, could be extended over ten years through agreement between the Department and them.

MR. JAMES: The OVS agreement (unintelligible) is for two years and extends automatically every six months and can continue up to a ten-year period. All the interim OVS agreement does is allows them to be in the right-of-way. It specifically states that if they decide that in any area of the City that they want to offer video service, that they agree and the City agrees that they have to apply for a traditional cable franchise.

COUNCILMAN KENNEY: Let me ask you it another way. If after two years of the OVS agreement, there's not an agreement on a franchise, Areas 3 -- I'm sorry, the areas that are completed in 4 will now be unplugged from video services?

MR. JAMES: If Council does not give its approval for them to have a cable franchise, they cannot offer cable services in that area.

COUNCILMAN KENNEY: After what time?

MR. JAMES: After the time that they

10/31/00 PUBLIC PROPERTY, BILL 000452

apply for an application to offer -- to apply for a traditional cable franchise.

COUNCILMAN KENNEY: We have an agreement with -- we're being asked to approve an agreement with them for two years to provide a bundle of services, including video. When -- I guess the --

MR. JAMES: The bill -- the bill is an interim agreement to allow RCN in the right-of-way.

COUNCILMAN KENNEY: Two years?

MR. JAMES: It's a two-year agreement for them to be into the right-of-way and to be able to offer a bundle of services and to recognize their status. That's the basic of the document.

The document then goes into specific terms about what provisions or concessions the City would like to receive in exchange for its authorization. And it is also lays this out in a very clear, constructive manner. When the RCN decides it wants to offer video anywhere in the City and they fall into a traditional boundary of a cable franchise, you have to come back and apply for a cable franchise.

COUNCILMAN KENNEY: And that's within 120 days of --

MR. JAMES: Within 120 days.

COUNCILMAN KENNEY: -- service being -- the video service being delivered to the first residents covered in Area 4.

MR. JAMES: Or anywhere.

COUNCILMAN KENNEY: No, in Area 4, we'd be talking about --

(Unintelligible, parties talking over each other.)

COUNCILMAN KENNEY: The first two years of build out.

MR. JAMES: Or they could come back after this bill is approved and apply the next day for a traditional cable franchise for Areas 3 and 4.

COUNCILMAN KENNEY: What if we don't agree to grant that franchise after two years, what happens?

MR. JAMES: The interim OVS agreement stays in place --

COUNCILMAN KENNEY: And the video

10/31/00 PUBLIC PROPERTY, BILL 000452
continues.

MR. JAMES: The video is not offered because they don't have a cable franchise. You got to have a cable franchise to offer the video service. The OVS agreement does not give you the right on itself to give you the right to offer video service.

COUNCILMAN KENNEY: Okay. I know you're sure of it; I don't know if I'm sure of it.

MR. JAMES: Okay.

COUNCILMAN KENNEY: Because I can't imagine a situation where if RCN was trying and applying for a video franchise, that they have all of this money invested over a two-year period, that they are serving customers with video and other services, and for some reason or another, the Department or Council has not given approval, that they are just going to shut off the TVs.

MR. JAMES: Well, I don't think they would do that either. I think that we would be in a position where we have to work out either some sort of agreement or, you know, they would not have the right to continue to offer the video service without that cable franchise.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: So we're in some ways restricting our ability -- let me change it. In some ways, boxing ourselves into having to do a deal for a franchise with RCN in the next two years.

MR. JAMES: Yes.

COUNCILMAN KENNEY: Okay.

MR. JAMES: A cable franchise?

COUNCILMAN KENNEY: Yes.

MR. JAMES: Yes.

COUNCILMAN KENNEY: Councilman Rizzo.

COUNCILMAN RIZZO: Commissioner, I'd like to talk about the effect of the OVS versus the franchise agreement has on the customer. The franchise agreement, if it becomes a franchise, then there are certain fees that would be passed on back to the customer. I think our -- the citizens of Philadelphia need to know that the price that they sign up with RCN will immediately change. Their monthly service will become more expensive because there will be a franchise fee, which is required, that then applies -- then is sent to the customer.

So what are we doing to make sure that

citizens that aren't familiar with this elaborate arrangements and traditional cable franchises or what they've been exposed to? I think it's important that people know that the price that they get today is going to change.

And could you give me a feel for how much additional money would be charged the customer the minute it becomes a cable franchise?

MR. JAMES: Okay. If we were to put aside the discussion regarding whether it's an OVS or a cable franchise just for a second, but if we were to look at -- if they were offering video services in Philadelphia, we would require them to pay the City the same 5 percent gross revenue that the incumbents currently pay us today. And if you look at the traditional way that that cable franchise fee is passed on, it is passed on directly to the subscribers, every subscriber. On their bill, it says franchise fee, and it's 5 percent of whatever bill is.

COUNCILMAN RIZZO: So, if --

MR. JAMES: RCN will do the same thing.

COUNCILMAN RIZZO: So if RCN solicited me and said, Here, we're going to save you eight

10/31/00 PUBLIC PROPERTY, BILL 000452

bucks a month, that within a short period of time, another fee is coming my way, which will put me right back where I was before I switched.

MR. JAMES: Well, again, I don't want to put myself in that position of answering for RCN, but I would say that they would have to -- it would make sense to me that any discussion where they're offering pricing to their consumers to attract them to come to them would have to be -- the total package would include whatever gross revenue fees that would be incurred to the consumer. I think because it would be immediately apparent to you as soon as got that first bill that if they told you the bill was $32 and it came in and it was $35, that you would see that the difference would probably be that franchise fee, and you would feel that you had not been given the full disclosure of the price.

COUNCILMAN RIZZO: Is there any way we can require RCN to let the customer base know that they intend to seek a franchise agreement and that, in fact, that means a bigger bill? Is there anything we can do legislatively or the Department of Public Property can do the make sure that that

10/31/00 PUBLIC PROPERTY, BILL 000452

is a disclosure?

MR. JAMES: Well, if I answer your question, it's that in the disclosure of this bill that you have before you, it specifically lays out the fact that the City, under the traditional cable model, would want to know what rates RCN is charging its customer, would want to be able to answer those questions about customer's complaints about being disclosed proper information, and also, we would ask them to provide us all of the rates that they are eventually going to charge their subscribers.

The bill spells out specifically the gross revenue formula which mirrors exactly what the incumbents currently use. I think it would be probably a disservice to RCN if they were trying to enter into the market and not fully disclose all of the details of their rates to their potential consumers.

COUNCILMAN RIZZO: I agree, but if there's a charge that doesn't exist for a period of 120 days after they turn on the first video, I doubt they'll be waving -- and I'm not speaking for them, I'm just -- this is me. They're waving the flat that says, In 120 days, guess what, there's going to be another fee associated with the bill.

So what I'm asking you -- and not too many of their customers, potential customers or the incumbent customers are going to read the bill, this bill, to learn the facts of the way this will be transitioning from one arrangement to another. So, again, what can we do or require?

MR. JAMES: Well, I think what we're going to require from them is a disclosure of how they plan to price and market the service to the subscriber so that we would have some idea of what and how they plan to display the information to a consumer that they try to sign you up.

So if they try to sign you up today and said, Councilman Rizzo, we can offer you telephone services that will cost you $25 a month, and in 120 days, there will also be a bill for your cable service and it's going to be $12 more, and they did not include in that $12 what the gross revenue fee calculation was going to be, then if they disclose that information to us, it would give us the opportunity to maybe coach them and that this

10/31/00 PUBLIC PROPERTY, BILL 000452

information is not distilled in such a manner that a consumer would know that when they get their bill, it's going to be $12 hours, not $15.

COUNCILMAN RIZZO: And that will be definitely a part of the process?

MR. JAMES: It's part of the process because it's how we treat the traditional cable franchises.

COUNCILMAN KENNEY: Mr. Steel, do you have anything more to add other than what Mr. James has added?

MR. STEEL: I just would add that the issue is not one --

COUNCILMAN KENNEY: I'm sorry. Commissioner, could you move your chair a little bit. Thanks.

MR. STEEL: Thanks. Sorry to interrupt.

The 5 percent franchise fee is required under the OVS and will be itemized and passed through to the customer, just as it would under a franchise. So the move for our company to a franchise would be seamless, and the customer would see no difference in their bill.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Thank you.

COUNCILMAN RIZZO: Okay, thank you, Mr. Chairman.

COUNCILMAN KENNEY: Mr. James, do you have any other testimony? Okay, I want to get into some questions.

If a large company cable company video provider with an economic wherewithal and solid business footing decided in the next two years to offer or to approach the City for a cable franchise for Area 3 and 4, would we be permitted to negotiate with them for a franchise?

MR. JAMES: Sure.

COUNCILMAN KENNEY: So there's no prohibition or exclusivity on the OVS agreement --

MR. JAMES: No.

COUNCILMAN KENNEY: -- That would preclude any other additional competition --

MR. JAMES: No.

COUNCILMAN KENNEY: -- in that area, okay.

What are the financial penalties if construction is not completed throughout Areas 3 and 4 on the schedule that's been outlined for

10/31/00 PUBLIC PROPERTY, BILL 000452

us?

MR. JAMES: In the agreement that we would have, very similar to the incumbent -- and sorry to keep referring to them in the same manner -- we would ask them, as part of -- before they start their construction, to provide us with both a performance bond and a construction bond so that we would have some protection if there is some failure on their part to meet their obligations of their other build-out. We also have provisions under the -- liability provisions to go against them should there be defects or failures in their ability to perform under their construction.

Part of our role in Public Property is to monitor very closely their build-out, and do that in a number of interactions with the company to make sure that we have the (unintelligible), the drawings, we have information relative to where and what streets they're going into. And we also ask them to set up a very detailed customer service plan that allows us to get feedback and provide detailed information to consumers that they're coming into that area so that we know how to handle the phone calls so that when we go back and hopefully, through a much more engaged relationship with RCN, have the ability to have either biweekly or biweekly or monthly meetings, depending on the necessity to make sure that they're conforming to the plan before we get to the point where we would actually have to go against bonds.

COUNCILMAN KENNEY: What provisions are in the agreement that you could highlight for us that would adequately compensate the City for the use of public right-of-ways and the requirement to restore them to their original condition through the course of construction and build-out?

MR. JAMES: Well, the compensation is under the gross revenue, under that provision specifically. If I can find the other section.

COUNCILMAN KENNEY: If you don't have it at your fingerprints, then you can provide it to us. I guess the question is, if a subcontractor is hired by RCN to dig up a street to do something, and that contractor did not put the street back in the condition that he or she found it in, what would be our recourse, what's our compensation? You know, what do we do?

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. JAMES: Yeah. If it's okay, if I can take some time, I could probably provide that back to you in writing.

COUNCILMAN KENNEY: Sure. Absolutely.

It seems that RCN's construction timetable that are proposed in the agreement are much longer than those of previous franchise agreements, installations and system upgrades. Am I wrong in that it's a longer period of time? And if so, why are they getting more time than some of the incumbents?

MR. JAMES: Okay. To answer your question, it's not in the overall aspect, if you look at combined Areas 3 and 4, they're going to construction over seven years. If you compare that to the original cable franchises that took four years, that would be a total time of eight years for the two areas. So, seven years, it's pretty on a par if you combine it with the construction of two areas.

If you look at the fact that they're going to have to over-build on top of an existing cable plan over an incumbent operator, that trying to hold them to the traditional time frame for completion of a shorter time period will probably not be necessarily correct and probably not really feasibly accurate since they're going to have a lot more challenges before them coming into the market where there's existing wires and cables provided --

COUNCILMAN KENNEY: Why is that?

MR. JAMES: Because I think that the amount of time that it's going to require other people that move facilities and make ready conditions so that they can construct, it's going to take some involvement, it's going to take more than just when you come into the area and the only ones on the pole is PECO and Verizon; now you have Peco, Verizon, and the cable operator, and God knows who else could be up on that pole, and there are going to have to be clearance issues worked out and that takes time.

So I think the time frame is reasonable.

COUNCILMAN KENNEY: Did Public Property hire a consultant of any kind or consultants to review RCN's business plan? And if so, what were the conclusions, and can we have a copy of that report?

MR. JAMES: The Department of Public Property used 2CS International, Ed Rudder (ph.), who is our traditional consultant, who has consulted us on every other cable matter that we've had before you. He has prepared some findings; we can certainly make that available to you.

Basically what we are able to kind of articulate to you is that they have the financial wherewithal to do what they say they can do, they show that they have the experienced people and the operation to do it, and it appears that they have a sound business plan to do that.

COUNCILMAN KENNEY: Is there a consultant report?

MR. JAMES: There is a report that we can make available.

COUNCILMAN KENNEY: Could you make it available, please to us and members of the committee?

MR. JAMES: Yes.

COUNCILMAN KENNEY: Were you aware of -- I mean, we've had some discussion about issues raised by various segments of labor. Were you aware, during the course of the discussion, negotiating the OVS agreement, that there were existing problems, potential problems, or complaints relative to RCN's alleged business practices as it relates to organized labor and their employee workforce?

MR. JAMES: All I can say is that that never came up in any of the discussions that we had.

COUNCILMAN KENNEY: So you were not aware of it.

MR. JAMES: I was not aware of it.

COUNCILMAN KENNEY: Okay. Talk a little bit about some of the possible consequences if Council delays or even just refuses to authorize this OVS agreement. What in your mind is -- what could happen?

MR. JAMES: Well, I think in most cases that --

COUNCILMAN KENNEY: Not suggesting that we are, but I'm --

MR. JAMES: No, I wouldn't --

COUNCILMAN KENNEY: I want to try to

get an overall picture of what all the possibilities are.

MR. JAMES: Sure. I mean, I think there's a number of possibilities that can occur. Assuming that if Council decided that this vehicle was not the vehicle that they thought was appropriate for RCN to do business in Philadelphia, there's a number of things you can do.

We can go back to the traditional franchise application and tell RCN that we want you to apply specifically for Areas 3 and 4 for cable franchise and basically work out terms similar to what you have before you.

What they can also do is, they can apply for a right-of-way agreement to be into the right-of-way and to be able to offer telephone service and run fiber and do whatever they need to do for their telephone service.

I think the long and short of it is, if the opinion of Council and the Administration is that we just didn't feel RCN was an appropriate company to be in the Philadelphia market at all, I think RCN would then take some challenge before

10/31/00 PUBLIC PROPERTY, BILL 000452

the Federal Communications to exercise their right under the OVS certification to be in the marketplace, and either through some federal mandate or other work-out terms that may not necessarily be agreeable to the City for them to be in the market and to be able to enter and offer services.

COUNCILMAN KENNEY: It's my understanding just from, I guess, anecdotal information about the strength of RCN financially, that it is a large company, that it has a great number of assets, and that one thing -- again, I'm not a devotee myself of the stock market. Recently I understand that there's been a bit of a tumble in the price of stock for RCN. And I'm wondering whether or not we have any way to evaluate, from our perspective, what that means to their ability to continue to provide what they say they can provide in the agreement, and does it give us any cause for concern?

MR. JAMES: Well, again, I'm not necessarily a stock expert, either. But I would say that from my understanding of what I've seen over the last couple of months is that there's been a downturn in the marketplace for telecommunications in general and that all the telecommunications companies are being affected by a kind of downturn on the dot-com companies that have been around and had a lot of venture capital but have yet to produce any revenues. I think that has affected the general marketplace.

I think the marketplace in itself is fairly strong. It's not that RCN is any different than some of the other companies, that Verizon stock is down since they merged and, you know, Oracle stock goes up and down. I mean, there's a number of very large companies that have been around and have a very large embedded base to have all been affected by the stock market.

I don't think it should give us a lot of concern.

COUNCILMAN KENNEY: Does our consultant have an expertise in that area that could lend us some information or enlighten us as to that it's okay, it's not a problem? I mean -- or do we need to seek information from some other source?

MR. JAMES: We did discuss that whole issue and, you know, it was his opinion, and I could let him speak for himself, but it's his opinion that it was, you know, consistent with what's happening in the marketplace in general.

COUNCILMAN KENNEY: Would you consider our relatively expert in that particular area?

MR. JAMES: I don't think he's a stock expert.

COUNCILMAN KENNEY: Okay, all right. Well, maybe we'll have to seek some information elsewhere.

Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Mr. Chairman.

How are you doing, Mr. Perez, Mr. James? I was told to ask you this question: Do you have a sense of how many subscribers there are in every franchise in the City of Philadelphia? Would you say that for the record?

MR. JAMES: We do have a report. I can -- I'd rather give you the most accurate information that we have today, and I don't have it with me, but I can provide it as part of my response to the Chair.

COUNCILMAN CLARKE: Okay. It was -- in

10/31/00 PUBLIC PROPERTY, BILL 000452

earlier testimony, there was a discussion about the selection process for Areas 3 and 4 versus the other areas in the City. The initial response was that Public Property told us to do it, then we talked about the ability to have access to fiber optics from Princeton and a number of different things.

Can you kind of run through the scenario in terms of how this area was selected, your recollection?

MR. JAMES: My recollection from my memory of what was discussed, the selection was RCN's selection; it was not by the Department of Public Property.

We had a lot of dialogue and discussion over an extended period of time for the very same question that members of Council have asked today: How can we get to you build out the entire city, how can we get you to commit to an obligation to provide cable franchising? There's wonderful opportunities and competition throughout the City. It turned into a very long and tough set of discussions that did not get us to the point where we could give you a bill that says, Here's franchises in all four areas.

RCN made a decision that there was two areas that they wanted to seek. We did not want to do any jerrymandering of lines or -- we had a lot of discussions about that, Well how can we move this and move that and capture different parts of it? And what it came down to is that we stuck to the original four franchise areas. These were the four franchise areas, and they were not going to move from that. And there was a selection based upon where they thought that the density was and where there was opportunity for them to make a profit in the marketplace.

COUNCILMAN CLARKE: So --

MR. JAMES: So it was not our decision.

COUNCILMAN CLARKE: So you feel that they probably made the selection based on the most lucrative franchise areas.

MR. JAMES: No. I think they -- again, I don't want to put words in their mouth. I think they made their decision based upon the density and the speed to market based upon where their facilities are located. (Unintelligible) in the market, there are certainly challenges in Area 1

10/31/00 PUBLIC PROPERTY, BILL 000452

if you're trying to serve the Center City area 'cause that's a very congested and very tightly underground network. So I think anyone would have a bit of a challenge trying to go after Area 1. If they were looking to get in going in the market quickly and turn a profit quickly, that's not the area what where you want to be.

COUNCILMAN CLARKE: Maybe "lucrative" wasn't the appropriate term. More profitable --

(Unintelligible, parties talking over each other.)

MR. JAMES: Opportunities for them to get a fast return on their investment.

COUNCILMAN CLARKE: Okay. My understanding, and correct me if I'm wrong, is if in fact RCN locates in 3 and 4, they'd bring the rates down to be more competitive with the existing cable franchise in that area. If the cable franchise provided in that area meets the numbers on RCN's, will they also be required to reduce the numbers throughout the entire City or throughout their entire network?

MR. JAMES: I'm not sure I understand.

COUNCILMAN CLARKE: From my

10/31/00 PUBLIC PROPERTY, BILL 000452

understanding, you can't have different rates for different sections of your franchise areas?

MR. JAMES: I don't think there's any restriction in the regulations for a cable provider to offer different rates in different parts of the market.

COUNCILMAN CLARKE: So if RCN is Cable A and another franchise is Cable B, Area B, and RCN comes in with lower rates, all right? In those areas where RCN has a franchise, the other cable company decides to meet those numbers so they reduce their numbers. But potentially, they can keep the numbers high in the other areas where they also have --

MR. JAMES: Sure. The one thing that's extremely important about it is that the rates are determined by the marketplace and it's market conditions so that you could all be within the same franchise areas and, you know, conceivably have different rates. Depending on where you have competition at, you could be in one section of the same franchise area.

COUNCILMAN KENNEY: That was not the testimony that was given earlier, because the question I had asked earlier in the same regard was that theoretically, if there were stiff competition in 3 and 4 and the cable rates stabilized or went down, and Comcast, the incumbent, were serving, and is serving, Area 1, could we experience a rise -- a theoretical rise in price, based on the competitive nature of 3 and 4, there's no competition in 1; so, therefore, the number one area of the subscribers start paying for the fight that's going up in 3 and 4.

(Unintelligible, parties talking over each other.)

MR. JAMES: That was -- my position would be that theoretically, yes, you could have that.

COUNCILMAN KENNEY: Did you hear that testimony? They said it was against the law for them -- for Comcast, theoretically, or any other single incumbent service provider to raise rates on some customers while they were competitively pricing other areas.

MR. JAMES: I think that under the cable regulations that rates are not really regulated in this marketplace when there's competition. So you could -- theoretically, you could charge whatever you want.

(Unintelligible, parties talking over each other.)

MR. JAMES: You could have differences (unintelligible) if you wanted, or you could have a consistency. I think the thing that's going to drive it is, there's market conditions where you're either trying to retain your customer base or expand your customer base. And maybe what RCN -- and, again, I'm speaking out of turn for them -- is that in Area 1, they may not have competition and that would be a disincentive to keep competition from going into that market by raising those rates because you do have an incumbent who is not just geographically limited to Philadelphia.

I mean, if you looked at the incumbent in Area 3 and 4, that's not their only franchise; they are nationwide. So the nationwide capabilities allows them to offset some expenses to deal with competition, and then they can probably speak to that, but they wouldn't necessarily have -- I couldn't see them just

10/31/00 PUBLIC PROPERTY, BILL 000452

raising rates in Area 1 because they have competition in Areas 3 and 4.

COUNCILMAN KENNEY: There's no prohibition.

MR. JAMES: There is no prohibition when it comes to rates. It's the market conditions.

COUNCILMAN CLARKE: They may decide to maintain the rates where they are now, not lower the prices, and because RCN does not -- is not required to provide video services in those other areas, although they have Internet and telephone service, then they can go on for two, three, four, years, and these people would be at the higher rate than the other --

MR. JAMES: Right. And I would say that if follow what RCN's market plan is, that if that was to occur and the rates went up in Area 1 or Area 2, RCN would probably see that as a business opportunity to move into that area because now that they have affected the marketplace and have changed the conditions in that marketplace to make their rates even higher, they can come in at the rate that they're

10/31/00 PUBLIC PROPERTY, BILL 000452

currently servicing in 3 and 4.

COUNCILMAN CLARKE: I'm not saying making them higher; I'm saying that if they stay the same, all right, and you've already said that there was a business decision to locate in 3 and 4, and it was based on the profitability of those two areas, all right, and they decided not to go in the other areas at this point, and that in terms of dollars and cents, it may not make sense three, four, five years out to go in that area if those rates stay the same, right? Because there's --

MR. JAMES: It may not make sense to go into those areas because of market conditions or because cost; it could be a number of reasons why they may never enter those marketplaces or they could enter those marketplaces tomorrow because some dynamics have changed.

It is not a clear road map for you to say that they'll never go in 1 and 2, but it's at the same time saying that if the opportunity exists and the structure exists -- the other thing too that we wanted to ensure was that there was an opportunity for them to create a track record so

10/31/00 PUBLIC PROPERTY, BILL 000452

that before they leaped into a larger area and maybe stretched themselves out trying to encompass all four areas at one time and actually end up not being successful and leaving the City with four dispirited, disjointed networks, it would make more sense for the -- at least from the City's standpoint, unless they are sure that they can be successful, let's just get a traffic record, let's see if the market plan works, let's see if their ability to attract customers, let's see whether or not rates stabilize or rates -- let's see if it really happens before we --

COUNCILMAN CLARKE: But you've already said that 3 and 4 is probably the most profitable area.

MR. JAMES: No, I said -- I said they probably made a decision, based upon the opportunities for them to get a faster return on investment, not necessarily profitability is not the only driver.

The thing that drives, from what I understand from them, is density. And if look at the areas where there's a greater density, there's a lower construction cost, there's the ability to get more customers a lot faster. There's areas in 3 or 4 that are very dense. There's areas in 1 and 2 that are very dense. I think it's just a business decision.

COUNCILMAN CLARKE: All right. Can you get me the information on all of the franchises and the subscribers in all of the franchises?

MR. JAMES: Sure, sure.

COUNCILMAN CLARKE: All right. Because I'm -- for some reason, I seem to I think that 3 and 4 probably has more subscribers.

COUNCILMAN KENNEY: We've asked RCN for demographic information on income, race in 3 and 4 and in 1 and 2 if they have access to it from their market information. And if, Joe, you could maybe do it for 1 and 2 also.

MR. JAMES: Yeah. I will give you what we have as a current subscriber (unintelligible). And the one thing that we have also said to them is that, you know, there's a lot of perception about what the economics may be in the different areas, and the only way to really validate it is to look at the information.

Now, if they have to build it according

to census tracts, the census tracts are going to be based on the most statistical data that exists today. So that there is not a disparity between them skipping around to different census tracts that they don't want to do because it's not financially viable; they have to build according to census tract. And we get that information, we monitor that information, and we hold them accountable for that.

And if the other incumbents are available to be successful in those census tracts, you should be able to be successful, but there will be an opportunity for all different levels of economics of citizens to be able to participate at some level, even if you stay just in Areas 3 and 4, because there is definitely a diversity in all areas of the City.

COUNCILMAN CLARKE: Thank you.

COUNCILMAN KENNEY: Just to go back a second so I understand, and this is the thing, real concern about -- while I recognize it from a philosophical standpoint, the competition issue, I think, is accurate. If we have more than one competitor in an area in any service, the price is

10/31/00 PUBLIC PROPERTY, BILL 000452

going to be competitive, it's going to be as low as possible, or one side or the other will lose.

But in Area 1, for example, if RCN jumps into 3 and 4 -- jumps into 4 first, I would suspect their business plan would call for a pretty tough pricing policy, which would make -- Comcast would have to respond in kind by reducing their rates to be competitive in the early stages of 4's build-out. I can't imagine that Area 1's monthly cable bill's going to go down, while that battle's going on. So that's going to stay the same. So for a period of one, two, three, maybe four years, Area 1 theoretically could be subsidizing the price war in Area 4.

And that's, I guess, why I understand, on one hand, it's unfair to ask a company to come in and build out the whole city because it's a huge economic investment; on the other hand, as a Cable 1 subscriber, I don't want to be stuck in limbo while waiting to see what shakes out in 4 and then shakes out in 3. It could be seven years before myself and people who live in Cable 1 franchise area experience will any benefit from this.

And then it was testified too by RCN that, Well, you know, other companies -- there's 40 other companies out there that provide cable service, they could jump into this market too. But over a four-year period, when they've had the ability to do so, has anybody made a request to compete with Wade or to compete with Comcast and 1? I mean, there may be 30 or 40 companies out there, but it doesn't seem like there's very many people interested, with the exception of RCN.

MR. JAMES: Yeah. I would say that if we would go back over the last couple years from the time we've been doing the cable renewals to where we are today, one of the most consistent lessons that came out of all those renewal discussions when the public testified was the price and the lack of competition. Consumers said that they didn't like the prices, the prices were too high, and there wasn't choice.

I think from that time going forward, if RCN doesn't enter the market, this bill would not go forward and said, RCN, we're not going to have you here, there is no guarantee that we will ever see any price stability or price reduction without any competition. And I would --

COUNCILMAN KENNEY: But competition could come in the form of a franchisee or potential franchisee who says, I want to come in and compete as a cable company.

MR. JAMES: And that's what they're going to do. They're going get a cable franchise, compete as a cable company, go head to head. But if a cable company came in today -- if Joe James decided to go into the cable business, I could come before Council and say, I want a cable franchise for only one section of the City, and that's all I would be asked to and would --

(Unintelligible, parties talking over each other.)

MR. JAMES: Pardon me?

COUNCILMAN KENNEY: We don't have a requirement to grant that.

MR. JAMES: And you don't have to grant that, but there is no provision under the franchising rules that says anyone coming in and applying for cable has to apply for every franchise area. They could come in and only apply for one, and you have the right to say yes or no

10/31/00 PUBLIC PROPERTY, BILL 000452

because they're going to pick the one where they think there's profitability and --

COUNCILMAN KENNEY: What you're saying -- what I think you think the feds are saying, and maybe they are saying it, I don't know, is that this OVS carve-out gets potential franchisees who want to come in as an OVS into the game earlier, faster, and cheaper than it would for a potential franchisee to come into the game.

If I agree with you that competition brings lower prices, why won't all of the citizens of this city over a seven-year period experience potentially those lower prices, when, in the end, we may be in an Area 2 or Area 1, basically subsidizing a price war in Area 3 or 4.

And I'm not saying that we should do it and that there's no other way -- it's the only way for this to happen, but think of the potentiality of the decision we have to make people in that over a three-, four-, five-year period, people in 1 and in 2, their rates stay right where they are because there's no place else to go. And then for 4 and 3, which may have higher income levels and more, you know affluent people, wind up with the lowest rates, the best service, and the highest Internet access and lower telephone bills.

I mean, in some ways the competition's good, but in other ways, it's unfair to people who don't live in lucrative neighborhoods or in more profitable neighborhoods. And we're going to have a delay of potentially seven years, probably less, but potentially seven years of stable, high rates in 1 and 2 and a tremendous price war in 3 and 4 that's going to be subsidized in part by the rest of those customers.

MR. JAMES: Well, I mean you argue a position that we argued when we first sat down with RCN, and it was so difficult for us to move for a long period of time because we raised the same concerns you have, we have the same issue. I mean, we're not trying to articulate the federal position that competition is necessarily good because if you look over a lot of the different industries, competition doesn't necessarily reduce price, and competition doesn't always ensure greater or better service.

So what we were -- what we've got to this point is that we were in a position where we had to come to some decision with them to let them into the marketplace, let them decide where they want to enter; that's really their call 'cause it's their business and they're putting up the dollars. But let's make sure that the way they come in is level with the incumbent, so let's make sure that it's fair.

Now, there's going to be a price war; there's a price war now with DirecTV and cable operators. I mean, it's just part of technology's going to drive some sort of competition and some sort of price war. And who says the prices are going to go down? Who says the prices are going to provide better service?

But I think we're at a position where we would be paralyzed to do nothing because there is so much uncertainty and we don't have a track record. We looked at other cities, we looked at Boston, we looked at D.C., we looked at other cities and found out, Well, what are they doing and how are they handling it? And what we've came up with is that we've to follow some sort of consistent manner and design a document and a bill and a structure that is fairly consistent, that provides protection for both parties, that lets them in the marketplace, and let the marketplace decide what the rates should be.

And, yeah, there's going to be some sections that may not see competition at all and may not see it ten years, but to really not allow competition to occur at all --

COUNCILMAN KENNEY: I know you struggle with this, but I sense -- and I'm glad you're being forthright with us, as you always are, to tell us your concerns about this. Even though you're operating in constraints that you are and some of the requirements that you are to move this thing forward, I sense that you share some of the potential concerns into the future that we have.

MR. JAMES: Yeah. It's a struggle, it's something that we've impacted and I think we've talked to members of Council before about the things that have come out of the Telecommunications Act that we didn't necessarily ask for, that we have to deal with, and we have to deal with it in such a way that we don't put ourselves at risk. At the same time, we have to let competition occur 'cause the federal government says it should occur.

But I think if you look in Areas 3 and 4 and their build-out, it doesn't stick in just one profitable; it does move out and traverses the whole area. And I think if you look at -- if the perception is that the Chestnut Hill area is the most, you know, affluent area, well, they're the last ones on the list, but does that mean that they're the ones who are going to buy the most service? Maybe not.

So it's all across the board there but, you know --

COUNCILMAN KENNEY: But you would -- by looking at the map and making generalities, you would suspect that there's maybe one or two marginally profitable areas due to density and income. But the bulk of the numbers probably from our just general experience with those communities have a higher income or a medium income, higher income and have more density. So I don't think there's any magic to why they picked that area and why there would happen to be thrown in there some marginally or poorer areas to kind of take some of the pressure off, we would --

MR. JAMES: They're all a part of the franchise. I mean, you get the good and the bad, you get everything mixed in, and no one area is carved out specifically for, you know, your income level.

The one thing that you will see --

COUNCILMAN KENNEY: I'm not talking about the carve-out for the areas; I'm talking about the construction schedules in 1, 2 and 3. So on the third year, you're hitting perhaps a marginally profitable area with less income. But you're still -- you know, I understand --

MR. JAMES: We're trying to supply some equity and trying to mix some fairness in there and, you know, that's kind of what we --

COUNCILMAN KENNEY: That's fair.

Councilman Rizzo?

COUNCILMAN RIZZO: I'd like to go back to the OVS versus the franchise agreement and expand on what the Chairman said.

Does -- and I would assume the answer to this question. Does coming through the door with the OVS agreement put more than their foot in the door, puts their leg in the door? Will it be more difficult for you to negotiate, or whatever you do, for a franchise agreement if they already have the OVS agreement and they're beginning to build out?

MR. JAMES: I think it's much more challenging if they come in through the door with the OVS, just purely as an OVS operator, because the first right of review has occurred at the federal level; it has not occurred at our level. So by the time they get to us, they've already come in with this mandate that allows them into our marketplace. So it does give them not only a leg but a foot.

But it doesn't mean if they want to be a good corporate citizen and they want to be successful in the marketplace that they not adjust their position, and they have done since our discussions, to adjust their position to be more open to the concerns and the issues that members of Council have raised here today.

COUNCILMAN RIZZO: As a person that will be a part of the negotiations when the 110 days expire, will it be more difficult for you to negotiate for a franchise agreement than if, in fact, they would come through the door asking for? Because basically what I heard earlier, and I think I understood, was that it really didn't matter; they would be just as happy to have a franchise agreement. Did you hear that?

MR. JAMES: Yes.

COUNCILMAN RIZZO: As they would an OVS. Is that not --

MR. JAMES: That's true. I mean, they would -- it doesn't matter to them which way the come into the door, as long as they come in the door.

I think what we've done as far as our bargaining position is that in the bill that you have before you, we've already worked out the provisions of the cable franchise bill, we've already discussed all of the hard issues. So before you grant the approval today, we've already negotiated the terms that would appear in the cable franchise agreement and make sure that those terms are equal.

COUNCILMAN RIZZO: So there's no disadvantage to you.

MR. JAMES: Actually, it was better for

10/31/00 PUBLIC PROPERTY, BILL 000452

us to take the time to work those issues out prior to coming before you so that everyone knew with some certainty what would be the provisions of the -- that we got into the cable franchise. We just turned the document around since it's a fairly simple process.

COUNCILMAN RIZZO: Thank you.

MR. JAMES: Mm-hmm.

COUNCILMAN KENNEY: Are there any more questions for Mr. James or Mr. Perez?

(No further questions.)

COUNCILMAN KENNEY: Thank you very much for your testimony. It was very helpful.

MR. JAMES: Thank you.

COUNCILMAN KENNEY: Mr. Lawrence Jarrett.

(Witness comes forward.)

COUNCILMAN KENNEY: Mr. Jarrett?

Good evening, sir. Thank you for your patience. When you're ready, could you please identify yourself for the record and proceed.

MR. JARRETT: Yeah, my name is Lawrence Jarrett, and I'm the Vice President of Urban Cable Works in Philadelphia, which is a partnership of

10/31/00 PUBLIC PROPERTY, BILL 000452

Time Warner Cable and Urban Cable Works, Inc.

I came here with a prepared statement basically that presents our position on the proposed ordinance to grant RCN and OVS a franchise for the City of Philadelphia. And rather than read that statement, I'm just going to submit it for the record.

(Copy of Mr. Jarrett's written testimony not submitted to stenographer for attachment hereto.)

MR. JARRETT: I do appreciate, and we as a company do appreciate, the City's efforts to foster competition, and we believe it's in the best interest of the residents of the City. However, we just want to express our desire to see that all of the video programmers compete on a level playing field. Competition should be encouraged, but not to the disadvantage of Urban Cable Works or Comcast or RCN or any other company by providing different terms in their respective franchises. It is the City's appropriate role to encourage fair competition and not to favor any competitor.

And this, too -- I'll lay some of the

10/31/00 PUBLIC PROPERTY, BILL 000452

concerns particularly with Councilpeople that -- Councilwoman Blackwell, Councilman Nutter, those whose Councilmatic District covers ours, I would just like to make them aware of some of the things that we're doing in our franchise so that they won't feel like they are getting a second-class cable system.

Over the last year, we have spent over $80 million to upgrade our plant, we have developed hybrid fiber coaxial architecture that gives the capability of providing various data and video programming over our system. We are presently deploying digital technology in our cable system, with the intention of a full-scale' roll-out to our customers on a node-by-node basis. This will provide over 200 channels of digital programming, music, and state-of-the-art interactive program guide.

We continue to meet our customer service standards established both by the FCC and the NCTA, and we continue to meet technical standards that we've established that are much more stringent than the FCC. Our community-to-community-based organizations are stronger than ever. We continue to sponsor and support efforts within our franchise by local groups. We have major holiday campaigns to collect clothing, food, and toys for the less fortune.

And if you compare our -- the article in the Philadelphia Inquirer a few weeks ago, they talked about rates in the City of Philadelphia. If you compare that, which we do, on a channel-by-channel basis, then you will see that the rates that are charged in our franchises are significantly less, and then they fall into the second tier, somewhere between 15 and 20 of the highest rates in the country.

So those are the kinds of things that we are doing, and we're going those things not because of RCN, but we are doing things because it makes good business.

Now --

COUNCILMAN KENNEY: I'm sorry, sir. You're Franchise Area 2 correct?

MR. JARRETT: Yes.

COUNCILMAN KENNEY: Okay, fine, thank you.

MR. JARRETT: Yes, Franchise Area 2.

Now -- and certainly, in talking to several people, based on what RCN has proposed, they have basically said that Area 2 doesn't have anything to be concerned about because they're trying to competing in Areas 3 and 4 with Comcast. In looking at the document that is being presented to Council, there are some differences that I would like to point out that I don't necessarily agree with the explanation that was presented here by the Deputy Commissioner.

First of all, my understanding is it's always an OVS system, which means an open video system, means that the federal government in essence gives them the right to provide video programming for the entire city. That means that the Public Property is negotiating just the right-of-ways, how they will do it. Prior to the U.S. Court of Appeals and the Fifth Circuit, the City didn't have the -- it didn't even have the right to determine where they were going to market that service.

And if you look at New York, they're all over the place. They go basically wherever they want to. Once they have the right-of-way, they can provide service in any part of the city that they choose.

Now, in Philadelphia, they have chosen to provide service in Areas 3 and 4. However, when that OVS franchise is granted, that does not preclude them from running fiber into Areas 1 and Areas 2 and cream out the lucrative areas and provide cable service to them.

Yes, we understand that they have 120 days, that once they decide to provide programming, video programming, they have 120 days to apply for the cable franchise. If I --

COUNCILMAN KENNEY: I'm sorry, I didn't mean to interrupt. I want Mr. James available to either rebut or --.

MR. JARRETT: If I read that correctly, it says that the City has 36 months in which to negotiate that cable franchise. And if they can't come to an agreement, then that franchise automatically reverts to a ten-year OVS franchise.

So my concern is that, in essence, if they have an OVS license and they are servicing Area 3 and 4 and, say, they're into Year 1 and 2 and the projections and their penetration levels aren't being met, what is to prevent them from running a fiber into Area 1, maybe one of the more lucrative MDUs in Area 1 or Area 2 and creaming those areas and then apply for a cable franchise, which, I understand, they have 120 days to do it, but the City has 36 months in which to approve it.

Now, I understand that there has been some negotiations to eliminate those negotiations, that they have in essence agreed to the language, and that may or may not be true, I haven't seen anything to that effect.

But in essence, though, those are the kind of things that concern me with the Council's discussion here with granting RCN an OVS.

COUNCILMAN KENNEY: Thank you very much.

Are there any questions for Mr. Jarrett?

(No questions.)

COUNCILMAN KENNEY: Thank you very much.

Mr. James, did you hear some of the concern that this gentleman has expressed, and could you kind of speak to those issues.

MR. JAMES: Yes. If I understand it, the concern is that the opportunity exists for the City to delay in actually reaching a settlement for granting a franchise agreement up to a period of 36 months, even though there's a 120-day requirement for them to apply. And that -- I mean, the reading of the document, yeah, that's correct, we could actually go on to an extended period of time before we reach agreement. But what we've tried, and I think we've been very successful in doing is, is attaching in the bill and in the ordinance the specific terms and conditions.

So that the one thing that he's correct about is that the terms and conditions are already worked out. So there is really nothing left for us to delay and there's really no feasible reason why we would take 36 months.

COUNCILMAN KENNEY: Would an OVS licensee in Philadelphia in the first two years of this agreement be able to raid any lucrative areas of 1 or 2 with cable TV service?

MR. JAMES: I don't believe that to be

10/31/00 PUBLIC PROPERTY, BILL 000452

accurate. I think that if you follow the plans that have been submitted and the drawings that we had, it's going to take them a good time for them to even construct their facilities to be in a position to even offer service in the first two years in any parts of Area 1 and 2. And I think (unintelligible) wouldn't be correct. If they decide to offer it -- again, assuming we are doing our job and that we're at the helm, we would not allow them to provide the video programming services in those areas unless they were willing to meet the obligations in the agreement.

COUNCILMAN KENNEY: Theoretically, and I'm not casting any aspersions on any particular company, but theoretically, if RCN, with an OVS-approved agreement, were to purchase Area 2, the company, what would be the dynamic of that? Is it prohibited, is it allowed?

MR. JAMES: No, it is certainly not prohibitive. If RCN wanted to acquire any of the full franchise areas that exist from any of the incumbents, they would go through the same process that Urban Cable Works went through when they acquired the Wade Time Warner franchise.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: But, I mean, they could make an offer theoretically to purchase -- RCN could make an offer to purchase Wade if they wanted to?

MR. JAMES: Sure.

COUNCILMAN KENNEY: With no prohibitions in this OVS agreement.

MR. JAMES: There's no prohibitions at all for them to acquire any of the four franchise areas.

COUNCILMAN KENNEY: Okay, thank you.

Any questions?

(No questions.)

COUNCILMAN KENNEY: Okay, thank you.

Thank you, Mr. Jarrett.

Mr. Pardini and Dr. Hutchinson, please.

The stenographer needs a short break.

(Break taken.)

\- - -

(Proceedings resume.)

COUNCILMAN KENNEY: All Councilmembers on the committee, please return. And could we cease all other conversations in the room, please.

(Witnesses come forward.)

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Could you please identify yourself for the record and proceed with your testimony.

MR. PARDINI: Sure. My name is Ed Pardini, and I am the Regional Vice President for Comcast Cablevision. With me is Stanley Wang, Executive Vice President of Comcast Corporation, and Dr. Wes Hutchinson, Professor of Marketing, from the Wharton School of Business.

COUNCILMAN KENNEY: Please proceed.

MR. PARDINI: Good afternoon, Chairman Kenney and members of the Public Property Committee. I am pleased to have the opportunity to address issues raised by RCN's proposed open video, or OVS licensing agreement, with the City of Philadelphia.

Our position on RCN's application is that Comcast welcomes additional competition in Philadelphia. Competition improves customer choice and encourages innovation. But competition must be fair, so we ask that RCN's agreement with the City contain the same burden and obligations on RCN as the City's agreement with Comcast and Wade Time Warner, as they imposed on the

Philadelphia's incumbent cable providers.

We think RCN's proposal will leave you with at least two serious questions to which you need satisfactory answers before you move forward.

First, will this new competitor really bring competition that benefits all of your constituents, and when will they see those benefits?

And, second, will this new competitor really show its commitment to the City the way Comcast has?

We all know firsthand about Comcast's commitment to the City of Philadelphia. When the City awarded Comcast a cable television franchise for Area 4 in 1986, we moved our entire corporate headquarters into Center City. Comcast today occupies in excess of 400,000 square feet of office space throughout the City and we employ thousands of Philadelphia-area residents here, who collectively contribute more than $1.5 million a year in City wage taxes. In fact, our company's collective tax remittance to the City from all sources easily exceeds $20 million every year. And three of our top corporate officers and hundreds of other officials and staff Comcast are residents of the City of Philadelphia.

We are major benefactors of City charities and activities, from playing a leading role in bringing the Republican National Convention to Philadelphia this summer, to donating significant sums of money to local charities as diverse as the United Way, Philadelphia Cares, the Police Athletic League, the Urban League, White Williams Scholars, and hundreds of others. In fact, Comcast this year alone will contribute over $2 million in cash and services to deserving City charities.

And of course, we put a wide range of in-kind resources to work for our community partners, ranging from hundreds of free hours of free TV to tickets to sporting events and entertainment events. And the list goes on.

Competition for cable customers is nothing new to us. We face direct competition from RCN and companies like it in hundreds of communities around the country. We also face direct competition from two major satellite companies, one of whom, Direct TV, has more

10/31/00 PUBLIC PROPERTY, BILL 000452

customers nationally than Comcast does. So we're very accustomed to competition, we thrive on it. It makes us a better company.

But when a company like RCN seeks the right from the City to be a cable operator like Comcast, then we believe the company should have the same responsibilities to the local community that Comcast does. Unfortunately, the terms that RCN seeks here in Philadelphia do not reflect this type of fair-play approach.

For example, under the proposed agreement, RCN agrees to apply for a cable television franchise only in Areas 3 and 4 of the City within 120 days, in exchange for the City's approval to let RCN begin constructing and operating its system in selected areas of the City at RCN's sole discretion. But if RCN and the City cannot come to terms on a final agreement within three years, the interim OVS agreement would become a permanent OVS agreement, and the City is powerless to negotiate additional terms.

In contrast to this puzzling blank check, when the City first granted cable franchises to Comcast and others 1986, it worked tirelessly to ensure that all areas of the City would begin to receive cable service simultaneously. No one franchise was awarded until suitable franchisees were found for all areas.

The City also required construct of the entire service area within two to four years. When the City renewed Comcast in 1998, it required a complete system upgrade within five years, regardless of demographic or socioeconomic factors. Of course, Comcast complied with the initial franchise requirements, and we are proud to report that we are a year ahead of schedule on the system upgrades. We are also well ahead of schedule in rolling out our Comcast at-home high-speed cable Internet service in all wards of the City.

RCN is seeking a seven year build-out term. This will permit RCN to pursue it's avowed business strategy, and I quote from RCN's marketing materials: Quote, to wire middle and upper-income neighborhoods whose density and low construction costs provide the maximum profit. If the City endorses that strategy, I submit to you

10/31/00 PUBLIC PROPERTY, BILL 000452

that the residents of South Philadelphia, West Philadelphia, Roxborough, Manayunk Center City, and portions of North Philadelphia will be denied the benefits of competition for many years to come, if not forever.

To demonstrate our point, we have asked Dr. Wes Hutchinson, a professor of the Wharton School of Business, to analyze RCN's build-out proposal. What Professor Hutchinson has found is that using RCN's own build-out plan, if you are a low-income person in the City of Philadelphia, you will be significantly less likely to receive the benefits of any competition from RCN than if you lived in a wealthier neighborhood. We've asked Dr. Hutchinson to summarize his findings for you at the end of my testimony. A complete copy of his report will be submitted for the record.

The lack of penetration into low-income communities is especially profound in the early years of RCN's build-out. This makes Dr. Hutchinson's findings particularly significant because RCN has not committed to any legally binding construction schedule. If the City really intends to bring the benefits of more competition to all of its citizens, this Council must not permit RCN to cherry-pick its way to big profits.

An agreement between the City and RCN should:

1. Require RCN to build out the entire City to serve all citizens of Philadelphia;

2. To establish specific two to four-year timetables for RCN to complete its entire build-out; and

3. Require the public rights-of-way be restored to their original condition; and.

4. Establish appropriate penalties for failing to meet construction standards or timelines.

These are all terms that we and Wade Time Warner live under. We don't believe that it would be fair for a new competitor to live under more stringent standards, but there's no reason why RCN cannot meet these standards if it truly wants to provide competition to benefit all citizens.

In addition, there are numerous other commitments that the City has required of Comcast and Time Warner as a condition of our cable

10/31/00 PUBLIC PROPERTY, BILL 000452

franchises. RCN has negotiated strenuously to avoid these obligations.

For example, Comcast currently contributes $750,000 to the School District of Philadelphia as the provider in Areas 1, 3 and 4. Time Warner pays $250,000 as the provider in Area 2. RCN proposes to pay only $250,000 in total to serve areas in 3 and 4, half of the commitment of Comcast and Wade Time Warner.

Similarly, Comcast has committed to $250,000 per franchise area to PCDC's Comcast Loan Fund, for a total of $750,000. Unless RCN agrees otherwise in future cable television franchise agreements, its obligation is capped at only $250,000 for any and all areas it selects to serve.

Of course, Comcast's voluntary commitments to this community go well beyond these formal pledges. In the past three years, we've partnered with VH-1's Save the Music Foundation to contribute over $200,000 to promote music education in Philadelphia's public schools. As noted earlier, the Comcast family of companies this year alone will make over $2 million worth of contributions to community organizations.

In addition, Comcast has agreed to substantial spending goals with local businesses and with minority and women-owned enterprises and has bound itself to these commitments for the next 15 years. RCN, by contrast, says it will agree to goals that are only one half to one fifth of what Comcast has agreed to, and they have only agreed to be bound for the initial two-year term.

Mr. Chairman and members of the committee, I think the facts of RCN's proposal speak for themselves. The low level of commitment they represent stands in stark contrast to Comcast's substantial commitments to this city. We believe that competition is a good thing, and Comcast is ready and eating to compete. But if you accept RCN's proposal as written, the benefits of full and fair competition will be denied to tens of thousands of your constituents and to our City's schools and community organizations.

I thank you for your time and attention, and we'd be happy to answer any questions you may have upon conclusion of Dr. Hutchinson's findings.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Let me -- what I want to do is ask the professor to give his presentation and then we'll have questions for -- were you prepare to testify?

DR. HUTCHINSON: Mm-hmm.

COUNCILMAN KENNEY: Please identify yourself for the record and speak closely into the microphone. Thank you.

DR. HUTCHINSON: Closely into the microphone.

My name is Wes Hutchinson and I'm a professor of marketing at the Wharton School at the University of Pennsylvania, and I conducted an analysis of the demographic implications of the RCN market development plan. I'm going to read the summary of that analysis into the record now.

COUNCILMAN KENNEY: Please.

DR. HUTCHINSON: The City of Philadelphia is reviewing a proposal from RCN Corporation to construct a' wire-line cable television system into portions of the City. The purpose of my report is to examine the demographic implications of RCN's market development plan.

Assuming that the City were to conclude

10/31/00 PUBLIC PROPERTY, BILL 000452

that additional wire-line cable competition could bring potential social and economic benefits to the City of Philadelphia, it is important to understand who is likely to see the benefits of this competition and who is not.

My report analyzes the implications of RCN's Philadelphia plan for specific demographic groups and finds dramatic variations among those communities that would benefit in the foreseeable future.

In a demographically balanced plan, the population having access to RCN services would have the same demographic characteristics as the total population in each year of the plan. However, in the RCN plan, as presented, there's a strong trend for the first areas to be high in income and predominantly white, as compared to the general population. This imbalance will not be redressed for at least five years, if ever, for a large percentage of the City's African-American households and low-income households.

For example, by the end of the first four years, approximately 58 percent of Philadelphia whites will have access to RCN services; however, only 4 percent of African-Americans and 29 percent of Hispanics will have access.

The degree of demographic imbalance in the Philadelphia plan is much more extreme than what is observed in RCN's build-out plans for Delaware County, Pennsylvania and Montgomery County, Maryland, which are also analyzed in the report for comparison purposes.

While my report no offers no opinion on RCN's motivations in putting forward this plan, the imbalance in the current plan, which would serve primarily mid- to upper-income and predominantly white households in the first several years, appears to deny benefits of the new competition to those who would in theory stand to gain the most.

Here are reports and these are handouts, in case you can't see the charts. I'll quickly run through them.

So, quickly, the method of analysis was that came from Comcast for every census tract in the three areas studied, a classification of level of RCN activity, in particular, which year of the

10/31/00 PUBLIC PROPERTY, BILL 000452

build-out plan for Philadelphia, so the categories of Philadelphia were Year 1 through Year 7 and then not at all. I then merged those categories of the census tract level with the 1990 census data, and then also acquired from our research firm projections forward to the current year, which is 2000.

And so the high points, if you will, of the results, we you looked at income -- this is getting tricky -- income and racial composition. And the concept is in this upper left-hand panel, that is the composition by median household income for the total City of Philadelphia and kind of racially balanced -- I mean, demographically-balanced plans would have that same composition throughout all years of the build-out.

Over here, it's kind of aggregated over the first four years. In the report, it details it year by year, as you can see. And so the highlight of what we observed for the first four years with respect to income is higher-income households, say, from 45,000 on up. The percentages of the plan are higher than those observed in the City as a whole. And in

10/31/00 PUBLIC PROPERTY, BILL 000452

particular, the lowest income level, 15,000 a year and below, at the end of four years, 17 percent of those with access will fall in that group versus 25 percent. It's particularly extreme, say, in the first years where it's 11 percent rather than 25 percent.

So kind of roughly in the first year, it would be less than half.

COUNCILMAN KENNEY: I'm sorry, Professor, this is just in the proposed Areas 3 and 4, correct? Do the statistics come --

DR. HUTCHINSON: This is for the first four years, and I believe that is just Area 4 primarily, the build-out plan by the end of the fourth year, is that --

MR. PARDINI: It tracks their construction plan through Years 1 through 7, so Years 1 through 4 are primarily Area 4.

COUNCILMAN KENNEY: Area 4, okay.

DR. HUTCHINSON: Area 4.

Then the lower panel is Years 5 through 7 of their plan. And then the final lower right panel is those not in the plan, mainly South Philadelphia.

Again, the concept is --

COUNCILMAN KENNEY: I'm sorry, in the fourth chart, are those not in the plan?

DR. HUTCHINSON: Those are not in the plan.

COUNCILMAN KENNEY: Only in Comcast service area, correct?

DR. HUTCHINSON: No. There is --

COUNCILMAN KENNEY: This includes Wade Two, okay.

DR. HUTCHINSON: So that analysis was done for all of Philadelphia.

Any other questions just about that chart?

(No further questions.)

DR. HUTCHINSON: So basically, the concept is comparing the demographics of the build-out to the City as a whole and seeing that particular lowest income group is under-represented. It was like a racial composition, the same layout as before, we see the composition for Philadelphia as a whole. By the end of four years, the whites would compose 86 percent of those with access. Clearly. This is the part

10/31/00 PUBLIC PROPERTY, BILL 000452

that's kind of -- it's kind of extremely different than a balanced plan. And even -- you can see at the end those not in the plan, there's still a residual imbalance.

As I said, the full report breaks this down year by year if you wanted to see the roll-out, particularly, you know, looking at, ay, the first two or three years. Most -- all of these trends, as I say, are more extreme in the first year than in the second year.

COUNCILMAN KENNEY: So it's your contention through your analysis that from a racial perspective in the Years 1 through 4, practically all of the white households in the area, in the OVS service area, would be built out, and that the African-American households in that same area would not be built out in any large numbers until Years 5 and 7.

DR. HUTCHINSON: I think the answer's yes to that. These show the demographics of the areas, this is with those who would have access in principle. So I don't do any analysis of who might subscribe, not subscribe, or how far into any area they were going to wire. It just says,

10/31/00 PUBLIC PROPERTY, BILL 000452

of those with access, at the end of the fourth year, according to their plan, 86 percent of that population would be white.

COUNCILMAN KENNEY: Those who are eligible to take advantage of RCN's offer --

DR. HUTCHINSON: Correct.

COUNCILMAN KENNEY: -- in the first four years, only thing 6 percent of those people would be African-American.

DR. HUTCHINSON: Correct.

COUNCILMAN KENNEY: The other non-African-American or non-white, the percentages stay basically the same. Is that fair?

DR. HUTCHINSON: Yes.

COUNCILMAN KENNEY: It's 4 percent, 5 percent.

DR. HUTCHINSON: Yes.

COUNCILMAN KENNEY: In Years 5 through 5, there is a huge jump from 6 --

DR. HUTCHINSON: Correct.

COUNCILMAN KENNEY: -- to 70 percent.

DR. HUTCHINSON: Right.

COUNCILMAN KENNEY: Available, accessible African-American households in those service areas.

DR. HUTCHINSON: That's right. Now, this is just those that are added; this is not cumulative. So this is the population that is being added in Years 4 to 7. And those --

COUNCILMAN KENNEY: Let me ask you the question the another way. In Years 1 through 4, are any of the people, are any of these African-American households in the bottom left chart, the bottom left pie chart, eligible to sign up for RCN services in Years 1 to 4?

DR. HUTCHINSON: No.

COUNCILMAN KENNEY: Okay.

DR. HUTCHINSON: That's strictly based on the geography.

COUNCILMAN KENNEY: Mr. James, the question that I have relative to this chart is that -- was there a change in the original OVS requested agreement, moving a large portion of potential African-American and minority homeowners or potential subscribers from Year 6 to Year 3? Was there any change?

MR. JAMES: (Shakes head.)

COUNCILMAN KENNEY: So the construction

schedule we see now is what it was from the original? The staff has some belief that there was a change in the construction build-out schedule that included more minority potential subscribers in Year 3 than was originally called for in the beginning of this process, which had them coming more in Year 6.

MR. JAMES: It's my recollection that there were several reiterations of the build-out schedule, but the last one that went into the bill was the one that you see, and there was no specific, that I recall, change that affected any particular diversity.

COUNCILMAN KENNEY: Okay. And this analysis is based on the most recent build-out schedule?

MR. JAMES: (Nods head.)

COUNCILMAN KENNEY: Somebody say "yes" or "no."

MR. PARDINI: It's based on what we believe to be Appendix J of the exhibit submitted with the application.

COUNCILMAN KENNEY: Okay, that's fine, thank you.

10/31/00 PUBLIC PROPERTY, BILL 000452

Is there anything else either of you would like to add to at least the initial presentation before we get into any questions?

MR. PARDINI: In the interest of the hour, we look forward to any questions.

COUNCILMAN KENNEY: Okay. All of this issue is based on price and competitive pricing and money and who is going to be eligible to experience the positive side of competition and who isn't in the period of time we're being asked to approve in the OVS agreement.

Could you do me a favor and -- or do yourself a favor, perhaps -- and explain some of the issues that have been in the press lately about Comcast's pricing position as it relates to major cities in the country who are served by Comcast or aren't served by Comcast, and whether or not and why, if it's true, is it perceived that Philadelphians pay more than their immediate suburban counterparts for either similar or the same service? Could you kind of go through the whole pricing issue?

MR. PARDINI: Sure.

COUNCILMAN KENNEY: 'Cause I think one

of the things that has been a problem for Councilmembers, the media and the public in general is a story that was in the Inquirer not too long ago touting the fact that Comcast was way out of line in its pricing structure, and that this kind of competition would help alleviate that problem.

MR. PARDINI: Sure. We believe that the Inquirer article was misleading in terms of its calculation of our rates structure. When comparing cable rates in the top ten markets, as the Inquirer sought to do, we believe that a cost-per-channel methodology is critical in fair criteria for determining value. I'd like to show you a chart, if I may, for one moment.

COUNCILMAN KENNEY: Yes, you may.

I can't see that from that distance.

COUNCILMAN NUTTER: If we can't see it, it doesn't exist.

MR. PARDINI: With apologies to Councilman Cohen, I'll ask him to move.

Let me tell you a few things that are on that chart. Number one, the Inquirer article included optional levels of services in the

10/31/00 PUBLIC PROPERTY, BILL 000452

pricing that it showed for Comcast. These are levels of services such as an optional programming guide and an optional tier of channels that customers do not have to take.

When you look at our cost per channel in terms of the package and the value we prove our customers, our cost per channel basis, Comcast Cable ranked 13th out of the 23 cable systems surveyed. In other words, while other markets charge nearly as much overall, they delivered far less service.

Cable systems in the following cities charged subscribers higher rates per channel than Comcast: San Francisco, Washington DC, L.A., Chicago, Houston, and Boston. Comcast's ranking in the Inquirer's chart would have improved even dramatically had the Inquirer not included our optional $2.25 printed cable guide. This cost was not included in other cable systems' pricing.

While the Inquirer presented a chart illustrating the rates for the Disney Channel, the paper did not present a chart showing other premium channels such as Encore, a commercial-free, 24-hour movie service, which

Comcast includes as part of our basic cable package.

The Inquirer failed to mention that 18,000 Comcast customers in the City of Philadelphia pay either $9.84 a month or $15.29 for 27 or 35 channel cable packages respectively. The Inquirer failed to credit Comcast for its flexible structure in providing a basic-only off-air reception package.

COUNCILMAN KENNEY: I'm sorry. What is it the basic-only on the off-air package?

MR. PARDINI: Essentially, it's our limited basic service, it provides 27 channels of off-air reception -- Channels 3, 6, 10, 17, 29, everything you could get off air for free, and you could get great reception and service along with several other educational access and government access programs.

COUNCILMAN KENNEY: How was the Inquirer article structured to come out with the conclusion that you guys are overpriced and not competitive with major cities? How did they add it up as opposed to how you added it up?

MR. PARDINI: They took all of our

10/31/00 PUBLIC PROPERTY, BILL 000452

levels of service, our limited basic level of service, our tier of satellite channels as well as an additional tier. They added in an optional monthly programming guide, which customers do not have to -- are not require to take.

So, in essence, they took our -- well, when you go to McDonald's, you get the family value pack.

COUNCILMAN KENNEY: I'm not allowed to go there anymore. When I used to go. . .

MR. PARDINI: Essentially, they took our super-sized package and compared it to everyone else's bare-bones rate structure.

COUNCILMAN KENNEY: Okay. You guys got a great product with your SportsNet. I happen to enjoy it, being a Flyers, Sixers and, most of the time, a Phillies fan. Could you talk a little about that? 'Cause one of the criticisms of the company is that somehow, you've cornered this market on this sports delivery here in Philadelphia and you're being unfair in your desire not to make it as part of a basic -- well, it is a part of the basic cable.

Explain the SportsNet dynamic 'cause

it's been part and parcel of some of the criticism of the company.

MR. PARDINI: I'm going to defer to Mr. Wang, who is more familiar with the issues surrounding it.

MR. WANG: Sure. It's a rather long story and cut me off if I bore you.

COUNCILMAN KENNEY: We've already been here a long time.

MR. WANG: The SportsNet Company is owned by Comcast, by Ed Snyder and his group and the Phillies, so there's a group of three people who own Comcast SportsNet. So we -- Comcast don't make all the decisions; the decisions are made by a group.

When we started, there was a company called Prism. Prism was --

COUNCILMAN KENNEY: I remember that.

MR. WANG: -- a high-priced premium service that that delivered movies and that delivered sports. Prism -- we bought the teams, Prism went out of business. We took the product that was delivered by Prism and that was terrestrially delivered. In other words, no satellite.

We took the Prism-delivered system and we put Comcast SportsNet on that system, on that terrestrially delivered system because it was cheaper and because we had no reason to put the signal outside of the Philadelphia market. We had no reason to send it up and bounce it off to Wichita, Kansas, because we're not permitted to deliver that signal to Wichita, Kansas. We're only under league rules to deliver that signal to this market.

So for economics and for an existing system, we delivered it terrestrially. Under the law, when you deliver it terrestrially, you're not subject to --

COUNCILMAN KENNEY: I'm sorry, could you restate that, deliver --

COUNCILMAN NUTTER: Deliver what?

MR. WANG: Delivered to cable operators terrestrially.

COUNCILMAN KENNEY: Terrestrially.

MR. WANG: Terrestrially.

COUNCILMAN KENNEY: On the ground?

MR. WANG: I'm sorry?

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: On the ground.

MR. WANG: On the ground.

COUNCILMAN KENNEY: See, I knew that Latin at the Prep was going to help me.

COUNCILMAN NUTTER: Very good, very good.

MR. WANG: We did not use the satellite; we put telephone wires or wires between the microwave, between where the product was emanated, which is the Sports Center, First Union Center -- it keeps changing names -- to the cable operators. And there were a number of cable operators in the market at the time, and there are still are, but we had bought up a substantial portion of it, no question about that.

So we delivered it terrestrially. The law says that when you deliver it terrestrially, you do not have to comply with something called "the program access rules." The program access rules say -- they're federal rules. They say if you put a program on a satellite and you, as a cable operator, own that program, you have to distribute it to everybody who wants it under essentially equal terms. We do not have to do

10/31/00 PUBLIC PROPERTY, BILL 000452

that under the law.

We chose not to sell it to DirecTV, who had their own exclusive programming called "The NFL." And come September and October, if you look in the Inquirer, you see large ads, "Go to DirecTV Exclusive Programming, the NFL." It's a powerful product. They have other exclusive programming. EchoStar, our other major satellite competitor, also has exclusive programming. So we, as businessmen, decided not to sell the product to DirecTV and EchoStar.

DirecTV and EchoStar complained, they went to the FCC, they brought two proceedings. Both proceedings were decided in our favor. The matter is on appeal to the full FCC, and that has been sitting at the full FCC for probably 18 months or 2 years.

But both decisions said that Comcast was perfectly legitimate within its rights to distribute that programming to whomever it wants without regard to the program access rules. So what we've done has been blessed to date by the FCC.

Now RCN comes into town, and they say,

We would like this product. And the truth of the of the matter is, we've given that product to RCN. We've served everywhere that RCN wanted the product, we've given the product to them. I believe they were in Allentown, they had a system and in various other places. They get the product in Delaware County.

We provided them with a six-month agreement, an extension recently. We've treated them exactly the same way that we've treated every other cable operator, a six-month agreement. During those six months, we are analyzing what to do with Comcast SportsNet. We have negotiations with the Phillies, with Snyder. There may be a change in April, but we needed a period of time to consider our business purposes of what we do with the programming. Perhaps we'll start a second channel, perhaps we'll move games somewhere or someplace. We don't know yet. So we have a short-term contract.

In answer to your questioning, which is going to come, will we renew? The intention is to renew for every cable operator in the region, including RCN, including Popvision. If you've

10/31/00 PUBLIC PROPERTY, BILL 000452

driven down the Schuylkill Expressway, you'll see big signs, "Subscribe to Popvision, we offer Comcast SportsNet."

So we are not using it exclusively, but we are excluding DirecTV and EchoStar. And to this moment, the FCC has said that's fine.

Did I say too much, does that answer your question?

COUNCILMAN KENNEY: That's fine. I just wanted the record to be clear.

Councilmember Nutter?

COUNCILMAN NUTTER: Thank you, Mr. Chair.

Mr. Pardini, I'd like to raise another issue with you. I have my own concerns about the chart that you laid out and some of the other newspaper stories. I will get to those.

The other matter that's been in the news a fair amount recently is the retransmission agreement with WPVI, or commonly known as Channel 6 or ABC, which, it's my understanding, that Comcast, I guess, is negotiating nationally with ABC.

I had the experience in the area where

I live and where I have cable service to have experienced a loss of that signal for some period of time. It was sudden, it was without notice, and I know that at least my constituents who are in Area 2, which is also shared by Councilwoman Blackwell in Council District 3 in West Philadelphia, there was a tremendous outcry with regard to that for that period of time that the station was literally off the air. I was watching a show and the screen went blank.

One, you might want to touch base with some of the Time Warner people about the anxiety that their viewing area experienced. You obviously have three-quarters of the City and would affect an even larger citizen base.

Second, there were numerous angry calls and demonstrations and the like with regard to Time Warner while larger decisions were being made in another part of the country. Naturally, the backlash came to the local operation.

My concern is you have your issues with RCN, and you have a right to have issues with RCN. My concern is WPVI Channel 6 is in my district. I do not wish to see other people

10/31/00 PUBLIC PROPERTY, BILL 000452

throughout this city experience the same kind of disruption to their lives as a result of battles between Comcast and ABC and what Disney is doing or what Mickey Mouse is doing or what the Cartoon Network is doing or anybody else.

What I want to know is, as a part of this process that we're going through, what is the status of the retransmission agreement going forward? What are the issues related to, are you going to pay for the service, are you not going to pay for the service, and provide a comfort level to people throughout the City about that particular issue.

MR. PARDINI: Councilman, your concerns are completely valid. For our negotations with Disney and a status report on where we stand, I again defer to Mr. Wang.

MR. WANG: I guess I get all of the tough questions, Councilman.

COUNCILMAN NUTTER: That's why you get the big bucks.

MR. WANG: Let me start off at the end. We will never take off the Disney local stations.

COUNCILMAN NUTTER: Well, you have no

reason to take it off.

MR. WANG: We will never take it off.

COUNCILMAN NUTTER: Right. Well, you're not taking it off, right?

MR. WANG: Each Friday now, we wait for a letter from Disney. Friday night, at 5:30, it comes in and says, You are extended for another week, two weeks, and now until November 29th. Until they say to us, Take that off, and they have the absolute legal right to say that at any time, we will never take that off.

So if your station goes blank, and it won't, it is because Disney has said to us, which they're entitled to do, that you cannot carry our local station, WPVI, anymore.

COUNCILMAN NUTTER: Do you pay any operators or programmers to carry their particular programs?

MR. WANG: We do not pay and broadcasters. But there's a fiction here that's been going on for years. The fiction started with Disney seven years ago, when they came in with the same local station, broadcast stations. This is free television, if you remember, free television, but free television is no longer free television; free television is something called retransmission consent, where Disney has the right to ask us for payment for free television.

COUNCILMAN NUTTER: Do you pay for any other television?

MR. WANG: We do not pay for any broadcast.

COUNCILMAN NUTTER: Well, you're obviously making a distinction between broadcast and the cable people.

MR. WANG: Right.

COUNCILMAN NUTTER: Do you pay for cable programming?

MR. WANG: We pay Disney for ESPN, we pay Disney for ESPN2. We pay the Disney Channel. We pay HBO, we pay Turner for Discovery -- I believe Turner owns Discovery.

COUNCILMAN NUTTER: CNN, TNN.

MR. WANG: Right. We pay Time Warner for -- well, that's all the Turner stations.

COUNCILMAN NUTTER: Right.

MR. WANG: We pay everybody.

COUNCILMAN NUTTER: And where you don't

10/31/00 PUBLIC PROPERTY, BILL 000452

pay, you end up making agreements about carrying other portions or whatever, Disney, or somebody else might have to offer? What do you do with NBC and CBS.

MR. WANG: NBC and CBS, we've reached agreements with them. They come in and say, Well, would you pay us to carry NBC in all of the markets? And we say no, we won't, but we will carry CNBC and MSNBC, and we negotiate a deal on CNBC and MSNBC, and thrown in is something called "retransmission consent."

COUNCILMAN NUTTER: I understand that. I don't care what you end up carrying. At the end of the day, I just want to know that there is an agreement. And if you want to carry Mickey, Minnie, and all of their cousins, that's fine with me. What I want to know is, when are you going to have an agreement? because I don't think the citizens of this city should have to continually, after you wait for your letter on Friday, read the newspaper on Saturday to see whether they're going to have service on Sunday.

MR. WANG: Well, we're going to have an agreement when us --

COUNCILMAN NUTTER: When?

MR. WANG: -- and Walt Disney get together and negotiate what is, quote, fair. Now, what is fair from their angle is one thing, and what is fair from our side is another thing. And if we agree to what they consider --

COUNCILMAN NUTTER: Well, do you think whatever they're offering has no value?

MR. WANG: We think it does have value, but we don't think it has 2000 times the value that it had seven years ago.

COUNCILMAN NUTTER: Well, what do you think the value's going to be and what's the impact on the company if, somehow, that station is not on the air? What do you think three-quarters of the City is going to think about Comcast?

MR. WANG: Well, I would hope they would think that about Disney because, again, it would be our decision to take it off the air.

COUNCILMAN NUTTER: Okay.

MR. WANG: But we will suffer and whether it's our fault or --

COUNCILMAN NUTTER: It is my impression, as a consumer, that in the last battle, Time Warner, ABC, that in the court of public opinion, Time Warner took a serious butt-kicking. Now, is Comcast prepared to deal with the same thing?

MR. WANG: That would be a terrible thing that would happen for the City and we will use all of our efforts to negotiate a deal with Disney. However, that doesn't mean that we will pay them everything they ask because --

COUNCILMAN NUTTER: I don't want to be in the middle of your negotiations.

MR. WANG: I understand.

COUNCILMAN NUTTER: What I want to hear about and what I want to read about in the newspaper one day is that there is an agreement. So my last comment on that particular point is, I would encourage you to get in touch with your counterparts at Time Warner and ask them what it was like for the 36 hours that that station was off the air. And then we can talk about it, okay?

MR. WANG: It is not a good thing for us, it is a terrible thing for --

COUNCILMAN NUTTER: It is not going to

be a good thing for you.

MR. WANG: It is not a good thing for us, it is a terrible thing --

COUNCILMAN NUTTER: I can assure you that it's not going to be a good thing for you.

MR. WANG: Absolutely, absolutely. I wish you could --

COUNCILMAN NUTTER: I don't want you to wonder about it, I don't want you to think about it.

MR. PARDINI: Councilman, we have in the last year achieved over 70 retransmission consent negotiations and successfully completed those. We will give our absolute best efforts to require a suitable agreement be achieved with our counterparts at the Disney Company.

COUNCILMAN NUTTER: Soon.

MR. PARDINI: Soon.

COUNCILMAN NUTTER: Thank you.

Let's talk about your chart. With regard to, I guess, the first issue, I think maybe I read in the testimony or saw the chart, and as you know from all of our earlier exchanges, I'm not in your area, but the company that serviced me is on the chart, and I was not aware, I guess, of the option of a price-per-channel combination.

MR. PARDINI: The channels are not sold.

COUNCILMAN NUTTER: I mean, you change the terms and I'm not directing this to you necessarily, it seems to be a kind of cable thing. From time to time -- I mean, you know, basic, sub basic, super basic, premium. RCN was in earlier and they've got, you know, gold platinum, titanium, diamond. I mean, everyone's got a different name to their thing.

MR. PARDINI: Yes, sir.

COUNCILMAN NUTTER: And the package is what the package is, and you either want Package X, Package Y, or Package Z. But I was not aware that you could get Package X and then say, Well, I'd like two channels from Package Y, 'cause the price is, you know, 50 cents, I guess, a month per channel, and I'd like to add those in. I mean, you can't do that, right?

MR. PARDINI: You are correct, you cannot do that. The channels are not sold on an a la carte basis. There are different tiers or combinations of channels within tiers that customers can choose amongst.

The chart here is designed to show relative value of the total package in similar price-per-pound, so to speak. And when you look at the relative value that our package delivers relative to these other marketplaces, we are not the most expensive. In terms of the value that we deliver, we are 13th or lower, depending upon the combinations or permutations of packages that are subscribed to.

COUNCILMAN NUTTER: Earlier we heard testimony about the whole issue, and Councilman Kenney was very extensive in talking about competition in areas where there is competition. Obviously, we've not, from a cable standpoint, experienced that in Philadelphia, and how it all shakes out remains to be seen.

When I look at the chart, though, and this is not to boost anybody, but just trying to understand. Comcast is listed as 13, 15, 16 and 22 for the areas where you're competing against other similar size cities or other companies. I understand what 22 is about, that's the limited

10/31/00 PUBLIC PROPERTY, BILL 000452

basic. I guess that's all the off-air stations plus probably a couple thrown in --

MR. PARDINI: Correct.

COUNCILMAN NUTTER: -- for attraction purposes.

MR. PARDINI: Mm-hmm.

COUNCILMAN NUTTER: 13, 15 and 16 seem to out-rank from a price standpoint 21, 23 and 24, which, naturally, is the topic of discussion with the company today, and all of those seem to have more channels at a lower price.

Would you wish to give us your views on that and what's going on with that and why is that the case?

MR. PARDINI: For the record, items in 21, 23 and 24, which you referred to, are RCN's packages in New York City, Washington DC, and Chicago in cases where they are entering the marketplace. When you're entering the marketplace, it's often common to offer a low introductory rate in the acquisition of new customers.

COUNCILMAN NUTTER: Do you have a chart or any materials? And if you don't, I understand

and I'd ask that you forward them to the Chair. Could you give us a similar chart and show us on a city-by-city or a county basis or a comparable-area basis some -- a display of competition as it relates to Comcast and RCN, where you do compete in the same locales? And give us -- I mean, for my purposes -- the Chairman might be interested, I'm not sure, about the price-per-channel concept, but I'd be very interested to see, for instance, if you guys are competing in the suburbs on a comparable area basis. If it's Narberth or Ardmore or whatever the case may be, I'd like to see what the packages are and how they match up system to system. That would be very interesting to see.

MR. PARDINI: We will provide that for you and get it to you very quickly.

COUNCILMAN NUTTER: All right, thank you.

Tell me just a little bit about some of the pricing strategies, and I think in some of the newspaper stories, probably the last for me, are there differences in prices between the City and the suburbs, whether on -- and I don't know what

10/31/00 PUBLIC PROPERTY, BILL 000452

your terminology for, I guess, your pricing plans, whether it's full basic or what have you got? Full basic without guide or even the limited basis in Philadelphia as compared to the surrounding suburban areas on similar channels in the package.

MR. PARDINI: Sure.

COUNCILMAN NUTTER: And are there any differences between what's in the package in Philadelphia versus what's in the package in a suburban area?

MR. PARDINI: Speaking in generalities, I'd be happy to submit further documentation to flesh out the full facts.

I would suggest to you that in the suburban marketplaces that the channel lineups are generally not as robust as what the City of Philadelphia currently enjoys. The primary --

COUNCILMAN NUTTER: Let me try and understand that. So you're saying that we get more channels --

MR. PARDINI: I believe so, yes.

COUNCILMAN NUTTER: -- in the City than in the suburban areas?

MR. PARDINI: Yes.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN NUTTER: Okay.

MR. PARDINI: Further, the differences in pricing are in many ways technology-based. In the City of Philadelphia, all of the original cable-providers required a cable customer to take a cable converter, or a piece of equipment, in which to view the cable signals. In many of the suburban franchises, because of the terrain or the technology that was utilized at that point in time by the original franchise operator, those boxes are not necessarily required.

Now, there are some unique features to the --

COUNCILMAN NUTTER: They don't have boxes in the suburban areas?

MR. PARDINI: No.

COUNCILMAN NUTTER: What do they have?

MR. PARDINI: Boxes are generally only required in suburban areas when you subscribe to a premium service like HBO or Showtime. Here in the City of Philadelphia, most of the basic channels at the time the system was built, channels like CNN and ESPN and other major networks were scrambled so that the unauthorized reception of

10/31/00 PUBLIC PROPERTY, BILL 000452

cable services could not take place.

COUNCILMAN NUTTER: What happens going forward as you move to a digital network? I mean, it's my understanding that there will be these fairly expensive new digital boxes that cost in the neighborhood of 3 to 400 dollars. Would you needs those in the City and in the suburbs or --

COUNCILMAN NUTTER: For those customers who elect to take our Comcast digital cable package -- and right now, that's approximately 25 percent of our subscriber base here in the City of Philadelphia, but those customers do require a digital cable converter in order to decode the little 1's and 0's into an intelligible picture. When you cram 200 channels or more into one digital cable package, you're going to need some technology at the end-user to make it all a friendly and happy experience for the customer.

COUNCILMAN NUTTER: What about in the suburban areas?

MR. PARDINI: That is true too. They require --

COUNCILMAN NUTTER: A box?

MR. PARDINI: -- A digital cable

10/31/00 PUBLIC PROPERTY, BILL 000452

converter in the suburban areas as well.

COUNCILMAN NUTTER: Okay. So you're going to get us information not only on the competitive comparison but also information about suburban billing versus the City billing?

MR. PARDINI: Yes, sir.

COUNCILMAN NUTTER: Are there any premium -- are there any services that are premium in Philadelphia that are a part of a basic package in the suburbs?

MR. PARDINI: Not to my knowledge, no.

COUNCILMAN NUTTER: So you're saying that if you have --

MR. PARDINI: I'm sorry, I apologize. In our suburban systems, the Disney Channel was put on basic as part of the previous -- it's -- the Disney Channel is carried as part of our basic lineup in the suburban systems, and that was a decision made by the previous company prior to our acquisition of it.

So the Disney Channel is part of basic in, for example, Bucks County, and it is sold on an a la carte premium channel basis here in the City of Philadelphia.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN NUTTER: But it was like that when you picked up the system, and you decided to maintain it?

MR. PARDINI: That is correct.

COUNCILMAN NUTTER: Were you concerned that if you made it a premium that people would drop it?

MR. PARDINI: We find that our experience in the City is that less than 5 percent of the --

COUNCILMAN NUTTER: I'm saying in the suburbs.

MR. PARDINI: No. We inherited a previous contract and we honor our contracts, so we kept the Disney Channel as part of the basic package because that was the agreement that we assumed.

Here in the City of Philadelphia, we have not done anything with the Disney Channel because we've been in negotiations for the last 18 months with the Walt Disney Company, and we have not made any decisions with respect to its carriage.

Currently in the City of Philadelphia,

approximately 5 to 7 percent of residents subscribe to the Disney Channel as a part of their cable services, for an additional charge.

COUNCILMAN NUTTER: What's the additional charge?

MR. PARDINI: It's anywhere from $8 to $11.75, depending upon the area. The difference, again, being the pricing structure that was inherited upon the acquisition and our -- we didn't want to do anything with the pricing structure while we were negotiating with Disney. We wanted to see what that final agreement would look like.

COUNCILMAN NUTTER: Okay. Well lastly on that, I mean, an 8 to $11 additional charge for most of your packages, I mean, that's like a 25 to 33 percent increase in your bill just for one station. I mean, do you think that that affects the decision-making process as to whether you're going to pick up a premium channel or not?

MR. PARDINI: I would think that if -- and I think back to the time when I had young children in the house, I would think that $8 or $11 was a phenomenal value for the opportunity for

10/31/00 PUBLIC PROPERTY, BILL 000452

my children to be entertained while I attended my other responsibilities.

COUNCILMAN NUTTER: Right, it's cheaper than a babysitter.

MR. PARDINI: Yes.

COUNCILMAN NUTTER: I understand.

Thank you very much. I look forward to the information.

COUNCILMAN KENNEY: Councilmember Brown?

COUNCILWOMAN BROWN: Good evening, gentlemen.

MR. PARDINI: Good evening.

COUNCILWOMAN BROWN: I would first like to underscore the concern raised by my colleague Councilman Nutter. I'm a City Councilwoman at large, and as he is, am terribly interested in the bottom-line yield of your negotiations with Disney. And I need to understand why there is the week-to-week extensions, because it's still a tentative agreement, correct?

MR. WANG: No, there is no tentative agreement. There is a bid and an asked, and we're very far apart as far as what is deemed fair. I

10/31/00 PUBLIC PROPERTY, BILL 000452

guess the Disney people are here and Councilman Nutter and Councilwoman, you can give them the same admonition that you gave us.

COUNCILWOMAN BROWN: So it is not tentative, it's a week-to-week arrangement?

MR. WANG: I'm sorry?

COUNCILWOMAN BROWN: It is a week-to-week arrangement.

MR. WANG: It is at the whim of the Disney Company at this point in time. Without an agreement, without a final agreement, they can tell us at any time to take the channel off, and under law, we would have to take it off.

COUNCILWOMAN BROWN: Thank you, sir.

Back to this -- I missed your opening comments around pricing, so let me ask straight-forwardly: Currently, what is the suburban price for cable?

MR. PARDINI: It really depends on what area you were in.

COUNCILWOMAN BROWN: Let's use Montgomery County as an example.

MR. PARDINI: In Montgomery County, the price for basic cable service, which does not include a converter charge or an optional programming guide, is generally in the 33 to $35 range depending upon the channel lineup that you live -- the area where you live.

COUNCILWOMAN BROWN: What is the equivalent for that same package that you just described in Philadelphia, what is the price?

MR. PARDINI: I would suggest that that same package, without equipment and without the guide, is approximately 34 to $36 in the City of Philadelphia.

COUNCILWOMAN BROWN: So $4 difference?

MR. PARDINI: No, about $2.

COUNCILWOMAN BROWN: $2?

MR. PARDINI: For the net programming yes.

COUNCILWOMAN BROWN: Even with that small margin of difference, why is it not equal?

MR. PARDINI: Because in the City of Philadelphia, you have certain construction costs, so you have certain capital investments that represent a large infrastructure investment that Comcast has made in the City of Philadelphia. Operating costs in the City of Philadelphia are

10/31/00 PUBLIC PROPERTY, BILL 000452

somewhat higher than in suburban systems. We pay our employees who tender to the City $1.5 million for wage taxes. The operating environment in the City of Philadelphia is also a somewhat higher cost; it is a high transaction market. There's a large rental base in the City of Philadelphia, so installation and disconnect activity, turn activity of customers moving from one spot to another is a lot higher than what see typically in a suburban marketplace.

There are any number of cost factors as to why operating in the City of Philadelphia is a higher-cost operating environment than those environments that we encounter in other markets.

COUNCILWOMAN BROWN: In your opening comments, you made it clear, you stated that, and I quote, competition is a good thing. Let's say that this body does what we need to do on our end to ensure that there exists a level playing field, help me, persuade me on why we should not then say that choice is a good thing for our constituents, and we, therefore embrace a like competitor in the area?

MR. PARDINI: We think you should that.

10/31/00 PUBLIC PROPERTY, BILL 000452

We think you should embrace competition. We think that you should ensure a level playing field. We have no problems with competition. We compete both here in the City of Philadelphia and we compete nationally in hundreds of communities like Philadelphia.

Here in Philadelphia, we compete with other operators, with other multichannel video operators, companies like Popvision companies like Wilco Electronics, companies such as DirecTV and Dish Network. We also compete with companies called Viking Communications, who will come in and take an apartment complex and microwave a package of video signals in there.

There are any number of potential competitors here in the City of Philadelphia that we definitely take into account when we look at our pricing structure and think what the market will bear for cable services.

COUNCILWOMAN BROWN: I'm checking my notes.

MR. PARDINI: I would also like to say that here in the City of Philadelphia, cable penetration is only about 52 percent, meaning that only slightly more than half of the residents of the City of Philadelphia take cable services. That's not exactly what you would call, when you think about Microsoft owning 90 percent of the personal computer software market, 52 percent of people subscribing would hardly be indicative of controlling the marketplace.

COUNCILWOMAN BROWN: Why is it useful for you to share that information, the statement that you just made?

MR. PARDINI: Because I think it's significant in that it shows that people do have a choice here in Philadelphia. They choose Popvision on a daily basis, they choose Direct TV, they choose the Dish Network. They don't necessarily have to choose Comcast. And most significantly here in Philadelphia, with a robust broadcast marketplace, with 3, 6, 10, 17, 29, 57, and any number of off-air signals available, one can just put up an antenna and get great entertainment.

So there are options, there is competition, and we have to fight for every customer we get and we have to fight hard to

10/31/00 PUBLIC PROPERTY, BILL 000452

provide them with great service and great entertainment value to keep them.

COUNCILWOMAN BROWN: That's it for this segment. Thank you, sir.

COUNCILMAN KENNEY: Thank you.

MR. PARDINI: Thank you.

COUNCILMAN KENNEY: I think people also choose to use illegal cable boxes too. And really, though, in fairness, what is the cost of that, what is the projected cost of theft of service? I mean, I know it's not as widespread as it used to be because of the technology to stop it, but it still has to be significant. It's like the same problem we have with our auto insurance. You know, if you had more people paying fair number for their cable bill, the prices maybe a little different.

MR. PARDINI: Yes.

COUNCILMAN KENNEY: What effect on the industry do you think it has?

MR. PARDINI: We think that the cable industry nationally loses billion dollars of dollars to the unauthorized reception of its services. Here in Philadelphia, our experience has been that we must be continually be vigilant to keep only those subscribers who are paying on the rolls. We generally find about 4 to 5 percent of the homes in Philadelphia are currently receiving the service in an unauthorized fashion.

COUNCILMAN KENNEY: In fairness to the cherry-picking question which has been going on, what's the situation relative to digital boxes? Digital cable service seems to be available in some areas of the City and not available in others. Is there --

MR. PARDINI: It's driven by technology. And if you remember when I was here before you in 1998, I committed to upgrading the cable system within five years so that all areas would be built and able to receive not only digital cable, but high-speed Internet service.

I'm pleased to report that Comcast is over a year ahead of schedule on its upgrade plan and that by the end of next year, 85 percent of all of the residents in Comcast service areas will be able to receive not only digital cable but high-speed cable modems. We will complete it probably by the end of the year 2002.

COUNCILMAN KENNEY: Okay. What was the original timetable?

MR. PARDINI: It would call for the end of 2003 or early 2004.

COUNCILMAN KENNEY: Okay. Councilman Nutter.

COUNCILMAN NUTTER: Thank you.

This is really more of a general question. What's the cable box charge currently?

MR. PARDINI: Approximately $2.96 with a remote control.

COUNCILMAN NUTTER: A month.

MR. PARDINI: A month, yes.

COUNCILMAN NUTTER: So it's basically $3 a month, $36 a year. What's a cable box cost?

MR. PARDINI: Generally, a cable box brand-new for a basic analog box is approximately $110. The rate for what we may charge for the box is regulated by the FCC. They take a look at how much the purchase price has been and what they have stated what a fair rate of return is on the purchase of that equipment. So that rate is regulated; we don't price it.

COUNCILMAN NUTTER: I understand that,

10/31/00 PUBLIC PROPERTY, BILL 000452

but whether it's you or Time Warner, this is more of a kind broad cable question, I mean, after three years, you've gotten the money back for what it costs, and if you never switch out, and I understand that soon we will be switching out, but if you have cable from the start and nothing ever wrong with the box, I mean, why are we still paying for it?

MR. PARDINI: Because a significant number of those boxes never come back into circulation; they are used for other purposes or they're simply left behind.

COUNCILMAN NUTTER: But I still have mine, so why am I still paying for it? It's going to circulate back to you. I mean, I've paid for the thing like five times over (unintelligible). Why am I still paying for a cable box? I mean after some point in time, I mean, seriously, you should really --

MR. PARDINI: I would suggest to you that while you have had your box on an uninterrupted basis, you're not the norm.

COUNCILMAN NUTTER: I've been told that before, Mr. Pardini, but never at a public hearing.

(Laughter.)

COUNCILMAN NUTTER: Would you like to go back and talk about Channel 6 again?

MR. PARDINI: You're far above the norm, sir.

COUNCILMAN NUTTER: Thank you. It's only an explanation; it may not be an answer but it's an explanation.

Thank you.

COUNCILMAN KENNEY: If there are no other questions, Mr. James, I think, did you indicate that there was some desire to come up and talk about some of the charts and perhaps we'll leave the doctor's chart up here so you can deal with some of those issues.

MR. JAMES: Thank you very much.

I just wanted to take a moment because I wanted to kind of comment on a statement that was made earlier because I, unfortunately, until tonight did not have opportunity to see report, so this was the first time for me to look at it. And some staff hasn't had an opportunity and we'd like to have an opportunity to review this material and

10/31/00 PUBLIC PROPERTY, BILL 000452

respond back to you.

COUNCILMAN KENNEY: Sure.

MR. JAMES: But one thing -- I'm not sure if it's an accurate representation, when you asked the question before is, had the plan to build out changed? And, no, it has not. And there is a discrepancy in what was proposed, or at least what's in the report by Dr. Hutchinson and what's in the actual plan that you received, where there was a mention that there was not going to be any -- or it was a small percentage of penetration in the African-American community in the first five years or four years.

And my reading of the chart and I'll show it to you, there is a significant difference in the two charts. According to the chart that's in the materials, the green section represents the first three years, there's a lighter shade of green --

COUNCILMAN KENNEY: Hold on.

MR. JAMES: Sure.

COUNCILMAN KENNEY: I understand that we have the ability to bring it up on the monitor. There we go, okay.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. JAMES: If you look at what RCN's construction plan in the seven years is, it's a difference than what's in the report by Dr. Hutchinson in that in his report, the green area represents the first three to four years and lighter shades of green and the yellow (unintelligible) the Years 5 and 6, where I believe he is indicating a penetration into what would be a large percentage of African-Americans. But if you look in the construction plan, Area 3 is divided; it goes in one area of the Northeast (unintelligible) and goes up to Area 3 at the same time, so that there is a higher penetration into areas that one would assume just by this report to be the African-American community.

So I wasn't sure which report or which chart he was looking at but that's not the chart that's in your plan and that's not the chart that's in the seven-year construction plan.

COUNCILMAN KENNEY: So the predominant area that we're talking about, the professor contends, won't be built out till Year 6; this chart indicates it would be built out Year 3.

MR. JAMES: That's correct.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Okay.

MR. JAMES: Right. And I think in the demographics, we would like to have the opportunity to look at the demographics and respond to it as well and make sure it accurately reflects what we think is the demographics.

COUNCILMAN NUTTER: Just one question on that as we're now looking at the monitor, Mr. James, and I understand what you're saying about the discrepancy, because you're saying that there is an area of essentially upper North Philadelphia that is in what's -- that has a 3 in the middle of it.

MR. JAMES: That's correct.

COUNCILMAN NUTTER: And that would mean that in the Year 3, there's going to be build-out activity in that area.

MR. JAMES: That area is to be built out in the Year 3.

COUNCILMAN NUTTER: Then my only question is, as I'm looking now on the farthest northeast section of the City, bordering Bucks County, that's Year 1.

MR. JAMES: Right.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN NUTTER: You come down, that's Year 2.

MR. JAMES: Right.

COUNCILMAN NUTTER: Year 3, you're going there, and then the proposal is to skip the lower Northeast and what, I guess, is Kensington, Richmond, and all of those areas and then immediately go to North Philadelphia?

MR. JAMES: That's correct.

COUNCILMAN KENNEY: Those neighborhoods would be like Juniata --

MR. JAMES: Right.

COUNCILMAN KENNEY: Can you just name a couple of the others so we can just orientate ourselves.

MR. JAMES: In Area 3 or on the river wards --

COUNCILMAN KENNEY: Area 3.

MR. JAMES: In Area 3 in the center, it's mostly North Philadelphia and parts of --

COUNCILMAN NUTTER: Olney.

MR. JAMES: The lower part of Germantown, and you'll pick up some parts of Olney right there in Area 3.

COUNCILMAN NUTTER: Right. It looks like Olney and East and West Oak Lane and --

MR. JAMES: Olney and Logan and that area, right.

COUNCILMAN NUTTER: Okay.

MR. JAMES: I mean, the idea was to have some appearances in the different markets, so it was not just the cherry-picking (unintelligible) and build out the whole area.

COUNCILMAN KENNEY: Has that been the original plan from the get-go or was that changed?

MR. JAMES: Like I said, there were several different discussions regarding it, but that was the part that was finally settled upon to be included the bill, and that's completely different than what's on Page 7 of Dr. Hutchinson's report.

COUNCILMAN NUTTER: Okay.

COUNCILMAN KENNEY: Okay, thank you. Thank you, Mr. James.

Dave Davis, please.

(Witnesses come forward.)

COUNCILMAN KENNEY: We intend to go

10/31/00 PUBLIC PROPERTY, BILL 000452

through the entire list this evening as the first day and night of hearings on this. Can I just do a real quick run-down as to who was originally scheduled to testify so I can get an idea of --

I see Lance Haver is still here, Ed Mooney is still here.

The representative from the Police Athletic League is not here, okay.

Dina Mendros?

MS. MENDROS: Here.

COUNCILMAN KENNEY: Reverend Shine is here. Thank you.

Lisa Hilsee is gone.

Will Daniel from Wilco Electronics is here.

Gretchen Clausing and Inja Coates are here.

Richard O'Malley?

MR. O'MALLEY: Here.

COUNCILMAN KENNEY: James Royal?

MR. ROYAL: Here.

COUNCILMAN KENNEY: Dylan Wrynn? He left.

Joan Preston?

10/31/00 PUBLIC PROPERTY, BILL 000452

MS. PRESTON: Here.

COUNCILMAN KENNEY: And Bob Olivetti?

MR. OLIVETTI: Here.

COUNCILMAN KENNEY: Okay. We thank you for your patience. The reason that we get the bulk of the technical testimony on the record is so we have a consistent record and where we can have questions on an ongoing basis. So while you're at the end of the list, we do appreciate you're being here and your patience, but we need to get all this other stuff in so know what we're talking about by the end.

Mr. Davis, please identify yourself for the record.

MR. DAVIS: Thank you, Chairman Kenney. My name is Dave Davis. I'm the President and General Manager of WPVI Channel 6. Despite the lateness of the hour, I appreciate your patience and the opportunity to come before you today and the members of Council. Hopefully the record will show that we are still in session now so my wife will understand why I'm not home for trick-or-treat.

COUNCILMAN KENNEY: I have the same

problem. Want to borrow my cell phone?

(Laughter.)

MR. DAVIS: I've already called, it doesn't do much good.

I have been employed at Channel 6 for the last eleven years. I am here to speak in favor of this bill that gives permission to RCN Telecom Services to build a second video cable system in Philadelphia.

Going back to the days of WFIL and American Bandstand, Channel 6 has been the community television station of Philadelphia. For the last 25 years, we have been the leading provider of local news, information, and entertainment programming.

We have been long-term partners with the City on every important event: The 4th of July, the Liberty Bell, the Millennium Celebration, the First Union Professional Bank Race, the Flower Show, Ethnic (unintelligible) Tall Ships, the Volunteer Summit. If I can get out of here on time, tomorrow at noon, we are having an announcement of this year's Thanksgiving Day Parade, which we do in conjunction with the

City, an even that we rescued when Gimbel's went out of business in 1986. We are also planning a special programming for the 100th anniversary of City Hall on New Year's Eve. Quite simply, Channel 6 is Philadelphia.

We try to program the station in a way that respects our viewers. Action News is presented by veteran professionals know the City and report on it responsibly. We produce the most public affairs programming of any station, shows like Visions and Inside Story. Next month, we celebrate 25 years of Puerto Rican Panorama.

We are the station of record for political discourse, offering nine hours of political debate time this fall. Last fall, Channel 6 was the only station to sponsor a debate in the mayor's race, and we did three of them.

Our syndicated programming is Oprah, Rose, Regis, Wheel of Fortune, Jeopardy -- not Jerry Springer, Howard Stern, or Dr. Laura.

We also belong to a network that shares our commitment to quality, with first-rate news and entertainment, from Good Morning America to Nightline, the Practice, to Millionaire.

10/31/00 PUBLIC PROPERTY, BILL 000452

We are the most-watched station in Philadelphia by an average of 40 percent, and we enjoy the highest audience levels of any major market station in the country. For that, we are very grateful to our viewers.

We also know that we have to compete for those viewers every hour of every day, because they have many other choices. This is not the same situation in our cable industry. When the City was first wired for cable, you saw the wisdom of spreading franchises among different providers. In the surrounding region, there were 15 different cable company owners. Now, for all practical purposes, with 85 percent of the market under its control, there is just one: the Comcast Corporation.

Eight years ago. When the federal government first passed retransmission consent laws, giving broadcast stations the right to negotiate a fair value for the signal, Channel 6 negotiated dozens and dozens of agreements with all the cable companies in the region. No one company controlled more than 28 percent of the market. Those deals were done quietly, efficiently, and without rising to the public's attention.

Now turn the clock ahead to this year and look at this chart at how things have changed since our last negotiation. Right now, Comcast owns or controls approximately 85 percent of the 2 million cable homes in our market. In 7 years, they have from 28 percent to 85 percent. In 1997, Comcast followed up its take-over of the Philadelphia 76ers and Flyers with Comcast SportsNet, the local sports channel. As the Philadelphia Inquirer pointed out this past Sunday, the biggest reason for SportsNet is to protect the Comcast Cable monopoly. Comcast has used a loophole in federal communications law to deprive one of its natural competitors, the home satellite industry, of this local programming. In effect, Comcast is using the assets of two of Philadelphia's sports teams to maintain the highest cable rates in the country.

Our original agreement with Comcast expired December 31st of 1999. For more than a year, we have been negotiating for another long-term development for their use of Channel 6 signal. Since January 1, we have received nothing from Comcast, nothing in exchange for the most popular channel on its system, while they continue to collect the highest monthly cable charges in the country from Philadelphia residents.

Because of our respect for viewers and to show good faith in negotiations, we have been granting temporary extensions to Comcast for the last ten months. Just last Friday, we gave them another extension, this time until November 29th. And what has Comcast offered? They have pledged not to take Channel 6 off its system. That would be like me pledging to keep driving your car without paying for it. Or a Comcast customer pledging to keep taking the cable service, even though they stopped paying for it. I hope you see through that hollow pledge, as we do.

And we want City Council to hear this straight from us. If Comcast continues to refuse to give our company fair value for Channel 6, these three extensions will end. And Comcast will have to discuss directly with their own customers how much their cable service is worth without Channel 6.

10/31/00 PUBLIC PROPERTY, BILL 000452

Comcast is the last major cable company that we do not have development with. Why? The only reason is because they are negotiating from the strength of their monopoly, and this is what brings us here today before you.

Imagine if there were already a second cable provider in Philadelphia. With one of them, RCN in this case, we already had an agreement for carriage of Channel 6. With the other, Comcast, we did not have an agreement. Do you think Comcast would be giving us the back of its hand as they are now? Or do you think they would be aggressively pursuing a deal with Channel 6 so they could include us in their package to sell to consumers. Or imagine if the Comcast salesperson at your door was describing the bundle of channels available for the basic rate of $42 but, by the way, Channel 6 was not a part of that package. Do you think they will sign up as many customers at that rate?

Please take a look at the chart to your right. It shows the average number of television households watching in cable homes. Almost all of them are obviously Comcast homes. For each of the

10/31/00 PUBLIC PROPERTY, BILL 000452

channels during an average broadcast day, sign-on to sign-off, 6 a.m. to 2 a.m., during the most recent ratings period in May of 2000. On the top is the bar representing Channel 6., with an average 7.3 rating in almost 200,000 households in any given quarter hour.

Next is the NBC station, with a little less than a 5 rating, or 125,000 households. The bars go down in descending order through the other local stations. Then the cable channels start to show up -- Nickelodeon, HBO, and ESPN, the most popular, at about a 1 rating.

They trail off from there, with the first Comcast-owned channel, Comcast, SportsNet averaging less than a 0.7 rating. And remember, this is during May, when the Flyers ran in the play-offs, so it was a peak month for that channel. The rest of the channels obviously (unintelligible) don't have enough viewership to even register with Nielson.

So when we try to determine value, let's compute. More than a 7 rating for Channel 6, less than 7/10s for Comcast SportsNet. Channel 6, then, is at least ten times as popular with the

10/31/00 PUBLIC PROPERTY, BILL 000452

viewers as SportsNet. Comcast charges customers more than $1 a month for SportsNet. So what is Channel 6 worth to them? Maybe $10 a month by their own pricing.

And what have we asked of Comcast for its right to resell the Channel 6 signal and have the most popular station on in its system? The grand total of 65 cents a month, 65 cents. Now, we know Comcast isn't able to sell ad time on Channel 6 like some other of its cable channels, but by any reasonable standard, 65 cents a month for the most watched channel seems fair.

And we tried to be flexible. If Comcast, like most cable companies, don't want to pay cash, our parent company has offered the option of placing two cable channels it owns on its system. If Comcast owns a Disney cartoon channel for kids and a soap opera channel for soap fans, we would give them the use of Channel 6. And we also ask that Comcast give its viewers in the City the same thing it provides most of its suburban customers: the Disney Channel on basic service instead of at a premium price.

So why has Comcast refused to accept

this offer, the same basic deal we have with every other major cable operator, one that gives fair value to Channel 6? Because a monopoly doesn't have to make fair deal. Comcast knows we are on the same boat as every consumer; we've had just one cable company to deal with.

And that brings us back to this hearing and the bill before you and your committee. We ask that you vote to begin to change that equation to give consumers and broadcasters a choice to help us break through the monopoly wall. Make no mistake; consumers pay a steep price for the Comcast monopoly. According to the Philadelphia Inquirer article of October 15th, Comcast customers in our city pay an average of $39.81 per month for 76 channels, not including the Disney Channel. In Chicago, RCN charges only $29 a month for 88 challenges, including Disney Channel. In its own study of cable competition, the FCC found that cable rates are 19 percent lower when over-builders like RCN are present. Applying this FCC calculation to the entire Philadelphia market yields approximately $100 million in cable overcharges to consumers every year.

I want to make it clear that we do not have any financial investment in RCN, nor do we own any distribution system other than a broadcast tower in Roxborough that continues to provide free over-the-air service directly to consumers, if they have an antenna. For the last two years, we have provided free video streaming of our newscast and special local programming over the Internet and we are now on satellite. Anyone who subscribes to that service can receive Channel 6. You get more channels at less cost, with Channel 6 included.

It's been our privilege to serve this community and we hope this testimony we offer today helps your committee make a more informed decision. Thanks again for the opportunity to come before you, and I stand ready to answer any of your questions.

COUNCILMAN KENNEY: Thank you for your testimony. And I think Councilmember Nutter and Councilmember Brown were trying basically feel out this whole situation, trying to understand what seems to be a real deep animosity and anger about this whole situation between Comcast and -- I mean, as big-business people go, it seems to be a little personal from time to time.

MR. DAVIS: It's really not personal.

COUNCILMAN KENNEY: Not personally but corporately. That's just my impression.

How long has Disney owned ABC?

MR. DAVIS: Five years, 1995. They took acquisition between 1995 and going into --

COUNCILMAN KENNEY: Prior to that ownership, what was the relationship with ABC and Comcast as far as getting on? I mean, how were they on; were they on for free then too, did ABC complain?

MR. DAVIS: Well, understand --

(Unintelligible, parties talking over each other.)

COUNCILMAN KENNEY: -- a relatively recent phenomenon.

MR. DAVIS: Well, I think there's two things. Number one, I think you have to look at that chart. In 1993 when ABC and Channel 6 negotiated agreements, we did basically the same deal with everybody and we had lots of different people to agree with.

(Unintelligible, parties talking over each other.)

MR. DAVIS: If you don't want it distributed by signal to hold over our head, 85 percent of the cable homes. It just wasn't that same situation. Understand, (unintelligible) we compete with every day on this chart over here. We compete with those channels, we compete with other cable channels, Disney movies. You go to the theater, you have 20 or 30 movies to choose from in (unintelligible). Competition is obviously, you know, not a problem for us. The issue in this case is that we're not dealing in a competitive environment; we're dealing with one cable company.

COUNCILMAN KENNEY: Are all of those cable companies listed on 1993's list, were they all serving Philadelphia at that time?

MR. DAVIS: Serving our market. In the City, there were four.

(Unintelligible, parties talking over each other.)

MR. DAVIS: -- were awarded four

10/31/00 PUBLIC PROPERTY, BILL 000452

different franchises.

COUNCILMAN KENNEY: So in '93, there four.

MR. DAVIS: In the City.

COUNCILMAN KENNEY: Cable operators in the City.

MR. DAVIS: Yes. And each one -- you would know better than I would --

(Unintelligible, parties talking over each other.)

MR. DAVIS: I think it was fairly even.

COUNCILMAN KENNEY: But now there's two in the City.

MR. DAVIS: I know only of Comcast and Time Warner.

COUNCILMAN KENNEY: There's two.

COUNCILMAN NUTTER: Right. By '93, there were probably only three, Mr. Chairman, three cable companies. I think by '93, Comcast, I think, had potentially bought --

MR. DAVIS: We negotiate, as Comcast does, for the entire market. They -- we, in fact, negotiate for the entire system. Comcast owns homes outside of Philadelphia; we obviously own stations outside of Philadelphia. The reason Philadelphia has become the center point is because they own 1.5, 1.8 million homes in this market. The vast majority of their homes are in the Philadelphia market.

COUNCILMAN KENNEY: I guess what I want to find out is -- get a flavor for is, what was a typical arrangement with ABC in 1993 and prior?

MR. DAVIS: In 1993, in the first year of retransmission agreements, our deals were in exchange -- again, most cable companies, even though they build their business on the backs of the over-the-air stations, most cable companies took a vow not to ever pay a broadcaster for their signal. And so the broadcasters, all of whom were owned by larger parent companies, also owned cable channels, said, Fine, if you don't want to pay us cash, then will you clear these channels that we own? And everybody did that deal. With us back in '93, it was for ESPN2. And that's how ESPN2 --

COUNCILMAN KENNEY: So that the so-called lost leader that was -- which turned out not to be a lost leader, but that was kind of the throw-in at the time.

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. DAVIS: Yes. We said, You could have the use of Channel 6 --

COUNCILMAN KENNEY: But no money changed hands, there was no payment for 6.

MR. DAVIS: Correct, no cash payment.

COUNCILMAN KENNEY: So we give it to you but you are to take ESPN2 or --

MR. DAVIS: Yes.

COUNCILMAN KENNEY: And now today's discussion deals with, You can take us but you need to do the soap channel and Disney and the Cartoon Network.

MR. DAVIS: Yes. Understand with the Disney Channel, in 68 million homes out of 70 million that the Disney Channel is on, it's on in basic. Comcast is the last place where the Disney Channel is still a premium. And as you just heard, it's only for some of its customers, most of whom are in the City updated.

I've got some update information. In '93, the Comcast share in the City was 54 percent and now it's 80 percent. And that's just in the City.

COUNCILMAN KENNEY: So '83 or '93?

10/31/00 PUBLIC PROPERTY, BILL 000452

MR. DAVIS: In 1993.

COUNCILMAN KENNEY: It was 54, now it's 85.

MR. DAVIS: Now it's 80 in the city.

COUNCILMAN KENNEY: 80 in the City.

MR. DAVIS: Yes.

COUNCILMAN KENNEY: All right. So you believe that approval of RCN would loosen up Comcast's grip on your throat.

MR. DAVIS: We're saying that because Comcast is the last system for us to make a deal with, because we have been granting them extensions since January 1, because since January 1, they have been paying us nothing in return for that, we're saying, forget going back in arrears, right now, if we can get a deal, there's a cable company that's one step larger than they are nationally, Time Warner, there's one step lower, which is Charter. The deal that we have on the table and that we have had on the table with them says exactly in the middle of those two deals and it calls for the clearance to Disney, SoapNet migration of the Disney Channel to basic in the same rate, in the same return, the same level of payment that those other cable companies have agreed to.

The question you ask is a very good one. Why has it been so difficult to make a deal with Comcast? The only thing that we can draw that conclusion from is this effort, a very successful effort by them, they're a very smart company, very good in a business sense, to create this super cluster of homes, from Baltimore-Washington up to northern New Jersey, with the Philadelphia region right in the middle. That has been their business plan to concentrate homes within a given area, to create this monopoly, because then they assume they can deal from a gaiter position of strength, which they seem to have been able to do in our negotiation.

COUNCILMAN KENNEY: And please don't take any offense to this question, and I'm not defending Comcast or I'm not criticizing ABC or Disney or anybody. But what is the difference in a company like Comcast or a company like ABC using its ability, it's power, its brain power to be able to become -- I mean, for example, I would say that ABC, in all fairness to the other TV news stations, is a virtual monopoly in Philadelphia. I would suspect that -- I mean, when I, for example, when I'm doing my news channel surfing at night, I start out at 11 o'clock on 6, and then I start moving my way around the dial.

MR. DAVIS: We appreciate it.

COUNCILMAN KENNEY: Let me just finish. But also, if you look at the number of shows that are popular on the prime time and commercial entertainment ABC lineup, it is -- explain to me the difference between ABC's overall control of the ratings and Comcast's overall control of their market; what is the difference in --

MR. DAVIS: Well, we control a much lower percentage, number one.

(Unintelligible, parties talking over each other.)

MR. DAVIS: Number two, you are free, as you just described, to browse among all the stations, all the channels. If we weren't doing a good job, I assume you wouldn't be watching it.

One warning: If you become a Comcast customer with some of their new digital boxes and you turn on your set through that digital box,

10/31/00 PUBLIC PROPERTY, BILL 000452

it's not going to turn off to your favorite channel; it's going to turn on the CN 8, because that's the way they set it up.

COUNCILMAN KENNEY: It does that now. My analog box turns on to CN8.

MR. DAVIS: Okay. It doesn't turn on to the last channel you watched. That's how they can exercise control more that we do. We don't own a distribution other than the tower that sends out our signal to people with an antenna. We can't directly control what people watch, where those channels are placed at, we don't have that control. All we have is content, all we have is content that the viewers have to make decision every day whether to watch us or not.

COUNCILMAN KENNEY: And I'm not going to suggest this is going to happen but let me give you an example. I mean, when you're talking about control of the channels, it's that they could take 6 and move you to 63.

MR. DAVIS: Under our current agreement, they can't do that.

COUNCILMAN KENNEY: But theoretically, it could.

MR. DAVIS: Oh, sure.

COUNCILMAN KENNEY: Okay, all right. I'm just trying to get an idea of the dynamics as to what the dispute is. It just seems to be -- and the other question is, how does 'CAU and KYW and CBS and NBC deal with this?

MR. DAVIS: Obviously, legally, we can't collude, I can't call them and ask, Hey, what was your deal? All I know is what I read in the papers, and what I read in the papers with NBC is that the people in this market came within three or four days of not seeing the extended Olympic coverage on CNBC and MSNBC because Comcast was the last major cable company to make a deal with NBC. What that tells me is that NBC had their own problems with Comcast.

Now, channel 3's parent company is Viacom. It just so happens that Comcast is now in the process of buying a home team sports channel in Baltimore-Washington that Viacom happens to have an interest in.

So there are all kinds of those business deals that we're not privy to. So when you ask how they do it, I don't know that. All I know is that NBC came very close to not having a deal, you know, for the Olympics.

COUNCILMAN KENNEY: Okay. Councilwoman Brown.

COUNCILWOMAN BROWN: You spoke to one consequence that would come -- potentially exists if the arrangement or deal between you and Comcast does not materialize, and that is one option or one consequence that you would move to Channel 68. Are there any others?

MR. DAVIS: Well, yes, and one of those is what we're doing right now: We're trying to speak out, we're trying to do everything we can within our ability to try and convince Comcast that Channel 6 is worth having on its system, that it's worth the same deal that other cable operators have given us in exchange for the use of the over-the-air stations. We're trying everything we can; that's what we've been doing for the last ten months.

We have been granting -- understand, we have been saying, Take our product that includes very expensive programming -- Monday Night football, we're paying a billion dollars a year to the NFL for the rights to Monday Night Football. Comcast is able to put that, through Channel 6, on their system and get money for it every day. I mean, how many people would have cable if you couldn't see Monday Night Football, Who Wants to be a Millionaire, Action News? I mean, how much is that worth? It's got to be something to him.

If they can answer this question, how many people would be willing to pay their rates if Channel 6 weren't a part of the system? Do the math. I think that's where you come up with how much we're worth to them. Like I said, 65 cents, they're paying themselves $1 for Comcast SportsNet, they're charging other cable companies outside -- next to them in the market up to $1.50 for Comcast SportsNet. Forget these other channels. If they don't want to put the Disney Channel -- if they have a problem with that, if they don't like that arrangement, if there's problems between them and Disney, 65 cents a month, we don't even go back in arrears to January, start right now. That deal has been on the table in front of Comcast for more than a year, because they're the ones that asked for it.

So again, if you sense a level of frustration, you're absolutely correct. I would much rather be spending all of my time trying to do the best job possible running the television station that I know Philadelphia holds near and dear to its heart, as do I. That's where I've spent my last 11 years.

I don't want to, frankly, be here. I've never come and asked you for anything; we're always in the giving mode, that's what we like to do, but this has been particularly frustrating, and I think it's because of their concentration of power in this particular market.

COUNCILMAN KENNEY: Okay, thank you.

Any other questions?

(No further questions.)

COUNCILMAN KENNEY: Thank you very much for waiting.

MR. DAVIS: Thank you, Chairman.

COUNCILMAN KENNEY: Mr. Haver.

(Witness comes forward.)

MR. HAVER: I will be uncharacteristically brief, very brief. You've put in a very long day.

10/31/00 PUBLIC PROPERTY, BILL 000452

COUNCILMAN KENNEY: Please identify yourself for the record.

MR. HAVER: My name is Lance Haver, I am a board member of CEPA, the Consumer Education and Protective Association, a 34-year-old grassroots consumer group founded by late Max Wiener.

I am here today to urge City Council that instead of allowing RCN to wire the City and force homeowners to allow private corporations to place wires on their home, possibly damaging them without compensation, to instead control the price of cable TV by revoking Comcast Cable's franchise. The City should then use the right of eminent domain to take over the cable and lease it to a company or companies that would charge a fair rate and provide the promise public access.

There is no question that Comcast is engaged in overcharging and price gouging. It has purposely been charging City residents higher rates than wealthy suburbanites. It may just be a coincidence that the higher rates fall on a population that contains a higher percentage of minorities or it may be a part of Comcast's marketing plan. It's unfortunate the professor didn't study Comcast's own pricing policies.

There should be no question in anyone's mind that Comcast has been guilty of price gouging and charging lower-income households higher prices. According to the October 15th Philadelphia Inquirer, Comcast charges the second highest rates in the nation for basic service. When the price of the Disney Channel is added, Comcast becomes the highest-priced cable TV service in the nation.

In essence, Comcast has become an unregulated monopoly, free not to only charge City residents more than suburbanites, but free charge the highest rates in the country and' free to control content. How is allowed that when I turn my cable on, I am always turned to a Comcast station? How many channels will Comcast take over for itself, thus depriving me of the diverse programming that should come with the cable? How is Comcast able to hold consumers hostage by saying that if they don't like the terms, they refuse to carry Channel 6, which produces the most watched news shows in the region.

10/31/00 PUBLIC PROPERTY, BILL 000452

I heard the Comcast spokespeople say they're not a monopoly, but I'd like to read a direct quote from Mr. Roberts from the October 1997 Vanity Fair magazine. The question now -- quote, the question now is whether Roberts can capitalize on an apparent loophole in the 1996 Telecommunications Act in order to lock up the Philly area sports programming. Quote, we don't like to use the words "corner the market" because the government watches our behavior, unquote, Roberts said with a laugh. Quote, let's just say we've been able to do things before they were in vogue.

And I also heard the spokesman say that Microsoft has a bigger share of the market, but as we all know, the federal government has called Microsoft an antitrust criminal.

I know that the popular solution to an unregulated monopoly is to try and foster competition, but it is a false promise for capital-intensive industries like utilities. Look at the decontrol experiments in telecommunications, electricity, and natural gas. While long-distance service costs have gone down,

10/31/00 PUBLIC PROPERTY, BILL 000452

dial tone services have skyrocketed. The average consumer has seen their bill increase, while big users and multinational corporations have seen their bills shrink.

Open the doors to competition in the electric industry without guaranteeing a ceiling price leads to skyrocketing price for consumers. In California, the price for electricity has doubled as a result of bringing in new companies. The same has been true with natural gas. One of the reasons that we face such unbelievably high rate increase is because natural gas has been deregulated, allowing companies to charge whatever they want.

Time and time again, our government has fallen for the false belief that individual consumers have some ability to negotiate prices with giant corporations. This simply isn't true. Can anyone on this committee imagine a family in Philadelphia calling any of the cable companies, negotiating an individual price for their family? Neither Comcast nor RCN would allow consumers to negotiate for fair prices.

It is only by being organized through

our government which acts through regulations that consumers can have any chance to negotiate a fair price. That is why CEPA believes that the best action for consumers is for the City to revoke Comcast's franchise, take over the cable, and lease its provides will negotiate with the City to charge a fair and just price. Anything else will continue to allow corporations like Comcast to rip off the public. And I might say, RCN was unwilling to guarantee a lower price for consumers.

In closing, let me also add my voice to those who are demanding that City Council force the cable TV and this administration to live up to the promise of public access. We were told that one of the benefits the people of Philadelphia would get in exchange for giving franchises to corporations is public access. That was over 15 years ago. It's time to honor the promise.

Thank you.

COUNCILMAN KENNEY: Thank you very much for your testimony.

(Applause.)

COUNCILMAN KENNEY: Any questions for

10/31/00 PUBLIC PROPERTY, BILL 000452

Mr. Haver.

MR. HAVER: If I may submit this for the record.

COUNCILMAN KENNEY: Thank you, Lance.

The Chair now recognizes Mr. Ed Mooney.

(Witnesses come forward.)

COUNCILMAN KENNEY: Good evening. Please identify yourself for the record.

MR. MOONEY: My name is Edward Mooney, the Vice President of Local 13000, the Communications Workers of America.

COUNCILMAN KENNEY: Please proceed.

MR. MOONEY: Thank you, Mr. Chairman. Local 13000 represents over 7,000 workers employed in the communications industry in Pennsylvania, many of whom are employed within the City of Philadelphia. I want to thank you for the opportunity to appear today to explain our position concerning RCN, some of whose employees we represent.

I believe it is important for you to understand the manner in which RCN has flouted our nation's labor laws. There is no better way for me to explain this than by briefly summarizing the

10/31/00 PUBLIC PROPERTY, BILL 000452

December 30, 1999 decision by the National Labor Relations Board Administrative Law Judge Benjamin Schlessinger.

In his decision, Judge Schlessinger found that RCN engaged in wholesale violations of the National Labor Relations Act, beginning in September 1998, when an independent union, which then represented certain RCN employees in North Hampton, Pennsylvania, affiliated with the CWA. The result of that affiliation was to settle for -- can only be described as a campaign of terror in which RCN:

Refused to recognize the CWA and has refused to bargain with Local 13000, even though the affiliation was lawful;

That refused to have off-duty employees to have access to RCN property in order to prevent them from engaging in activity protected under Section 7 of the Act;

That legally barred employees from speaking about Local 13000 while at work;

That legally barred employees from wearing union insignias, and legally disciplined employees who wore union insignias or otherwise

10/31/00 PUBLIC PROPERTY, BILL 000452

insisted on exercising their lawful rights under the National Labor Relations Act to discuss union affairs;

Unilaterally changed terms and conditions of the employment with regard to wages and hours and other terms and conditions of employment;

And illegally prevented Local 13000 from communicating with employees through the use of union bulletinboards.

I have the decision available for anyone who might want to read the contents in detail. And I must tell you that the text of the decision can not really and accurately convey the fear and the frustration our members who have had to suffer from RCN's refusal adhere to civilized forms of industrial relations behavior.

An added problem, of course, is that this illegal conduct on the part of RCN began over two years ago. It took almost 15 months to get the judge's decision, and now RCN has appealed to the full board in Washington, DC. That appeal has been pending for very eight months and we are still awaiting the board's decision. While the union is quite confident that the board will uphold the judge's decision, RCN may still appeal to board's opinion the United States Court of Appeals, which will only result in additional delays.

Moreover, during this entire period, RCN has continued to act as if there is no union representing its employees, notwithstanding the very clear and direct findings by the judge. Further, RCN continues to violate the Act, making various changes without bargaining, harassing union members, and otherwise (unintelligible) its obligations.

During this time period, RCN has attempted to insert itself into the Philadelphia communications and cable market, increasing its volume of business and, presumably, its earnings, at the same time that it has denied its employees the fundamental right enshrined in labor laws for over 60 years.

I think you rally have to ask yourself whether you want such a company providing services to the citizens of Philadelphia. Any provider in the City must assure that its employees will offer the highest level of service available.

How can RCN provide such assurances, given the environment it has created? Does anyone really believe that a workforce with low morale that results from the actions of a company such as RCN, a workforce without input into their jobs, a workforce with no ability to ensure that its members will share in RCN's prosperity will meet the needs of the citizens of Philadelphia. Can anyone seriously maintain that a company such as RCN, which is in such labor turmoil, is going to meet its obligations in a competent, effective, and timely manner? Of course not. We know it, you know it, and so do the citizens of Philadelphia.

Local 13000 strongly believes that you have the ability to ensure that Philadelphians are not afflicted by a company whose service will inevitably be affected by its refusal to recognize its legal obligations. We hope you'll exercise that ability.

Thank you.

COUNCILMAN KENNEY: Thank you very much for your testimony. Thank you for coming in.

Are there any questions?

(No questions.)

COUNCILMAN KENNEY: Thank you.

Dina Mendros, please.

(Witness comes forward.)

COUNCILMAN KENNEY: Good evening. Please identify yourself for the record.

MS. MENDROS: Okay, thank you. My name is Dina Mendros. I'm here representing Citizens for Consumer Justice, which is Pennsylvania's largest consumer rights organization. In the over three years that we've been in existence, we've worked on many issues important to Pennsylvanians generally and Philadelphians specifically.

Some of CCJ's accomplishments include spearheading the 1998 Patients Not Profits Coalitions Campaign to preserve charitable assets and community-accountable health care throughout the demise, bankruptcy and sale of the Allegheny Health System in southeastern Pennsylvania. We testified on numerous issues affecting consumer rights on the state level. In addition, we are working to preserve social and health security through passage of a real patient's bill of rights, to add a prescription drug benefit to Medicare, for campaign finance report, and many other issues.

So much of our work at CCJ depends on getting our message out. We would not have been nearly as effective in our work if we had not been successful in attracting the attention of the news media. In order to get information to people in today's fragmented society, access to mediums of mass communication is paramount. Recognition of this is just one of the many reasons CCJ has joined the fight for public access cable television. CCJ has been involved in the fight to get public access cable television for the residents of Philadelphia for several years. In this information age, citizens must have access to the airwaves, and not just as consumers, but also as producers.

The main purpose of our work at CCJ is to work for the rights of citizens and ensure that their voices are heard. The voices of citizens hold real political power. One reason that public access is so important is that through this medium, people will not only be able to speak out, there will also be a distribution system in place that will allow these voices to be heard.

We are here today to address the issue of new cable company, RCN Corporation, which is seeking approval of their franchise agreement or their OVS agreement with the City. As reported in a recent Inquirer article dated October 15, 2000, Philadelphians currently pay among the highest cable rates in the nation. This, despite Comcast, currently the major cable subscriber or supplier for the City calling Philadelphia their corporate home. I guess the home court advantage is very beneficial to their corporate interests; it certainly isn't benefitting the interests of City residents. We hope that if another cable company is allowed to do business in Philadelphia, the rates, as well as other aspects of service, will prove to be more advantageous to residents.

Whatever action City Council takes on this very important issue, the City must hold any cable company doing business in Philadelphia, those already in place and those that may come, to their agreements in providing public access. I know that publicly Comcast states that they are willing to meet they are obligations to the City regarding public access, the City only need ask. And I'm certainly not taking the City off the hook in that failure to move on this issue.

But behind closed doors, I understand that Comcast previously provided a video to City officials that portrayed only negative public access programming. This type of programming is negligible compared to the total amount of programming that public access stations around the country provide. Each year public access stations produce more programming than the programming of all major networks combined. This public-private difference is not (unintelligible) the quality of Comcast.

I know that public access (unintelligible) is not the main topic of this hearing but I use this opportunity to address this issue because City Council refuses to deal with this issue head-on. In a previous public hearing on the issue, when over 100 community members came and voiced their support of public access, few members of the Council attended, the press virtually ignored us. In comparing that hearing to this, it's not surprising, but it certainly is disheartening to see how solicitous City officials are to corporate interests, and by contrast, how disrespectful they are to community interests.

In closing, the citizens have been much too patient in their wait for public access. Citizens for Consumer Justice stands in alliance with the Philadelphia Community Access Coalition, who will be speaking shortly, in calling for the City to do the right thing, follow their own ordinance, and provide public access television for the citizens of the community. CCJ will be watching and will hold the City accountable if they fail to do so.

COUNCILMAN KENNEY: Thank you.

(Applause.)

COUNCILMAN KENNEY: Thank you for your testimony. Just one issue, are you in favor or opposed to the granting of this? I mean, I understand your concerns over public access, but you weren't clear on whether or not you support or oppose the pending legislation?

MS. MENDROS: I will support the City in making a decision, but whatever way they choose, I want them to make them accountable for public access.

COUNCILMAN KENNEY: Okay, thank you.

Reverend Shine, please.

(Witness comes forward.).

COUNCILMAN KENNEY: I appreciate your patience. I know it's been a long evening. Nice to see you.

REVEREND SHINE: Mr. Chairman, I feel like an ancient prophet, especially the one who was a frequent visitor before the pharaohs of Egypt, always saying, "Let my people go."

(Laughter.)

REVEREND SHINE: I'm so frequent here at this chamber that I want to express my thanks for the opportunity to come.

Mr. Chairman, right from the start, let me say that when we learned of this hearing today, it was the attitude of the leadership of the Black Clergy of Philadelphia and Vicinity to be in support of the position that Comcast takes. Now, why?

I want to preface my rationale with why the clergy of this city asked me to come. As you

10/31/00 PUBLIC PROPERTY, BILL 000452

may be aware, that a few years ago, an organization was formed. It was called the African-American Association for Corporate Responsibility. I was elected chairman of that committee by virtue of Peter Bijore (ph.), the CEO and president of Texaco, who refused to let my peel go. It was our organization and my vice president, Barry Ellen Roberts, who was the lead plaintiff in that case, and you saw the outcome, the world saw the outcome.

And as a result of that, we believe that our mission was very formidable, to be sure that the interest and concerns and the needs of African-Americans in the marketplace in the corporate America should be addressed with equity and parity.

With what I've come to learn about what Comcast has offered by way of social responsibility -- and by the way, here in Philadelphia locally, I am a board member of what we call "PACRI." PACRI is the Philadelphia Association of Catholic Religion Investors. And as a board member of that, we combine our interest with ICCR. ICCR is the Interfaith Center for

Corporate Responsibility. Globally, we have shareholders and about $185 billion in stock around the globe.

It was our organization, the AACR, the African-American Association for Corporate Responsibility, that was at the forefront of divesting in South Africa. So we do not come before this body lightly, nor do we take issue with RCN lightly, but we do give our wholehearted support for what Comcast is about in its social responsibility, as we heard in their statement today.

In regards to the role of this pending legislation, I'm going to ask, on behalf of the -- in Philadelphia, where we represent -- Black Clergy of Philadelphia and Vicinity, we represent more than 250,000 members of our churches. Consequently, we are TV viewers, a significant part.

When I heard testimony given earlier about the various charts, most of that language was far and above what I could even understand, admittedly so. However, but when I look around the chart and see the areas -- let's say I think I heard here tonight the term "cherry-picking." In that case then, there were selected areas by which would be serviced over three to four to five years. Then the -- if at all, the areas that are best served in the more concentrated or high density areas like North Central and West Philadelphia, Kensington and Fishtown and et cetera. Now, I happen to live somewhere near -- close to the greater Northeast, and my church is this in West Oak Lane, so I'm familiar with the service that's being provided.

And let me further state that if there were other mediums, and I listened to the person from -- the gentleman from Channel 6. In competition, which this is about, well then, just line up your business, use the business sense, and be more competitive and get on the cutting edge. If this organization has come to be on the cutting edge and they have a certain interest in serving the communities, then, by all means, do it. My concern is that those who are least served, or under-served, would be better served.

Economically, not far from what I've heard, being in this chamber, RCN would economically leave some out, educationally block some out, and some will be socially falling out, because they will not be able to benefit at the outset of what might occur until this legislation be enacted.

Philadelphia is known to be fair and equitable and parity. That's our goal, that's our mission. If we then allow such legislation as this, what potentially would occur is exactly what I said, that there will be those that will in the first three to four to five years be economically left out. There will be those that will be educationally left out.

There was conversation here about the OVS, open vision -- or open video systems. Well, our position that we would take is that there would be those that, if RCN has its way and our organization, the AACR, was to be in touch with them, to sit down with their CEO about their interests, we would move very aggressively to be assured that what could really take place that would benefit all people, not just some who would make it more lucrative for others in the selected area, where a chosen market has been identified by those presenters.

That is a hand-picked market and it's obvious as to the reason why. To cultivate this kind of a market means that you strategize, and we certainly will strategize about what our role would be. We hear people talk about minorities and about other interests citizens' interests. Well, I'm here to represent the African-American interests, and I am satisfied with the service that's been provided and will continue -- I believe I stand on behalf of our organization, the Black Clergy of Philadelphia and Vicinity, when I say to you that the faster billings and the issue that we heard, the -- how they will impact immediately. If there's construction to occur, if there's employment to be gained, if there's a way by which we could be a included in the economic stability of our city, and all of us together, then I think that's the duty and the responsibility of the City Council, to be sure that whatever takes place in this city benefits the citizenry, not some selected area, some selected group, but all of the peoples.

Has RCN before you demonstrated or

given you any plan or strategy whereby the social responsibility of R -- I don't even know what RCN means. Is that an acronym or something? What does RCN stand for? But I know what Comcast is, but I don't know RCN. So if we knew what we were dealing with -- have they done any marketing in the African-American community to discover what would be some essential ingredients and needs there? Have they made some overtures? I listened again to what Comcast has said here.

So what does all of this mean if all the people's interests of this city are not going to be taken into consideration. It is about time in the 21st century that the interests of corporate America be more inclusive, more equitably distributed across the whole line, not just for the profit margin of some who could benefit the most, but rather, we enjoy competition, be glad to welcome it. Only if it's going to be equitable and there's parity for everyone. If that's not the intent or the interest that is included in what is presented by RCN, then, by all means, they will hear from us directly, and we will face them directly on this issue.

Comcast has made its presence felt and known. We enjoy the relationship in our community as a result of it. It has done what it could and is doing more, and I believe will do more. So with all of the other things that you must deal with and consider, then you must also know that we as a part of the community are being represented here to say that our concern is that RCN, that this legislation that will allow for them certainly in the form that perhaps that it is before you, that it must be again revised, or it must be dealt with in a more scrutinizing way, or it must be not be allowed to be passed through this body. Unless and until that can happen, then our support will be maintained as I have already stated that it will be.

Thank you, Mr. Chairman.

COUNCILMAN KENNEY: Thank you very much, Mr. Chairman.

COUNCILWOMAN BROWN: I have a question.

COUNCILMAN KENNEY: Councilmember Brown.

COUNCILWOMAN BROWN: Good evening,

Reverend Shine. You covered a number of points. The Chair of our committee in committee in his opening comments was very eloquent in saying and agreeing with you that Comcast has an admirable track record with regards to corporate responsibility. What I also heard Comcast say, however, was that their bottom line is that there be a level playing field. If there is a level playing field, then they welcome choice.

REVEREND SHINE: Yes.

COUNCILWOMAN BROWN: Given that potential, hoped-for scenario, what would be the position of the Black Clergy?

REVEREND SHINE: Then we would ask that a -- I already stated, that the social responsibility that we have enjoyed and that Comcast has already laid out before you, that let's see a comparable -- because when you say "a level playing field," then it must of necessity include the same kind of social responsibility that Comcast or (unintelligible).

COUNCILWOMAN BROWN: Okay.

REVEREND SHINE: That will benefit all people and just not be for those that can better afford it, such as in the Greater Northeast, as some of those charts indicated. But let's have a level playing field and not just a level playing field for competition's sake, but a level playing field for social responsibility's sake, as well as for the entire citizenry of Philadelphia.

COUNCILWOMAN BROWN: Okay.

REVEREND SHINE: I hope that that answers your question.

COUNCILWOMAN BROWN: It does, it does. I have follow-up a long, but we still have witnesses to go, so we'll follow up for sure at another hour.

REVEREND SHINE: Thank you.

COUNCILMAN KENNEY: Thank you.

Mr. Will Daniel.

(Witness comes forward.)

COUNCILMAN KENNEY: Would you please identify yourself for the record and proceed.

MR. DANIEL: Yes. Mr. Chairman and members of the committee, my name is Will Daniel, and I'm the owner of Wilco Electronic Systems and Wilco Service Inc.

My company also provides cable

10/31/00 PUBLIC PROPERTY, BILL 000452

installation services for Comcast. We've had a contract for Comcast since they received the first franchise back in 1986. We are a certified minority business enterprise. By hiring Wilco electronics under the MBE program, Comcast has helped to create over 300 jobs in the City.

My company also provides wireless cable services to a number of apartment complexes in the City, including the Philadelphia Housing Authority. We provide the service to over 500 household.

I'm here to share with you several concerns that I have with the plans that RCN Corporation has put before you to build a so-called open video system. First and foremost, I'm very concerned that RCN goes for hiring local and minority business will fall far short of what Comcast agreed to do. I understand that RCN only will agree to the goals that are less than half, and in some cases, a low little less than 20 percent of what Comcast agreed to under their cable franchise agreement with the City.

I also understand that RCN's current plans would establish local and minority business goals for only two years, unlike Comcast's commitment, which runs a full 15 years.

This is a positive thing for the City. If someone wants to come and use the City's available right-of-ways to make a huge profit, they need to give something back. Comcast has agreed to create community jobs and has made community investments. I think it's only fair to ask RCN to at least step up to the same commitments that Comcast has made and not try to get away cheap.

My second concern comes from what I know about RCN's business practices. When they come into the cities, the first thing they do is go to the apartment buildings and the condominiums. They try to grab low-hanging fruit. My company currently provides cables television services to a lot of these multi-unit buildings. If RCN is allowed to come in and cherry-pick and instead of taking only the fair obligation of (unintelligible) parts of the community, it would hurt me directly, and it won't help hundreds of thousands of Philadelphians who live in rowhouses and single-unit family units.

Mr. Chairman, if RCN is allowed to provide the service in Philadelphia, I think you need to ask them to behave like they are a part of the City and not simply allow them to skim off profits and ship them home to New Jersey. I urge you to hold RCN to the same cable franchise requirements as Comcast to make sure that RCN will give Philadelphia as much as they take away.

I thank you.

COUNCILMAN KENNEY: Thank you very much for your patience and testimony.

MR. DANIEL: Thank you.

COUNCILMAN KENNEY: Gretchen Clausing and Inja Coates, please.

(Witnesses come forward.)

COUNCILMAN KENNEY: Good evening. Please identify yourself for the record.

MS. CLAUSING: Good evening. Gretchen Clausing, C-L-A-U-S-I-N-G.

Actually, trick or treat.

COUNCILMAN KENNEY: Thank you.

MS. CLAUSING: I'm going to blame you for all of the bowls of candy that I have at home; I really don't need them.

But, anyway, I want to thank you, Councilman Kenney, and the committee members for giving me this opportunity to address you this evening. I am a member of the Philadelphia Community Access Coalition. We're a grassroots coalition of individuals and organizations concerned, very concerned, about the lack of community media in Philadelphia, notably public access television. And we've been lobbying to get public access television stations and community access centers activated and running in Philadelphia, as promised in the original cable franchise agreements dating back over 16 years.

Our members represent a broad spectrum of interests, including civic groups, business and technology, arts and cultural institutions, labor unions, religious organizations, and health care, peace and community and media activists. At this point, we have well over a hundred organizations that have joined our coalition along with countless individuals.

And I would just like to remind you, as Dina did, about that wonderful day in June of 1999, when we had over well over hundreds of

10/31/00 PUBLIC PROPERTY, BILL 000452

people in here testifying here in on behalf of their desire to have public access. Well, since then, we've grown, and we are continuing to grow. We become more informed, more active, and more impatient.

I see this really today as a watershed moment. It's been a very interesting time in these past couple years as all these franchise agreements have come up for renegotiation, and we continue to make these efforts to carve out public space, and I'm really tired of hearing about the attention being paid to always the corporate interests and not the interests of the citizens themselves. And I really want to urge you all to take this opportunity to really kind of, again, put ourselves in a place where we can actually seize the opportunities of these new technologies and put Philadelphia in the forefront of the community medium movement in this country. We are really at, as I said, a watershed moment.

So on that, I would like to remind members of Council and cable representatives and members of the press that public access remains an incredibly important issue to the citizens of

Philadelphia. This system could utilize, as I said, the converging digital technologies to provide a vibrant community-produced media system, including computer training, desk-top publishing, Internet access, Web site design, computer animation, community radio and video production.

And what I am really here to say today is that RCN shares this vision with us, and I'm very pleased that they're sort of willing and ready to work with us in making this happen here in Philadelphia. And I am very pleased to have seen them go on record today in support of public access television and our efforts in this area. They understand that Philadelphians are more than just consumers, but can be active participants in creating exciting television integrated with the other new media that has the power to communicate ideas and provide Philadelphians with unprecedented opportunities to learn from one another. They're directness and candor has been refreshing and very different from the lip service that we have received from the incumbents as, they've been referred to today.

However, I would also take this

opportunity to point out that the proposed OVS agreement, Appendix D, Page 3, where it is noted that RCN will create an escrow fund for the purpose of supporting the citywide government access facility. I contend that if they do this for the government, they should do it for the public as well and create an escrow fund for the public access cable stations.

In closing, I just really want to say that a community without public access is a community sorely disadvantaged. Along with being commercial-free, public access is the one place where images rarely seen in the mainstream media can be seen, images such as older people, people of color, people with disabilities, people with accents or those who speak another language, those who are less attractive, respectful teenagers, good cops, and images that I can't even imagine that represent the rich fabric that is our City of Philadelphia.

I also want to just again say that the true benefits of public access are beyond just what you can see on television, once those stations would be established, but they could

10/31/00 PUBLIC PROPERTY, BILL 000452

assist after-school programs, teach teens about the Web, televise town meetings, link block captains and community groups, assist social service agencies, and even provide free air time to local officials and candidates running for office.

So to make it simple, 'cause I think it's sometimes such an abstract and dense topic, so to cut through all this rhetoric, I'd like to sort of imagine situation, but a cable in a city for 16 years have been really selling us a really expensive car. And when I was 16 years old, and we want the keys and we want to be able to drive that car and we want to be able to not only drive that car, but then learn how to build our own car.

So with that, thank you.

COUNCILMAN KENNEY: Thank you very much.

Could you identify yourself and proceed.

MS. COATES: It says "good afternoon," but I guess it's now "good evening," Chairman Kenney and members of the committee. My name is Inja Coates, I-N-J-A, C-O-A-T-E-S and I'm addressing you today as member of the Philadelphia Community Access Coalition.

As was probably already stated. Our coalition represents close to 100 of Philadelphia's notable arts and cultural institutions, science and technology organizations, community groups, educators, churches, concerned citizens, and many other interested parties who believe in the power of public access to share information, provide technology training, spur creativity, and empower our neighborhoods.

And I just want to take a moment to state my agreement with Reverend Shine that we do strongly believe that we would like to see the corporate powers be more inclusive and that services should be rendered fairly. However, with all due respect, I don't believe that he speaks for the entire Black Clergy. In fact, our coalition has met with numerous members of the faith community who see the value of public access and strongly desire the ability to connect with their congregations through television, and they also recognize the opportunities that it represents to the young people and many other people in our community. And some of those people are here today and some of them had to leave, and so I just wanted to clarify that point.

Anyway, let me continue. I am pleased to speak to you today about Comcast. Comcast was once a small family-run company that began right here in Philadelphia. Now they are one of the largest cable providers in the country and they claim to be a good corporate citizen. It's interesting how businesses can claim citizen status, while real citizens are thought of as only consumers.

For the sake of argument, though, let's continue that line of personification for a moment. A company's corporate culture can be thought of as its personality, and let's take a look at Comcast's personality. They have typically charged as much as they possibly can for the least available service. They may call it "good business" or "being competitive," but it has generated so many complaints against them from municipalities and customers that the FCC was forced to issue a social contract to Comcast, taking them to task for price gouging. And this was over many years.

Many of the things that they came in promising in their refranchising were things that they were compelled to do by the FCC, and it was not out of the goodness of their hearts. Our organization had heard from people in other cities where Comcast has recently taken over, shocked at the way they have come in and bullied their way around. And they're asking us just, you know, a community advocacy group, What is up with Comcast? It would seem that Comcast's personality is a bit of a thug.

When you look at why there's no public access in Philadelphia, look at the fact that Comcast has shut down existing community access facilities in many other places where they do business. Look at the fact that they've provided an anti-public access tape to the Rendell Administration for a presentation that you and Councilman Rizzo called an attempt at brainwashing. Look at the influence they've cultivated over the last 17 years with their offices conveniently right across the street, to the point where Councilpeople, and I believe it was even you, Councilman Kenney, that referred to them as "an 800 pound gorilla." They claim to be good corporate citizens but it seems their corporate culture is one that does not care about the communities in which they operate.

It's hard to imagine that Philadelphia would be any worse off with RCN. Comcast claims that RCN represents unfair competition, and yet, they call it fair to monopolize the local sports broadcasts. If this situation were reversed and it was Comcast making a bid to enter this market, it is unlikely that they would be doing anything that RCN hasn't done to make it more fair. As one of the representatives from Comcast said, what's fair to us and what's fair to Disney are two different things. It's interesting when you talk about fair.

What -- we are concerned about the union issues that were raised. We trust that those issues would be resolved if RCN were, in fact, going to do business here. And we believe that Philadelphians deserve a choice as consumers and as citizens. We believe that RCN should be permitted to build in Philadelphia, with the hope that they can raise the bar for cable operators in this town and set a new standard as corporate citizens as well.

While we realize that what's at stake here is essentially about money, and lots of money, we believe that as RCN develops in Philadelphia, they will recognize that good business includes good community relations in a way that Comcast has not.

So that's -- thank you. Well, I had other points I was going to make that were in response to things that were said but, uh. . .

COUNCILMAN KENNEY: Thank you very much.

Are there any questions for these witnesses?

(No questions.)

COUNCILMAN KENNEY: Mr. Richard O'Malley, please. Is Mr. O'Malley here?

(Witness comes forward.)

COUNCILMAN KENNEY: Good evening. Please identify yourself for the record.

MR. MURPHY: Good evening, Chairman

10/31/00 PUBLIC PROPERTY, BILL 000452

Kenney and Councilmembers. My name is Kevin Murphy. I apologize on behalf of Richard O'Malley; he had to leave.

COUNCILMAN KENNEY: Okay. Is this an Irish organization?

(Laughter.)

COUNCILMAN KENNEY: I'm only kidding, please proceed.

MR. MURPHY: He asked that his letter be read so that it could be entered into the record.

COUNCILMAN KENNEY: Go ahead, thank you.

MR. MURPHY: Thank you for this opportunity to express the concern of the Wynnefield Residents Association about the lack of public access TV in the neighborhoods of the City of Philadelphia. Like other community organizations, the Wynnefield Residents Association does not have the financial resources to communicate directly or effectively with those who live in its neighborhood. Public access TV would greatly facilitate its mission of helping to provide better services to its residents such as in the enforcement of the City's zoning code. In addition, our youth would be able to take advantage of the job training opportunities now being offered on public access in other major cities of our country.

In 1983, City Council passed an ordinance creating four cable TV districts in the City. The reasons for four districts were: First, to guarantee competition; and, second, to ensure that at least one district would be minority-owned. By "competition," they apparently meant that the rates and services of the four companies could be compared to make sure that a district was not charging its customers excessive rates, providing inferior reception, or inadequate programming.

The City, in the 1983 ordinance, stipulated that the four companies would provide public access TV to the communities within their districts. What does public access TV mean? The cable companies would provide the means, studios, personnel, and technology for the televising of community meetings, school plays, et cetera, targeted to the residents in the neighborhoods.

The same ordinance provided the resources to implement public access by requiring that the cable companies pay the City an annual fee of 5 percent of their income, which fee the companies, of course, the companies passed along to their customers.

In light of the above promises, what have the residents of the City received? Instead of four companies, we have only two, and a minority control of one of the companies has been off and on. And Philadelphia remains one of the last major cities not to have public access TV.

Why do we not get public access? , first the money intended for public access went into the City's general operating budget and by the time the cable layout was completed in the early '90, the City was virtually bankrupt and used the cable fees to help pay its operating expenses. Finally, the Mayor and the President of City Council never established the nonprofit corporation stipulated in the 1938 ordinance to administer public access TV.

The time for public access is now. The City today has a surplus. Moreover, when the

10/31/00 PUBLIC PROPERTY, BILL 000452

cable licenses were renewed last year, the new ordinances once again stipulated a provision for public access. Hopefully, any new ordinance allowing greater competition among the cable companies will likewise call for public access. The City and its neighborhoods need it more than ever. The time to act to establish the nonprofit public access corporation is now.

Signed, Richard F. O'Malley.

COUNCILMAN KENNEY: Thank you very much. Are you -- so I understand for the record, your organization is in favor of this proposed OVS agreement or opposed or neutral or --

MR. MURPHY: I couldn't speak on behalf of the Wynnefield Residents Association since I'm not actually a member.

COUNCILMAN KENNEY: Okay, okay. Thank you.

Mr. Royal, please.

(Witness comes forward.)

COUNCILMAN KENNEY: Is Joan Preston still here?

MS. PRESTON: I'm here.

COUNCILMAN KENNEY: Okay, I just want

to make sure.

Good evening. Please identify yourself.

MR. ROYAL: Good evening. My name is James Royal. I'm the president of the Community Involvement Corporation in Strawberry Mansion. And we thank the committee and the committee chair for this opportunity to talk about RCN and also OVS and also public access.

First of all, we did not know that much about RCN, and somebody asked a good question: What does it mean? And since I've been in the building, I've run into three or four of my friends that work for RCN. So I don't know what that means.

But, anyway, it's important from the testimony that we heard earlier today that it is clear that there are more than 800-pound gorillas in the room, and also the fact that the Philadelphia Community Access Coalition, of which we are a member, is soon to be 800 pounds.

It's important that the Council -- and we would believe that, as Reverend Shine has also said, that the Council has really the responsibility to work through this maze to understand the real ramifications. We are for local unions. We know there are problems in all corporations. We understand what Comcast has done in the past. But the issue now is, what is Comcast, RCN, Channel 6, and City Council going to do now to help us get our public access together?

I think it's important to understand that OVS means to me "obvious vexed spirit," because we've been sitting here over the last six or seven hours and we've heard a lot of numbers being thrown around, so I would say to Council, in general, we are -- we want the competition, I think everybody said they want it. But it's the level playing field really that has to really be established by the Council and not so much by the entities that are coming here.

I think it's also important that Council understand that on Year 16 that the public access is really needed at this juncture at a very bad time, because regardless of who becomes the beneficiary of the services and/or the dollars, there are still going to be some folk left out, and we're talking folks on the wagon, there's folks falling off the wagon.

And we would also like to reiterate there are more than just the Black Clergy there. There are four other religious groups in the black community that represent the ministers throughout the City. And so the Black Clergy is one, and it's not the largest one.

I'd like to further state that it's important for us to understand, with all of the dynamics -- and again, like Reverend Shine, usually when it's time for us to testify, the community, we're always at the end. But what we're always ask to do first is pay, regardless of whether we want to or not.

And on my movie screen, I saw these big things up here with the surround sound, well, our movie screens, I think, are back there. When you look out that window, that's my video-audio camera. And those are the people out there that need our help.

So I'm saying to the community today, we think it's a great idea to have RCN come in. We also believe that whatever problems they have, they can be worked out. And it was also intimated that by getting this OVS from the federal government, then they could come in whether we like them to come in or not. So I think it would behoove us to get as much as we can in the opening part, because what Council can't do in opening part, the community, again, can do at the very, because we are the ones that have to pay. And if we organize ourselves well and become 800 pounds, then they will give us at least what we deserve, if not more.

Thank you, sir.

COUNCILMAN KENNEY: Thank you very much for your testimony.

(Applause.)

COUNCILMAN KENNEY: Joan Preston, please.

(Witnesses come forward.)

COUNCILMAN KENNEY: Good evening. Thank you for waiting. Can we please turn on the microphone for Miss Preston. I want to make sure they get the microphone on first.

Please proceed.

MS. PRESTON: Thank you. I'm Joan Preston and this is Mr. Barberton Davis, and we

10/31/00 PUBLIC PROPERTY, BILL 000452

represent the Time of Deliverance Television Ministry and the Christian or religious community. If it's okay, Mr. Barberton just wants to speak for about two minutes. And then I will proceed.

COUNCILMAN KENNEY: Sure.

MR. DAVIS: I would simply like to say that first of all, I consider it an extreme honor to be here tonight.

COUNCILMAN KENNEY: Thank you.

MR. DAVIS: And I would like to express my sincere gratitude for the opportunity.

I would like to take for granted that it's common knowledge before this Council, who are also members of the Philadelphia community, that the current deplorable state of the mortality among the young people of this community, and not only this community alone, but those throughout nation, I would propose, has a cause to lack of moral and self-esteem among young Americans. We feel unimportant and our impressions insignificant. Is it then a marvel that open floodgates of frustration displaying themselves in disruptive and destructive behavior?

10/31/00 PUBLIC PROPERTY, BILL 000452

But now before this body lies the opportunity to give a voice to the people, the young people of this community. This body, through its decision, can speak confidence and inspiration into the hearts and minds of the members of this community, the young members of this community.

Let the people of this community speak to the people of this community. Let the people of this community teach, encourage, and inspire the people of this community. Public access is the answer.

COUNCILMAN KENNEY: Thank you. Please proceed.

MS. PRESTON: Thank you. Identify yourself first, please.

MS. PRESTON: I'm Joan Preston.

COUNCILMAN KENNEY: Thank you.

MS. PRESTON: Thank you.

The Time of Deliverance television Ministry is a part of the (unintelligible) Evangelistic Church located at 2001 West Lehigh Avenue, where Pastor Benjamin Smith, Sr. is the pastor. Our church has approximately 8,000 parishioners. Also, there are numerous churches and other religious organizations in this city who deserve public access.

Time of Deliverance and PCAC (that's the Philadelphia Community Access Coalition) have been in the trenches for approximately 3.5 years. Primarily, we have been sending the same, repetitious message: We want public access, we want Comcast to do what the ordinance mandated. That is, render public access to the community. Comcast has not.

We were encouraged on October 18th by a presentation delivered by Mr. Anthony Riddles, the director of MNN, and that is the magazine that you have before you. That is the Manhattan Neighborhood Network. It's a public access station in New York City. Mr. Riddle disclosed how successful has been in New York City. He also distributed copies again of the weekly program provided on a day-to-day basis. The program disclosed how MNN has reached out to the community to educate the youth, they have developed training programs for those individuals who are interested in the field, and any number of opportunity for

10/31/00 PUBLIC PROPERTY, BILL 000452

the neighborhood and the youth in the community.

Public access has proven in other major cities that the access opportunity is a benefit to the cable company and the community. There are many complaints about Hollywood and the kind of programs that they are sending across the tubes and how this kind of programming impacts the behavior of our children.

I'm especially impressed with the Link of America. This is a Saturday night program that enables the youth from California, Chicago and Washington DC to communicate live. Where is Philadelphia's link? There are statistics that shows this program alone has kept thousands of youth off the streets, thus eliminating the volume of crime.

And I say to you in closing, the community will support the cable company that is willing to support the community.

Thank you for your time.

COUNCILMAN KENNEY: Thank you very much for your testimony.

(Applause.)

COUNCILMAN KENNEY: Mr. Olivetti,

please.

(Witness comes forward.)

COUNCILMAN KENNEY: Good evening. Please identify yourself for the record.

MR. OLIVETTI: Hi. My name is Robert Olivetti. I'm testifying as a private citizen and a Comcast subscriber.

A couple people mentioned that they thought they'd be giving out Halloween candy tonight. For myself, when I get home, I have to explain to my wife daughter why I'm spending my birthday here instead of home.

COUNCILMAN KENNEY: As long as it wasn't her birthday.

(Laughter.)

MR. OLIVETTI: Then I'd be in real trouble.

Let me suggest a couple things real quickly: Pads on these seats. And possibly a policy where citizens testifying on their own don't always end up at the end of the list. If you want to encourage citizens to -- it's the second time I've testified, but now this time, I did call late, but I mean, it seems like there seems to be a pattern that private citizen are at the bottom.

COUNCILMAN KENNEY: Actually, I can explain that to you. Part of our problem is that when we have technical legislation like this, all of the people who can offer from the City's perspective and from the corporate perspective the technical aspects of the bill, it's a much clearer record.

(Unintelligible, parties talking over each other.)

COUNCILMAN KENNEY: So if we go from the bottom up and reverse, no one would really know what we're talking about until we got to the end.

MR. OLIVETTI: I'm just looking for the middle.

COUNCILMAN KENNEY: Okay.

MR. OLIVETTI: I understand why you don't want us on the record first.

Okay, I just wanted to mention that I've been following the cable industry for about 20 years, even though I don't work in the industry. I have testified before Public Property hearings on the cable industry a number of times, mainly in the earlier years, when Comcast first took over their franchise, and I haven't been, as far as I know, to many hearings in recent years.

And I try to always be fair in my testimony and say both sides, what's right and what's wrong. Most of my testimony over the years has been very positive, in favor of Comcast and the fact that I thought they were doing a good job. I think they had a rough start when they started, but I think they improved greatly over the years.

And so tonight, I'll start out by saying what's right about Comcast. The picture is almost always on, which is good. The service is significantly better than it was in the first couple of years and has gotten better and better, as far as coming out to the house, keeping appointment. The phone service is much better than it's ever been.

As far as being a good corporate citizen, obviously, I believe in some ways, they are, but later on in my testimony, when I talk about pricing, I think sometimes if you're

10/31/00 PUBLIC PROPERTY, BILL 000452

overcharging the people, you can afford to be a good corporate citizen and still have a lot of money left over. So I think that needs to be kept in mind.

I think their prices are getting a little out of control and it hurts me to say that; I've been a big supporter of them for years, and I've testified in favor of them on many occasions, sometimes when I was the only public citizen and the only person at the hearing testifying.

Yeah, I won't go into the Inquirer, we know what they've had to say about it. And I think a lot of their figures are accurate, even though there was some testimony that there may have been some distortions.

As far as the Disney Channel, the Disney Channel is not a premium channel; it's a basic channel, by all accounts. Premium channels don't have commercials, premium channels don't interrupt your movie. You can tape a move and you can watch it without commercials. Disney is a basic channel; there's no other way around it. So why Comcast continues to charge premium prices for a basic channel beyond me. I knew that we were one of the few places in the country and it sounds like tonight we're about the only place in the country that continues to complain to them about it and, obviously, nothing is being done.

It sort of follows in a pattern that I noticed over the years with them, where they've frequently been the last cable company to switch premium channels to basics that have converted, such as AMC and Bravo in the past.

As far as SportsNet, I can live without SportsNet but half the population in Philadelphia probably can't, including, it sounds like, you. So I don't care really about SportsNet in one sense. But in another sense, it does prevent competition. Keeping SportsNet off the satellite prevents competition. And Comcast, I hate to say it, but they obviously, apparently, are not interested in competition despite what they said tonight.

When they say that their costs would be higher if they allowed SportsNet on satellite, that's true, but so would their revenue be higher because, obviously, they'd be able to charge for those additional subscribers, and that point is

10/31/00 PUBLIC PROPERTY, BILL 000452

never brought out.

So -- and also, they could give people the option. The sports programming is the most expensive programming on TV. They could set up a tier of basic channels that include the channels that cover sports mainly, which are the most expensive, and give people an option as to whether they want those or not. But from my understanding, they insist all the companies that they deal with that SportsNet be carried on pure basic.

An additional way -- they talk tonight about the charge for the cable box, about two dollars and something. The charge for the cable box at one time was a big revenue source for Comcast; it started out two or three dollars, then it went to four, and then to five, and then around six, or whatever, until the government stepped in and said, You can't do that, you've got to charge about what the cost of the box costs you to replace. And so what did they do? They lowered the price of the box and they created something now, called "whole-house access," which means if you want your premium channels in your living room

10/31/00 PUBLIC PROPERTY, BILL 000452

in addition to your family room, you now pay a charge. Well the government doesn't regulate that. So instead of paying $6 for the box and getting the premium channel in both rooms, now you pay $2.50 for the box because it's regulated, and they charge you $3.99 or 4.50 to get the premium channel in the other room. The end result is, you're still paying the $6 for the box.

I recently saw on the Internet, if I read it correctly and I believe I did, testimony that Comcast made to the FCC regarding that they would like permission, apparently, to not only control SportsNet the way they do in Philadelphia, but to have the right to control other channels that they have an ownership interest in and not necessarily sell it to everyone. And I believe I read that correctly. And I have that article if necessary.

In regard to a couple points that they made tonight, they said they're interested in fair play and they thrive on competition. As I mentioned, I don't know if that's necessarily the case.

When they criticized RCN's selection of

10/31/00 PUBLIC PROPERTY, BILL 000452

which neighborhoods and which areas of the City they were going to go into and the demographics and this and that and the other thing, I didn't hear them mention that if I believe I'm correct, when they applied for a franchise in Philadelphia initially, they only applied, I believe for Area 3 and 4, the exact same areas that RCN is applying for. And I believe they were selected for Area 4 and Rollins was selected for Area 3, which eventually became Heritage, which eventually Comcast took over and acquired it to areas they were interested in in the beginning. I don't believe they applied for Area 1 or West Philadelphia. So I think that argument sort of loses a little bit of sting.

As far as, you know, corporate citizens, they do have their headquarters here, which is great. And obviously a company with their national headquarters in a city would normally be expected to do a little more than a company that doesn't have their national headquarters. So I don't think that's necessarily a completely fair comparison to expect RCN to necessarily do everything that Comcast does.

10/31/00 PUBLIC PROPERTY, BILL 000452

Obviously, we expect more of Cignas and the SmithKleins and people like that, who have their national headquarters here.

As far as the cost-per-channel argument that they made, cost per channel is very deceptive. There are some channels that are free that they don't charge the cable company. There are other channels that actually pay the cable companies, such as shopping channels and things like that because they -- there's channels that will even give themselves away free in order to get on the dial. So, you know, have to analyze that a lot more closely. You can load up the dial with channels that are free or 5 cents per and say, Well, our average per-channel rate is low. It really depends on what you're carrying.

So -- and in general, they mentioned that they choose not to provide SportsNet to DirecTV because they have exclusive programming, and to EchoStar because they have exclusive programming. DirecTV does have the NFL contract. I don't believe EchoStar has any exclusive programming, and I thought it was curious that they didn't mention what the exclusive programming on EchoStar was.

Just to summarize --

COUNCILMAN NUTTER: Thank you.

MR. OLIVETTI: About 15 or 20 years ago, before the City awarded cable franchises, I was in favor of Comcast getting as many franchises as possible. Like I said, I've testified mainly in favor of them over the years. I remember seeing a billboard that was spread around the City at the time that the franchise negotiations were going on. And if I remember correctly it said that Comcast is the only cable company that grew up on hoagies and soft pretzels. They called themselves, I believe, the "home team," and they are the home team, but being the home team doesn't give you the right to consistently overcharge the hometown.

(Laughter.)

MR. OLIVETTI: So I say in concluding, and doesn't give me great pleasure to say it, having been a fan of theirs for years, let the competition begin.

Thank you.

COUNCILMAN KENNEY: Thank you for your

testimony.

(Applause.)

COUNCILMAN KENNEY: That will conclude our list of witnesses. This committee will stand in recess until the call of the Chair. Thank you.

(Adjourned at 8:12 p.m.)

- - -

C E R T I F I C A T E

I HEREBY CERTIFY that the foregoing proceedings of the Council of the City of Philadelphia of Tuesday, October 31, 2000, were reported fully and accurately by me, and that this is a correct transcript of same.

RE: COUNCIL COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS

BILL NO. 000452

_________________________________,
JOSEPHINE CARDILLO,
Registered Professional Reporter