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## COUNCIL OF THE CITY OF PHILADELPHIA

3

## PUBLIC HEARING

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## COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS

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Room 401, City Hall  
Philadelphia, Pennsylvania  
Thursday, February 1, 2001  
2:20 p.m.

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BILL NO. 000452 - an ordinance granting permission to RCN Telecom Services of Philadelphia, Inc., to construct, own, operation, maintain, replace and remove a telecommunication system in, over, and under the public rights of way and streets of the City of Philadelphia and operate and maintain a video programing service over such telecommunication system, pursuant to provisions governing open video systems in the Telecommunications Act of 1996, under certain terms and conditions.

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## PRESENT:

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COUNCILMAN JAMES F. KENNEY, Chairman  
COUNCILWOMAN JANNIE BLACKWELL  
COUNCILWOMAN BLONDELL REYNOLDS BROWN  
COUNCILMAN DARRELL L. CLARKE  
COUNCILMAN DAVID COHEN  
COUNCILMAN FRANK DI CICCIO  
COUNCILWOMAN DONNA REED MILLER  
COUNCILMAN MICHAEL A. NUTTER  
COUNCILMAN ANGEL L. ORTIZ  
COUNCILMAN FRANK RIZZO

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2 COUNCILMAN KENNEY: The hearing on  
3 Resolution 000773 that was scheduled immediately  
4 following this hearing will be recessed until next  
5 Thursday, February 8 at 1 p.m.

6 Ladies and gentlemen, can I have your  
7 attention, please. We have a quorum. Would you  
8 please refrain from conversation. I apologize for  
9 the delay. As I mentioned earlier, Resolution No.  
10 000773 dealing with the Philadelphia Gas Works will  
11 be heard on Thursday, February 8 at 1:00 p.m.

12 Council Committee on Public Property and  
13 Public Works is now in session with a quorum  
14 represented by Councilmembers Blackwell, Nutter,  
15 Councilmember Clark, Reynolds-Brown and I am  
16 chairman James Kenney. We are now going to conduct  
17 or hear testimony on Bill No. 000452, which is an  
18 ordinance granting permission to RCN Telecom  
19 Services of Philadelphia, Inc., to construct, own,  
20 operation, maintain, replace and remove a  
21 telecommunication system in, over, and under the  
22 public rights of way and streets of the City of  
23 Philadelphia and operate and maintain a video  
24 programing service over such telecommunication  
25 system, pursuant to provisions governing open video

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2 systems in the Telecommunications Act of 1996, under  
3 certain terms and conditions.

4 The Chair would call Mr. Joe James from  
5 the Department of Public Property.

6 Councilmember Rizzo is also in  
7 attendance.

8 Good afternoon, Mr. James. Could you  
9 identify yourself for the record and proceed. I  
10 believe for the purposes of offering an amendment  
11 that the City and Public Property and Law Department  
12 is suggesting and also for the purposes of kindly  
13 reading into the record the amendments that I myself  
14 have requested that have been discussed with the Law  
15 Department and agreed to by the Law Department and I  
16 believe by the RCN Telecom Services of Philadelphia.  
17 So for those purposes, please identify yourself for  
18 the record and proceed.

19 DEPUTY COMMISSIONER JAMES: Good  
20 afternoon. My name Joseph James, Deputy Commission  
21 for the Department of Public Property. Good  
22 afternoon. Good afternoon members of the committee.

23 The department has at the first hearing  
24 presented an amendment which was a clarification of  
25 the construction schedule after coordination with

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2 the Department of Streets, and that was submitted at  
3 the first hearing sometime ago. I don't recall the  
4 date at this particular time.

5 At this point in time, the Department is  
6 prepared to present a set of amendments that are  
7 before members of the committee that have been  
8 reached through a successful discussion with  
9 representatives from RCN Corporation, Members of  
10 Council, and the Law Department. I will try to be  
11 as concise as possible on those amendments.  
12 Hopefully, you have them before you.

13 COUNCILMAN KENNEY: Before you begin,  
14 does every member of the committee have copies of  
15 the amendments? There should be two sections. One  
16 is about four pages, five pages long, and the other  
17 is a -- that's the other one. Please proceed.

18 DEPUTY COMMISSIONER JAMES: These are  
19 proposed amendments to Bill No. 000452. The first  
20 amendment deals with Section 1, Subsection D of the  
21 final OES agreement of Article 1, Section 5, the  
22 Cable Television Franchise. This amendment is to  
23 limit the proposed term to seven years given the  
24 proposed seven-year construction with an extension  
25 of additional eight years upon certification of

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2 completion of construction. The purpose of this is  
3 to ensure that the construction is completed, is  
4 certified by the Department of Public Property  
5 through the Commissioner before the extension of the  
6 additional time. Under this agreement, if RCN is  
7 only -- has an OVS agreement which is initially  
8 proposed, then they would be extended from a  
9 seven-year initial term for three additional years  
10 for a total of a ten-year agreement. If they are  
11 successful in obtaining a cable franchise which has  
12 a 15-year term in it, they basically have a  
13 seven-year initial term for them to them to complete  
14 the construction schedule and upon certification  
15 obtain automatically the additional eight years for  
16 the full 15-year term.

17 The next amendment is under Section 3,  
18 Subsection A, Franchise Application of Article 1,  
19 Section 5 for the cable television franchise. This  
20 allows the City to negotiate additional terms and  
21 conditions in the subsequent cable franchise  
22 agreement as deemed necessary for the safety and  
23 welfare of the public and ensure that the  
24 construction will be completed and terms will be  
25 renegotiated if the franchise is transferred.

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2               Next is under Section 4, Subsection A-1  
3 of Article 2, Section 2, System Construction. This  
4 requires submission of plans from RCN with  
5 construction multiple sections of each franchise  
6 area at a time certifying that is done without  
7 regard to any social, economic, or demographic  
8 factors.

9               Section 5. This is under Article 2,  
10 Section 2, System Construction. And it requires an  
11 annual construction progress report as well as  
12 financial statements regarding the construction  
13 project's financing and this will be submitted to  
14 the Department of Public Property as well as to  
15 Members of City Council.

16              Under Section 6, there's an amendment  
17 requires a separate construction bond, insurance  
18 coverage, and local offices for each franchise area.  
19 And what this particularly says is RCN shall also  
20 maintain a local office with a local Philadelphia  
21 telephone number in areas where they would apply for  
22 a cable franchise for the purposes of providing  
23 customer service and bill payment and billing  
24 inquiries as well as customer complaints.

25              The next amendment is under Section 7,

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2 Article 2, Section 13, Fiscal Reports. This  
3 requires annual construction progress reports as  
4 well as financial statements regarding the funding  
5 as we just talked about. It requires RCN to  
6 maintain records and make available to Public  
7 Property and Members of City Council and the public  
8 all requests for service and their disposition.

9 That is the extent of the amendment.

10 COUNCILMAN KENNEY: Mr. James, Deputy  
11 Commission James, did you review the amendment, the  
12 Department's amendment in conjunction with the  
13 Street Department's? Has that been read into the  
14 record?

15 DEPUTY COMMISSIONER JAMES: The first  
16 amendment which deals with the construction schedule  
17 were read into the minutes at the first hearing.

18 COUNCILMAN KENNEY: Fine, okay. Thank  
19 you.

20 Is there anything else you want to add  
21 relative to this particular issue while you're  
22 sitting there?

23 DEPUTY COMMISSIONER JAMES: No. I think  
24 there's been a lot of discussion about the  
25 negotiations to date, and I think in these further



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2 amendments. What we've been able to do is fairly  
3 well amplified. The understandings between the City  
4 and RCN on how they would handle their construction  
5 and the insurances that the City would want to  
6 obtain to make sure in fact they do complete it,  
7 they do provide it in such a way that all the  
8 customers are served within the particular franchise  
9 areas that they apply for. And in supplemental  
10 testimony there was some additional corrections or  
11 modifications in some statements that I made  
12 initially in the first hearing and, hopefully,  
13 Members of Council had a chance look at. But  
14 basically it was, again, correcting the misnomer  
15 that they would have to -- RCN as part of this  
16 agreement would have to apply for and obtain the  
17 authorization from cable franchises in areas that  
18 they would like to apply for. And into that, they  
19 would have to build out the entire franchise area as  
20 part of their obligations, very similar to the  
21 incumbent operators. Thank you.

22 COUNCILMAN KENNEY: Thank you.  
23 Councilman Nutter, you have questions for Deputy  
24 Commissioner James.

25 COUNCILMAN NUTTER: Yes, I have a few,

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2 yes.

3 I was going to ask you later about this  
4 particular issue, but why don't we kind of pick up  
5 where you just left off and I'll go back to some of  
6 the other questions that I have because I thought  
7 what I just heard you say was somewhat different  
8 than what I recalled or from what I understood back  
9 in the first hearing in October. I thought my  
10 understanding at that time was the applicant would  
11 be able to provide certain services for a certain  
12 amount of time, and if they did not have a cable  
13 franchise by another certain time or they hadn't  
14 been awarded one or hadn't applied for one, I  
15 thought there was something about some two-year  
16 issue that they would then not provide cable  
17 television services. Is that what was discussed  
18 back at the October hearing?

19 DEPUTY COMMISSIONER JAMES: I believe  
20 that's how it was discussed at the original hearing.  
21 And there was a reason for my supplemental  
22 testimony, and hopefully a correction of that.

23 COUNCILMAN NUTTER: Well, I'm sure I did  
24 not explain it too articulately just now. So why  
25 don't you tell me what the testimony was back then

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2 and then tell me what the testimony is today.

3 DEPUTY COMMISSIONER JAMES: I think the  
4 most distinguishable difference between my original  
5 testimony was that RCN under this authorization  
6 under this bill as an OVS interim agreement would  
7 not be able to provide video programing in any area  
8 of the City unless they had a cable franchise.

9 COUNCILMAN NUTTER: Can you hold on for  
10 one second?

11 DEPUTY COMMISSIONER JAMES: Sure.

12 COUNCILMAN NUTTER: For some reason,  
13 we're have a little bit of trouble hearing you up  
14 here.

15 COUNCILMAN KENNEY: You know what I  
16 would suggest? I recognized this the last hearing  
17 we had yesterday. Would you mind going to the other  
18 Chair. I think that maybe a little clearer  
19 microphone. Glad we got this new system.

20 DEPUTY COMMISSIONER JAMES: Hopefully if  
21 I can try to explain this. At the first hearing, we  
22 had a discussion regarding RCN's ability to offer  
23 video programing services in parts of Philadelphia  
24 if they needed a cable franchise to do that or could  
25 they do that under OVS agreement that we're

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2 proposing. We propose that under the bill RCN would  
3 have authorization to become an OVS operator in  
4 Philadelphia and to provide telephone and video  
5 services as they're right under their OVS  
6 certification from the Federal Communication  
7 Commission. RCN in both the City --

8 COUNCILMAN NUTTER: I thought certain  
9 obligations kicked in as soon as you started video  
10 programing, or at least certain rights by the City  
11 kicked in as soon as anyone started providing video  
12 services.

13 DEPUTY COMMISSIONER JAMES: Right. In  
14 the bill, there is a number are provisions for RCN  
15 to provide us services similar to a cable franchise,  
16 certain obligations like public education on  
17 government access, 5 percent gross revenue, and  
18 other stipulations very similar to a traditional  
19 cable franchise. And the reason for that is that if  
20 that RCN under this authorization never obtained a  
21 cable franchise for any particular area under the  
22 traditional cable franchise, they would still be  
23 able to provide video programing services. They  
24 would still be under obligations very similar to a  
25 cable franchise. It's just that the OVS agreement

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2 would become a permanent OVS agreement, but there  
3 were provisions in the agreement that said after  
4 this authorization would occur, 120 days after it,  
5 they have the ability to apply for a traditional  
6 cable franchise. And so far, they have expressed an  
7 interest to do just that and have identified the two  
8 specific areas that they have identified as part of  
9 their build-out schedule for Areas 3 and 4.

10 If the City decided not to grant them  
11 those cable franchises, they could still provide  
12 video programming services, they would still be able  
13 to meet their obligations as far as the company is  
14 concerned and being in this particular business, and  
15 the City would still be available to those rights  
16 that are identified as far as the gross revenues,  
17 the pay, and other obligations that they've already  
18 committed to.

19 I believe in my testimony in the past, I  
20 suggested that they would not be able to provide  
21 video services if they didn't have a traditional  
22 cable franchise; and that is not correct.

23 COUNCILMAN NUTTER: Why is that not  
24 correct?

25 DEPUTY COMMISSIONER JAMES: Because

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2 their OVS certification from the Federal  
3 Communications Commission gives them the right to be  
4 a video programing, that's what it's intended for.  
5 And they have a right under that to provide video  
6 services as well as telephony services to customers  
7 in the areas that they're certified.

8 COUNCILMAN NUTTER: Why did you say what  
9 you said back in October?

10 DEPUTY COMMISSIONER JAMES: I think I  
11 was excited. I think I spoke too soon and did not  
12 think it out.

13 COUNCILMAN NUTTER: You get excited.

14 DEPUTY COMMISSIONER JAMES: Yes, I get  
15 exited occasionally.

16 COUNCILMAN NUTTER: In front the Public  
17 Property Committee you were excited?

18 DEPUTY COMMISSIONER JAMES: You know, I  
19 have those days.

20 (Laughter.)

21 COUNCILMAN NUTTER: There are more  
22 exciting committees around. All due respect to the  
23 chairman of the committee.

24 Well, this was a little while ago, so  
25 what is the difference materially between an OVS

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2 agreement and a cable franchise? What are the  
3 benefits to the City? What are the benefits to the  
4 applicant? And what are the liabilities or risks to  
5 either under either scenario?

6 DEPUTY COMMISSIONER JAMES: Well, the  
7 benefits for a company to become an open video  
8 service provider was established as part of the  
9 Telecommunications Act of 1996 to allow basically  
10 telephone companies to get into the video business  
11 so that we would have competition between the  
12 traditional phone companies and the cable providers.  
13 And to allow companies to do that, there was, well,  
14 not a lot of regulations for them to do that. It  
15 didn't require them to go through similar process to  
16 get a cable franchise. It basically gave them a  
17 very simpler manner of becoming certified at the  
18 federal through the federal Communications Committee  
19 on those issues that we traditionally also review as  
20 a cable provider as far as their technical ability  
21 or their financial ability and their ability to  
22 operate a particular franchise.

23 So for a company that's -- a newly  
24 formed company, in particular --

25 COUNCILMAN NUTTER: A company that's a

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2 what?

3                   DEPUTY COMMISSIONER JAMES: A newly  
4 formed company like a competitive local exchange  
5 provider. It gives them the ability to offer a  
6 bundle of services, and that is particularly what  
7 RCN is attempting to do. So from an RCN standpoint,  
8 I would think it would be to their benefit, and so  
9 that's the course they've taken, to become that OVS  
10 and get that OVS certification. With that, they  
11 still have to come to a local municipality where  
12 they want to and obtain an agreement. They don't  
13 have to obtain a traditional cable franchise  
14 agreement. They can obtain an OVS agreement. And  
15 there's not a lot of structure to that to say that  
16 basically they have to perform everything that they  
17 would have to a cable franchise except an  
18 institutional network is the normal provision that  
19 they're not required FCC that they have to give to a  
20 local municipality to operate. And it also gives  
21 them the cover of the federal mandate in case a  
22 municipality is inclined not to give them an  
23 agreement, that they have this authorization they're  
24 entitled to be here, they're entitled --

25                   COUNCILMAN NUTTER: The municipality is



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2 not inclined to give them what kind of agreement, an  
3 OVS agreement?

4 DEPUTY COMMISSIONER JAMES: An OVS  
5 agreement or a cable franchise agreement to keep  
6 them from entering the market. The federal  
7 government wants them in the market; they want them  
8 to operate; they want them to provide competition.  
9 So a company coming in, they might select, of course  
10 an OVS. For a City, the cable franchises provides  
11 us the traditional model that we're most accustomed  
12 to and it provides us and to a certain extent to a  
13 cable provider, even an OVS provider, a certain  
14 amount of certainty. The regulations have been  
15 established over time, they're clearly spelled out,  
16 they talks about terms and conditions and guidelines  
17 and what things you can ask for and what you can't  
18 ask for.

19 So a company, and even in the case of  
20 RCN, would want to eventually to have cable  
21 franchise because there's a lot more certainty  
22 there. And the OVS, there's not a long history,  
23 there's not a lot of established record of rights  
24 and responsibilities that you would find more  
25 certainty under the cable franchise.

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2 So for the City standpoint, as other  
3 cities have done, in this particular case, RCN,  
4 they've gone into the model of offering an interim  
5 agreement to get them started so the City does not  
6 delay them and does not stop them in the market and  
7 does not fall under any kind of federal mandate, and  
8 allows them the opportunity to migrate into the  
9 traditional cable franchise.

10 COUNCILMAN NUTTER: Why not start out  
11 getting a cable franchise?

12 DEPUTY COMMISSIONER JAMES: I believe  
13 it's something that has to be looked at by both  
14 parties depending on that municipality, what works  
15 for that municipality and what works for RCN in that  
16 particular market. In some cases, going right to a  
17 cable franchise would probably be the best outcome.  
18 Some cases, maybe we want to see them prove  
19 themselves and let them establish themselves under  
20 the interim agreement and then let them migrate into  
21 the cable franchise once we've had an opportunity to  
22 better understand what they're doing to do and the  
23 services they're going to provide.

24 So for a City, it's kind of we get the  
25 best of both worlds. We have an interim agreement.

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2 They've guaranteed to build out construction in the  
3 interim agreement, they're guaranteed to provide us  
4 provisions very similar to a cable franchise under  
5 that agreement, and they still have the right to opt  
6 out and get a traditional cable franchise.

7 COUNCILMAN NUTTER: Have you done any --  
8 other than your, I guess, two times now before the  
9 committee, you're not excited today, are you?

10 DEPUTY COMMISSIONER JAMES: No, I'm much  
11 calmer today.

12 COUNCILMAN NUTTER: What's been the  
13 department of information that's been shared with  
14 regard to the whole OVS versus cable franchise  
15 arrangement. OVS came out of the '96 cable act?

16 DEPUTY COMMISSIONER JAMES:  
17 Telecommunications Act.

18 COUNCILMAN NUTTER: The  
19 Telecommunications Act.

20 DEPUTY COMMISSIONER JAMES: Yes.

21 COUNCILMAN NUTTER: And this was the  
22 first of its kind here; is that correct.

23 DEPUTY COMMISSIONER JAMES: This is the  
24 first in this market, yes.

25 COUNCILMAN NUTTER: And other than the

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2 two hearings that we've now had, has there been any  
3 discussion about OVS to the broader Council body  
4 here? Has there been any briefing about this  
5 concept and how it came to be and what it's all  
6 about?

7 DEPUTY COMMISSIONER JAMES: I don't  
8 believe we provided the Council any direct briefing  
9 on the subject.

10 COUNCILMAN NUTTER: What are the  
11 downsides for either party?

12 DEPUTY COMMISSIONER JAMES: Well, I  
13 think downsides are the same whether it's an OVS or  
14 it's a cable franchise. There's the risk of any  
15 kind of business venture in the magnitude of the  
16 construction that's going to occur, whether or not  
17 they're going to be successful, whether or not  
18 they're going to be profitable.

19 And the risk to the City is the  
20 disruption and, you know, the uncertainty they may  
21 not be successful and how that would impact the City  
22 if they're not.

23 COUNCILMAN NUTTER: How would that  
24 potentially impact the City.

25 DEPUTY COMMISSIONER JAMES: Well,

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2 potentially, we could have construction occur, we  
3 could have a lot of disruption and a lot of wires  
4 placed above ground and below ground and never have  
5 an operator who would complete it. So there would  
6 be some certainly detriment to the infrastructure  
7 and the City to be disrupted and not have the  
8 services delivered. The similar risk that occurred,  
9 you know, basically in 1984 when we first started  
10 cable that there was a risk that all four of those  
11 providers would not have been successful and the  
12 risk was basically somewhat the same. Today, the  
13 only difference is the economics associated with the  
14 companies that are trying to do it as an  
15 overbuilder.

16 COUNCILMAN NUTTER: What's an  
17 overbuilder.

18 DEPUTY COMMISSIONER JAMES: An  
19 overbuilder is someone who builds on top of an  
20 existing, in this case, operator within the same  
21 market, within the same area.

22 COUNCILMAN NUTTER: Let's talk a little  
23 bit about your testimony. The first page of  
24 testimony I have which has both the Commissioner's  
25 name and your name on it, I was kind of struck -- I

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2 mean, I read a few testimonies from time to time,  
3 but yours has kind of trifecta of words that draws a  
4 little bit of attention. It says on the first page,  
5 "This testimony is submitted to clarify, supplement  
6 and amend the testimony of Commissioner Andres Perez  
7 and Deputy Commissioner Joe James in response to  
8 questions presented by committee members during the  
9 committee's public hearing on the bill on October  
10 31, 2,000."

11 What all needs to be clarified,  
12 supplement and amended, and what happened since that  
13 time to cause those three things to come into play?

14 DEPUTY COMMISSIONER JAMES: I think in  
15 the area of clarification, the testimony went back  
16 to, once again, to redress if it had not been clear  
17 the first time in the testimony that was given  
18 before about what are the things the City's going to  
19 obtained from this agreement. What are the benefits  
20 to the City that were going to arise by providing  
21 RCN this opportunity. There was clarifications to  
22 questions like, as I mentioned before, answers I  
23 gave in the previous testimony that were not quite  
24 correct. And hopefully, we've corrected them by  
25 giving the question and the appropriate response

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2 that should have been made at the time.

3 COUNCILMAN NUTTER: On Page 2, the  
4 testimony reads, "RCN has agreed to terms that are  
5 in material respects equivalent to the terms and  
6 conditions of the City's four cable franchises."

7 If you say they're in material respects  
8 equivalent, does that mean that there are any  
9 material differences or are there any differences?

10 DEPUTY COMMISSIONER JAMES: There are  
11 some differences in the timing of certain payments  
12 under certain obligations, very similar to what we  
13 did with the Urban Cable franchise where all of the  
14 payments for, let's say, meeting their obligation to  
15 the School District doesn't occur all at the first  
16 payment, that we allow them to split them over  
17 payments. The same thing as obligations we made to  
18 PCDC or government access, and even in areas of the  
19 public access obligation that the timings for their  
20 payments would probably not occur at the same time  
21 as the payments from the other operators, thereby  
22 extending the money that would be available for the  
23 construction and providing of the service. So those  
24 are kind of material changes -- and basically, the  
25 agreements are equal in that they have the same

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2 scope of services that are being -- and provisions  
3 that are being derived from, whether they're 5  
4 percent gross revenue, the ability to obtain revenue  
5 from cable modems, the ability for us to obtain  
6 money for the School District, the ability for money  
7 from government access channels, the government  
8 access channel allocations, to School District  
9 allocations channels, and the college and  
10 universities in there. There's even a commitment  
11 for the institutional network that are, again, it's  
12 not equal to the same obligation, but none of the  
13 agreements are actually identical. They're  
14 equivalent based upon what we've termed to be the  
15 best value that they could provide to us under this  
16 agreement.

17 COUNCILMAN NUTTER: On Page 3, there's a  
18 statement that says "None of the original  
19 franchisees was required to construct more than one  
20 franchise area of the City, let alone the entire  
21 City or to do so within these completion times."  
22 This is at the end of a paragraph talking about some  
23 completion dates.

24 My recollection back at the time maybe,  
25 though, that I don't know if anyone was asked to or



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2 would have been allowed to. Is that correct?

3 DEPUTY COMMISSIONER JAMES: In the  
4 original four franchise when they were awarded,  
5 there were proposed timetables by the applicants  
6 when they would have their system completely  
7 constructed. Those were the schedules that we were  
8 basing, basing upon our monitoring of their  
9 completion. They then came back and asked for  
10 extended times because they could not complete it in  
11 the time frames that they asked for, and the City  
12 provided those extensions. So what we were trying  
13 to say in the statement is there was no requirement  
14 by any one of those four to build the entire City or  
15 to have their construction completed within a  
16 four-year period of time. They proposed times and  
17 we accepted those times. But when they needed  
18 extensions, we gave them extensions.

19 COUNCILMAN NUTTER: Has there been any  
20 suggestion or requirement that RCN build the entire  
21 City?

22 DEPUTY COMMISSIONER JAMES: Well, there  
23 has been discussion about the build-out schedule  
24 that they have proposed. There may be some  
25 inequities in it because it doesn't encompass the

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2 entire City or it only starts in a certain cable  
3 franchise area and not in all four franchise areas  
4 at the same time. And, you know, that's their  
5 opportunity to propose where they would like to  
6 start and where would they like to build. And what  
7 we tried to provide in the testimony is that it's  
8 not that similar from what occurred in the past.  
9 Business is asked to start where they wanted to  
10 start, and we basically allowed them to start where  
11 they wanted start.

12 COUNCILMAN NUTTER: Well, I understand  
13 that. What I didn't understand about the statement  
14 or what the point was, again, was that I don't  
15 recall any of the four franchisees being required to  
16 do anything City-wide. I thought that there  
17 primary, if not only, obligation was to build in  
18 their area.

19 DEPUTY COMMISSIONER JAMES: That's  
20 correct. And what the testimony is trying to  
21 indicate is that now we have -- that did occur in  
22 the past. Now we have a new entry who wants to come  
23 into the market and he wants to select where he  
24 wants to start. There has been statements made in  
25 the press about them not accomplishing the entire

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2 City and there may have been some concerns, I don't  
3 recall all the comments made by the committee  
4 members at the time of the hearing in October, but  
5 suggestions that why aren't they building the entire  
6 City, why don't we have an obligation for four  
7 franchises from them all at the same time. We  
8 merely tried to amplify what had occurred and what  
9 we think materially the significance of those two  
10 construction schedules that were permitted.

11 COUNCILMAN NUTTER: Okay. The  
12 Chairman's been most gracious with leeway. I ask  
13 one question and then yield back.

14 On Page 4, it's a statement here that  
15 says, "Therefore if RCN offers video programing over  
16 the Center City network or anywhere else in  
17 franchise Areas 1 and 2 multiple dwelling units to  
18 select neighborhoods or areas to individual  
19 customers or anyone else it is obligated to apply  
20 for a cable franchise for the entire area within 120  
21 days after offering video programing in the area."

22 Does that mean that they are not  
23 required to apply for a cable franchise if they're  
24 offering the video services in Areas 3 or 4?

25 DEPUTY COMMISSIONER JAMES: No, I

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2 believe the statement is written as such to indicate  
3 that we already have a commitment from them that  
4 they are going to do Areas 3 and 4 and are going to  
5 apply for cable franchise in those particular areas.

6 So what the intent of the comment was --

7 COUNCILMAN NUTTER: Just 120-day?

8 DEPUTY COMMISSIONER JAMES: Right, with  
9 120-day. And we were trying to address the other  
10 two areas that were not committed to initially.

11 COUNCILMAN NUTTER: Okay. I'll come  
12 back. Thanks.

13 COUNCILMAN KENNEY: Thank you very much.  
14 Councilmember Clarke.

15 COUNCILMAN CLARKE: Thank you, Mr.  
16 Chairman.

17 Councilman Nutter actually asked some of  
18 my questions.

19 COUNCILMAN KENNEY: He has a way of  
20 doing that.

21 COUNCILMAN NUTTER: Councilman, I  
22 apologize. I did not look at your papers this time,  
23 but I apologize to you.

24 COUNCILMAN CLARKE: I know it wasn't  
25 intentional.

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2 One of the latter questions with respect  
3 to the remainder of the City, as you will recall in  
4 the hearings being a councilperson who does not  
5 represent either Area 3 or 4, I obviously had some  
6 concerns. During that discussion, there was  
7 actually information came out kind of on both sides  
8 as it related to the rates. I think there was some  
9 conflicting testimony, one that indicated that the  
10 rates had to be set rates across the board, and I  
11 understand, and please correct me if I'm wrong,  
12 there is no requirement that has a set rate across  
13 the board, not only between franchisers but within  
14 the one franchise there apparently could be  
15 different rates in different areas. Is that my  
16 understanding?

17 DEPUTY COMMISSIONER JAMES: Councilman,  
18 that is the my understanding, that the flexibility  
19 in the rates are determined by the provider and they  
20 have the latitude to set the rates as they deem  
21 appropriate based upon their cost in a particular  
22 area. So it could be higher cost within the same  
23 franchise area. They possibly could charge  
24 different rights. Would not seem to be likely, but  
25 it's possible. But certainly across all four

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2 franchise areas, the rates are not necessarily  
3 uniform.

4 COUNCILMAN CLARKE: With respect to Areas  
5 1 and 2 as it relates to RCN's ability to ultimately  
6 get to that, assuming best case scenario that  
7 they're able to make it more competitive in 3 and 4  
8 would obviously be to the advantage of or probably  
9 would be required of other franchise in that area to  
10 lower their rates to become competitive with RCN if  
11 in fact what they say is true. My concern as it  
12 relates to 1 and 2, how do we achieve what best case  
13 scenario will happen in 3 and 4 in terms of get  
14 being able to get competitive rates? How in terms  
15 of a time frame, how do we get there? I just don't  
16 think it's appropriate for people in 1 and 2 to not  
17 have these enhanced services at a lower rate in  
18 those two areas.

19 COUNCILMAN KENNEY: Before you answer,  
20 let me just piggyback on that a moment, and I know  
21 there's no real answer to this question. But one of  
22 the things I've had discussion with other  
23 councilmembers, Councilman DiCicco included is what  
24 effect does the rates in the monopolized areas of 1  
25 and 2 have from an upward standpoint relative to the

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2 price war that apparently will go on in 3 and 4? I  
3 mean, I know Comcast won't answer that. RCN can't  
4 answer that, and we don't really have a crystal  
5 ball, but at some point in time if the competitive  
6 pricing in 3 and 4 create a problem in 1 and 2 where  
7 Comcast or whoever the provider is needs to absorb  
8 that cost somehow. I'm worried about cable rates in  
9 those areas going up, frankly. So that was just an  
10 addendum to Councilmember Clarke's question.

11 DEPUTY COMMISSIONER JAMES: Councilman,  
12 there is no real answer to that question because we  
13 don't have the opportunity to be able to make that  
14 -- to control the ability for them to move into the  
15 other areas. I would think, this is just my view,  
16 that making them successful in Areas 3 and 4 further  
17 creates the opportunity for them to move across to  
18 Areas 1 and 2. Very similar to what Comcast started  
19 out in Area 4 and became very successful. When  
20 there was opportunities and the economics were there  
21 they move and acquired the other areas of the City  
22 to their benefit. And that doesn't necessarily mean  
23 that the rates have lowered in Areas 1 and 3 which  
24 they acquired after they had 4 initially. I think  
25 it's a business decision and the real driver behind

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2 all this, yeah, it's enhanced services, but when it  
3 comes down to it, it's just entertainment. And it's  
4 the cost of providing that entertainment which is  
5 driving their cost.

6 COUNCILMAN CLARKE: I hear what you're  
7 saying, but I recall, again, in earlier testimony  
8 this there was this whole issue about why 3 and 4  
9 were selected. First we were told essentially that  
10 the plug was a little closer to the Princeton  
11 office. And then we got a little beyond that. We  
12 started talking about 3 and 4 possibly being more  
13 lucrative early on in the process than 1 and 2.  
14 When you talk about that being the case, I'm not  
15 sure that they would fill the need to go to 1 and 2  
16 if 3 and 4 is in fact as lucrative as they indicated  
17 in earlier testimony. And I'm just saying as a  
18 person who represents those areas, I don't think  
19 that it's fair for us not to be on a level playing  
20 field as it relates to cable services and enhanced  
21 services. And I think the City should take a more  
22 proactive approach as opposed to just kind of  
23 waiting and seeing what happens with the RCN if they  
24 ever decide to come down to 1 and 2 based on the  
25 economics. I don't know there's the wherewithal



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2 within the City to do that. Or do we go out and  
3 solicit individuals? I mean, what are we going to  
4 do about that?

5 If this happens, I'm going to start  
6 getting some calls.

7 DEPUTY COMMISSIONER JAMES: I can only  
8 say that is probably one of the main reasons that  
9 it's taken us so long to get this point at the table  
10 because we in the Administration who were in  
11 negotiations with RCN had this as a major concern  
12 for us is how do we draw RCN into making a larger  
13 commitment and providing services across the board  
14 for the entire City. And that took a lot of  
15 negotiations even to the point where they're going  
16 to start in 3 and 4. We by no means at all took  
17 that issue lightly. We were very concerned that you  
18 would have the same concerns that you're expressing  
19 right now, and certainly in the concerns that we  
20 have as people who live in the city is that if  
21 there's going to be an opportunity for competition  
22 and lower rates, everyone should have that benefit.  
23 This is the best deal that we could create at the  
24 time that we were able to bring to the table.  
25 Hopefully we will continue to encourage them into

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2 move in those areas. But I don't know if we have  
3 the administrative or regulatory authority to force  
4 them into areas where they're not willing to go.

5 COUNCILMAN CLARKE: I guess because of  
6 the Telecommunications Act and we essentially have  
7 know wherewithal to say that you can't just select  
8 this very lucrative area without --

9 DEPUTY COMMISSIONER JAMES: I thank if  
10 you look at the businesses in general, look at all  
11 the different telephone companies that there are.  
12 There's over 33 competitive local exchange companies  
13 that have identified Philadelphia in a marketplace  
14 and I can tell you they're all in Center City.  
15 There's on competition for your home service right  
16 now. Nobody's offering it and I don't see anybody  
17 stepping up to it, but there's 33 companies that  
18 have identified Philadelphia as the place to do  
19 business and they're all in the core of Center City.  
20 So either the Telecommunications Act doesn't have,  
21 you know, everything in it, it certainly provides  
22 competition. But companies, just like dot com  
23 companies, like everybody, they're going to have to  
24 generate a profit first before they can expand. The  
25 ones who expand without generating a profit and

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2 don't have the customer base don't last very long.  
3 Even though they're starting in Areas 3 and 4, those  
4 areas 3 and 4 have always existed and have always  
5 been lucrative to whoever had them. That doesn't  
6 make them a safe haven and only restricted to the  
7 incumbents. Everybody has to have an opportunity  
8 and they have, as a business, have a right to make a  
9 selection where they want to go.

10 COUNCILMAN CLARKE: Thank you, Mr.  
11 Chairman.

12 COUNCILMAN KENNEY: Councilmember  
13 Blackwell.

14 COUNCILWOMAN BLACKWELL: Thank you very  
15 much.

16 I understand there was an appeal filed  
17 in March of 2000 with NLRB; is that true and what is  
18 the status?

19 DEPUTY COMMISSIONER JAMES: I'm sorry,  
20 Councilwoman, I'm not familiar with.

21 COUNCILWOMAN BLACKWELL: The National  
22 Labor Relations Board.

23 DEPUTY COMMISSIONER JAMES: Well, I'm  
24 not familiar with any of the labor relations issues  
25 RCN is involved in.

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2 COUNCILMAN KENNEY: Councilmember, I'm  
3 not sure whether we're going to have testimony --  
4 no, we're not going to have testimony.

5 COUNCILWOMAN BLACKWELL: We're not going  
6 to have testimony from CWA?

7 COUNCILMAN KENNEY: No, not at this  
8 time.

9 COUNCILWOMAN BLACKWELL: Okay.

10 COUNCILMAN KENNEY: Councilwoman  
11 Blackwell has a request that a representative from  
12 RCN approach the table, whoever you believe is  
13 appropriate to answer this particular question.

14 COUNCILWOMAN BLACKWELL: Good afternoon.

15 MR. PITTS: Good afternoon,  
16 Councilwoman. I believe you're referring to the --  
17 I'm sorry. I am John Pitts, P-I-T-T-S.

18 COUNCILMAN KENNEY: Hold on for one  
19 second.

20 COUNCILWOMAN BLACKWELL: Thank you.  
21 Identify yourself for the record and proceed. Thank  
22 you.

23 MR. PITTS: My name is John Pitts,  
24 P-I-T-T-S, I'm the area vice president for RCN.  
25 Councilwoman, I believe you're referring to the

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2 matter concerning RCN and the CWA in the Lehigh  
3 valley system?

4 COUNCILWOMAN BLACKWELL: Yes.

5 MR. PITTS: It is correct that we did  
6 appeal a ruling from the NLRB. The current status  
7 of that -- and the particulars are in my testimony  
8 from October 31st. The current status of that is  
9 that we have sent a letter to the CWA requesting  
10 that we both drop litigation and move to a fair and  
11 open election in the Lehigh Valley. And we have  
12 just recently received a response from the CWA  
13 agreeing in part to our recommendation.

14 COUNCILWOMAN BLACKWELL: That's a very  
15 important issue to us, and I understand Councilman  
16 Cohen has a lot of issues with regard to this whole  
17 issue concern.

18 As you know, there's been a lot of talk  
19 in the past about racial disparity in your building  
20 plan, and certainly we want to make sure that you're  
21 a young company that RCN is and that all people  
22 certainly in Philadelphia are protected.

23 Let me ask. It's been said that because  
24 of financial problems RCN has decided not to go into  
25 have other markets. What is preventing you or

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2 encouraging you to stay committed to Philadelphia?

3 COUNCILMAN KENNEY: Councilmember

4 Reynolds-Brown has follow-up to Councilmember's

5 Blackwell question.

6 COUNCILWOMAN REYNOLDS-BROWN: Good

7 afternoon, gentlemen.

8 MR. PITTS: Good afternoon.

9 COUNCILWOMAN REYNOLDS-BROWN: You

10 indicated in your response that you sent a letter to

11 CWA requesting that both of you drop your cases,

12 correct?

13 MR. PITTS: Correct.

14 COUNCILWOMAN REYNOLDS-BROWN: And that

15 they -- did you use the word "comply" or "support"

16 your recommendation? Which was it?

17 MR. PITTS: The letter requests that we

18 both -- suggests that we both drop litigation and

19 move to a fair and open election. And the letter

20 that we received from them just a few days ago, it

21 agreed to generally that statement with some

22 stipulations, and we're formulating a response to

23 their letter.

24 COUNCILWOMAN REYNOLDS-BROWN: You faded

25 on the tail end of your response.

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2 MR. PITTS: They're letter -- we  
3 received a letter from them a few days ago agreeing  
4 to the concept of dropping litigation and moving to  
5 an election.

6 COUNCILWOMAN REYNOLDS-BROWN: Thank you  
7 very much. I was unclear on what you were referring  
8 to when you say recommendation. Thank you.

9 Thank you, Mr. Chairman.

10 MR. PITTS: Can I add something? Of  
11 course, we have to work on the hows and the wheres  
12 and so on.

13 COUNCILMAN KENNEY: Councilmember  
14 Blackwell, would you like to continue?

15 COUNCILWOMAN BLACKWELL: Thank you. We  
16 had followed up asking due to financial issues just  
17 the status of where they are in terms of preventing  
18 or encouraging a stay in the City. Where is RCN  
19 now?

20 We have a lot of concerns in this  
21 Council and there are people on both sides of the  
22 issue because we're really not sure that we're  
23 clear. It's a union town. We want to expect our  
24 unions. We still hear all the rumors about RCN not  
25 really being committed to the whole City but only

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2 being committed to certain people in certain areas.

3 And those are legitimate issues for us. So we want

4 to know exactly what your plans are and what your

5 commitment is to Philadelphia, to certain areas and

6 to all of it.

7 MR. BURNSIDE: I'm Scott Burnside,

8 Senior Vice President for Regulatory and Government

9 Affairs for RCN.

10 Let me start with the macro and move to

11 the micro answer to that question.

12 COUNCILWOMAN BLACKWELL: Thank you.

13 COUNCILMAN COHEN: Define macro and

14 micro for me.

15 MR. BURNSIDE: I will. I will do that.

16 From a macro prospective, I want to talk about the

17 general economic conditions and how they have

18 changed over the last couple of months and even over

19 the last year with respect to investment capital and

20 new business interests. And from that perspective,

21 I'm talking from macro perspective.

22 As you probably are aware, RCN and other

23 companies in its so-called sector economically,

24 we're very fortunate, those of us who had a business

25 plan that was of some interest to Wall Street and



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2 we're able to collect or attract a substantial  
3 investment to start this business. It's a business  
4 with a very high barrier of entry. After all, what  
5 we're doing, essentially, is competing with two or  
6 three of the most entrenched monopolies that this  
7 country's ever seen, that being the local exchange  
8 telephone companies and the entrenched unregulated  
9 cable monopolies. And to do that, we need to have a  
10 substantial amount of capital to build a network.  
11 We were able to raise and continue to raise that  
12 capital, but without any do doubt, there has been --  
13 whether we use, as I hear on television, the R word  
14 or not, we're in a economic downturn. And  
15 obviously, that means from a business perspective,  
16 there is much less investment capital available.  
17 And so what we have done, as any prudent business  
18 would be do, is adjust its business plan and its  
19 trajectory of growth accordingly; and we've done  
20 that. We have pulled back in markets or new markets  
21 that we had been seriously exploring, places like  
22 Denver, Colorado, and Houston, Texas, and so on, and  
23 concentrated simply on the markets where we have  
24 already committed to. And certainly --

25 Now I'm moving, I guess, from the macro

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2 to the, micro. With respect to this market, clearly  
3 RCN, taking the Greater Philadelphia market as a  
4 whole, has already made a substantial commitment.  
5 We have something in the neighborhood of 25  
6 different agreements or licenses to operate in  
7 suburban communities and want very much to have the  
8 same opportunity to operate here in the City itself.  
9 So I think with respect to any references about RCN  
10 so I think with respect to any references about RCN  
11 slowing down its growth, that I hope explains the  
12 rationale and exactly what has gone on as we've  
13 adjusted to this economic condition we find  
14 ourselves in. And we're very hopeful, as I think  
15 most people are, that once the economy turns to some  
16 degree, the investment bankers in Wall Street will  
17 again reinvest or additional investments in  
18 companies who have survived this downturn; and we  
19 fully intend to be one of those companies. So I  
20 think from the perspective of the overall business  
21 plan, that addresses our current environment and  
22 situation.

23 Now, with respect to of the City itself,  
24 I think that Mr. James's explanation to Councilman  
25 Nutter about what our plans are and how we plan to

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2 go about it and the protections and safeguards in  
3 the license that has been negotiated over some long  
4 period of time gives both the company and the City a  
5 reasonable, if you will, win-win agreement because  
6 it has to be that way. And I would only have added  
7 to his -- and perhaps this is to some degree  
8 addressing your question, that if RCN is successful  
9 in doing what we are prepared to sign for here in  
10 the City, the opportunity to go on beyond that,  
11 obviously, becomes much easier because we will have  
12 then achieved some economic base. We're building a  
13 very brand-new high technology network, one that  
14 doesn't exist today. That's the good news. The bad  
15 news is we don't have any customers yet in  
16 Philadelphia. And to establish a customer base with  
17 the investment necessary and the infrastructure, the  
18 head end, the telephone switch and all of those  
19 things in place, the opportunity and ability to go  
20 into the other parts of the City became very  
21 attractive to us. But we simply can't digest the  
22 whole thing all at once. And I think that is pretty  
23 much what Mr. James was saying and I think that's  
24 what I would say.

25 I'm not sure if I've answered all of

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2 your questions, but if I haven't, I'm not sure I  
3 remember exactly what else I need to tell you.

4 COUNCILWOMAN BLACKWELL: In light of  
5 your recent -- and the statements you just made  
6 concerning your financial concerns, do you foresee a  
7 problem in obtaining construction and performance  
8 bonds in order to ensure competition in the initial  
9 phases of the project?

10 MR. BURNSIDE: None whatsoever. This  
11 company is very well capitalized and, in fact, is  
12 prepared to weather a much, much longer storm with  
13 respect to a downturn in the economic conditions  
14 than any of us believe is reasonable. We're fully  
15 funded out through a five-year business plan and  
16 with the ability to attract, hopefully, new  
17 investment over the next couple years, we'll be back  
18 on the growth projectory that we were on. But if  
19 not, we have a commitment and we we're not making  
20 any commitments that we can't fully honor. So I'm  
21 very confident that what we're doing here in  
22 Philadelphia can be accomplished with all of the  
23 safeguards that have been built into the agreement.

24 COUNCILWOMAN BLACKWELL: Thank you.

25 Thank you, Mr. Chairman.

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2 COUNCILMAN KENNEY: Thank you.

3 Councilmember Rizzo.

4 COUNCILMAN RIZZO: I'd like to follow-up  
5 for Commissioner James on the amendments to the OVS  
6 agreement. And it follows the financial condition  
7 of RCN. Here, obviously, you must have had a  
8 concern because it says here, "Given RCN's recent  
9 financial problems, we wanted to increase their  
10 financial commitment to ensure the project would be  
11 completed and make this arrangement more equitable  
12 to the commitment of the other franchise-holders."  
13 The construction and performance bonds, could you  
14 tell us the value of those construction and  
15 performance bonds, and are they adequate in the  
16 event that --

17 DEPUTY COMMISSIONER JAMES: Councilman,  
18 you have to excuse me on the actual numbers. I  
19 don't have the actual numbers for what the bonds  
20 are. I would say just off my memory, the  
21 construction bonds are based on the total amount of  
22 money that's required for them to build out. It's  
23 like a percentage like most bonds. It's based on  
24 the amount of dollars that are going to be expended  
25 along with the insurance. We would obtain a

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2 sufficient amount to cover the construction that  
3 they're planing to do as well as a performance bond  
4 to make sure that we have sufficient capital through  
5 a bond. If RCN would not be able to complete it, we  
6 would have money to be able to go out and hire  
7 someone to complete the construction or be able to  
8 sell off the assets that are already in place.

9 COUNCILMAN RIZZO: Wouldn't it be --  
10 isn't it important for a decision-making process to  
11 know exactly those numbers before we make a  
12 decision?

13 DEPUTY COMMISSIONER JAMES: I'm not  
14 saying I don't. I just don't have them in front of  
15 me and I don't recall them off the top of my head.

16 COUNCILMAN RIZZO: Could you please  
17 comment on the fact -- in your opinion, the  
18 performance bonds and construction bonds would be  
19 established to sufficiently cover the completion of  
20 the construction and bring the system's construction  
21 to completion, if they walked, who would operate a  
22 system we just built?

23 DEPUTY COMMISSIONER JAMES: We had this  
24 discussion with one of the previous franchise or  
25 along the same lines and their ability when Urban

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2 Cable took over from Time-Warner and the Wade  
3 franchise. We asked for additional construction  
4 bonds and there were discussions that if they were  
5 unable to fulfill their obligations for the  
6 build-out, the City would have to take over that and  
7 operate it either by finding an operator through a  
8 bid process or looking for a company that would want  
9 to acquire that particular franchise and then  
10 operate it.

11 COUNCILMAN RIZZO: Because this isn't  
12 the typical technology that you say to a cable  
13 company, hey, we need you to jump in and operate.  
14 This is a different animal, from what I understand.  
15 It's just not -- there's not a lot of people walking  
16 around to do this.

17 DEPUTY COMMISSIONER JAMES: Basically,  
18 the technology operates very similar to what's out  
19 there today, either from the incumbent cable  
20 operator or from the telephone company. It's a  
21 fiber network and it's a matter of technology as far  
22 as the switches that operate it.

23 COUNCILMAN RIZZO: Before we lose track  
24 of the questions, could you comment on how and  
25 amounts of the performance the construction bonds?

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2 MR. PITTS: I don't recall the exact  
3 amount. But I know that in reading through the  
4 franchise and what was required, it was in the range  
5 of the performance bonds that we were required when  
6 I was a cable operator here in the City, so we  
7 didn't have any concerns about the amount.

8 COUNCILMAN RIZZO: I mean, really, I  
9 can't imagine we could sit here and you're planing a  
10 project and know that you're going to need  
11 construction and performance bonds and you don't  
12 have a clue what those numbers are.

13 MR. PITTS: I didn't say I didn't have a  
14 clue.

15 COUNCILMAN RIZZO: Well, then tell me.  
16 Tell me how much these performance and construction  
17 bonds are going to be.

18 MR. PITTS: One second, Councilman.

19 COUNCILMAN RIZZO: Sure. There's a  
20 point of being vague and this is it.

21 MR. PITTS: We have it.

22 MR. STEELE: My name is Thomas Steele,  
23 Vice President with RCN. I've had the advantage of  
24 being able to check the agreement while the  
25 gentlemen were talking at the table. The



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2 construction bond is \$3 million, and there's also a  
3 Section in the agreement which gives the City's risk  
4 manager the ability to require the limits on  
5 insurance and/or the limits on the bonds required by  
6 the agreement to be increased by RCN from time to  
7 time to reflect the increased potential liability.  
8 The only restriction there is it has to be  
9 consistent with standards that are at work in the  
10 cable industry.

11 COUNCILMAN RIZZO: Excuse me now.  
12 You're talking about a construction bond of \$3  
13 million. That sounds to me very, very lean. How  
14 much are you planning to spend -- let's talk about  
15 Area 1. What is your investment in Area 1? Any of  
16 the areas, just give me an example. It's \$3 million  
17 it's tough to build anything today for -- I just  
18 can't imagine \$3 million being enough to finish a  
19 project that could be how many millions, how many  
20 millions of one of the projects going to be?

21 MR. PITTS: \$125 million.

22 COUNCILMAN RIZZO: So we're halfway  
23 through the project, \$125 million project, and you  
24 expect the City of Philadelphia to finish it for \$3  
25 million.

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2 MR. PITTS: It was president my  
3 expectation that that's what the bond was designed  
4 to do.

5 DEPUTY COMMISSIONER JAMES: The bond  
6 provides us insurance in case there's a default.  
7 It's set at a number that's very similar to what the  
8 other operators had when they obtained the cable  
9 franchise. It's not really our expectations that we  
10 will have to acquire this and operate it. \$3  
11 million is enough for us to find a company to  
12 complete it. \$3 million may be enough for us to  
13 sell off the customer base that they have already  
14 built to date, but it's certainly not intended to  
15 recoup the \$125 million if that's what they're  
16 planning to spend on the construction. Bonds are  
17 just not designed to be the full face value of the  
18 construction. It's a percentage of whatever that  
19 capital is. Again, it has insurance, it has a  
20 performance bond, and it has a construction bond.  
21 So we have at least three vehicles to use if we're  
22 ever put into that position to have to take it over.

23 COUNCILMAN RIZZO: And the amendment  
24 would b3e that requirement for each of the franchise  
25 areas?

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2 DEPUTY COMMISSIONER JAMES: Each

3 franchise area, that's correct.

4 COUNCILMAN RIZZO: Thank you, Mr.

5 Chairman.

6 COUNCILMAN KENNEY: Thank you.

7 Councilwoman Miller.

8 COUNCILWOMAN MILLER: Thank you, Mr.

9 Chair. I have a question for Mr. James and also a  
10 couple questions for RCN.

11 Under the Federal Cable Act, does that  
12 mean now that Philadelphia is open or will be open  
13 to all different types of companies coming in to do  
14 cable?

15 DEPUTY COMMISSIONER JAMES: Under the  
16 Telecommunications Act in '96, it allows any parts  
17 of the country for a company to get started as an  
18 OVS operator and to go into that market if they meet  
19 the requirements of the FCC.

20 COUNCILWOMAN MILLER: So is in the only  
21 OVS company that has approached Philadelphia to want  
22 to provide cable services?

23 DEPUTY COMMISSIONER JAMES: Yes.

24 COUNCILWOMAN MILLER: Do you have an  
25 idea of how many more companies are out there?

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2 DEPUTY COMMISSIONER JAMES: When we  
3 first had the opportunity to meet with RCN, we had  
4 the similar question, and I think from our research  
5 there was only about three or four companies  
6 nationwide that were in different markets that were  
7 trying to do the same type of effort. There was  
8 companies in, I believe, Georgia, might have been in  
9 Florida, in the midwest area and the California. I  
10 can't recall the specific jurisdictions. But there  
11 were not a lot of companies that were taking this  
12 model and was trying to become an overbuilder.

13 COUNCILWOMAN MILLER: This question is  
14 for RCN. Since part of Area 3 and 4 are in my  
15 councilmatic district, I have questions that pertain  
16 to programing and service. What is the difference  
17 between you, a OVS and let's just say Pop Vision?  
18 Are you familiar with Pop Vision?

19 MR. PITTS: Yes, Councilwoman, I am.

20 The difference?

21 COUNCILWOMAN MILLER: Yes. Pop Vision  
22 came into town and it's the only company I know  
23 other than Comcast and then part of Wade is also in  
24 my area. And Pop Vision came into town and people  
25 jumped at it purchased Pop Vision, and it was awful.

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2 My concern is that people get quality service for  
3 their money. So I really want to know about your  
4 track record and the type of programing and service  
5 that you provide.

6 MR. PITTS: Well, we're operating in 10  
7 towns in Delaware County right now, offering a high  
8 how quality of service, full range of video  
9 programing, telephone and high speed internet. What  
10 we are proposing is to bring that same level of  
11 service into Philadelphia. It's a much more robust  
12 offering than Pop Vision. It's everything that  
13 people are used to in the area of programing. Any  
14 channels that are being offered now, virtually all  
15 of them are on our lineup as well. There's some  
16 limitations with Pop Vision that with us delivering  
17 our product fiberoptic and some co-ax cable. We  
18 don't have those limitations.

19 COUNCILWOMAN MILLER: So when it rains,  
20 your service is still there, it doesn't go in and  
21 out?

22 MR. PITTS: Exactly.

23 COUNCILWOMAN MILLER: When you set your  
24 cable system up in Chicago and Boston and New York  
25 and Washington, D.C., are you doing the entire

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2 cities? And how long have you been in existence?  
3 Or are you only doing certain areas slowly the way  
4 you're doing here in Philadelphia, moving into the  
5 entire city slowly?

6 MR. BURNSIDE: I'll try to answer that.  
7 In the markets that you identified, I think the  
8 first one was Chicago, Chicago is somewhat similar  
9 to Philadelphia in that it is divided into multiple  
10 franchise areas. We actually started in Chicago  
11 with one area and have just recently, just in the  
12 past couple of months signed a deal with Chicago,  
13 after having had a couple of years start in that  
14 first area, to do three other areas. So I think  
15 there is something of a similarity. The only thing  
16 I would point out to you that with respect to  
17 Chicago, RCN acquired a small company that was doing  
18 exactly what we're doing, but only doing it in  
19 Chicago. With respect to Boston, Boston is  
20 different in that it only has one franchise area.  
21 The footprint of Boston, the physical footprint of  
22 boston is not nearly as big as the City of  
23 Philadelphia. And for that and I guess other  
24 reasons, they chose in the City only to have one  
25 franchise. So obviously when we did an agreement in

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2 the city of Boston, it covers the whole City. We  
3 have also -- we also started out there with an  
4 interim OVS agreement very similar what we're doing  
5 here.

6 COUNCILWOMAN MILLER: So you're  
7 providing cable to the entire city of Boston at this  
8 time?

9 MR. BURNSIDE: Well, not yet. That goes  
10 to sort of the second part of your question. We've  
11 been in business since 1997 and we're in the middle  
12 of a seven-year build-out schedule for the franchise  
13 in Boston.

14 Now, I also wanted to point out one  
15 other distinction you raised. In the City of New  
16 York where there are five boroughs and I think, I'm  
17 not sure, but I think nine franchises all tolled, we  
18 are operating there strictly under an OVS agreement.  
19 There is no transition to franchise and we,  
20 therefore, we have no commitment to build out the  
21 whole City. And the reason that's germane is that  
22 the City itself, the Department of Information,  
23 Telephone and Technology, the acronym's DOITT, felt  
24 that it would have been virtually impossible to hold  
25 a company to a build-out schedule for, let's say,

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2     all of Manhattan where there are two franchise areas  
3     in any time comparable to what was in the existing  
4     franchise agreement and they decided that some  
5     competition in some areas was better than none. And  
6     I don't want to put words or thoughts in their head,  
7     but I think if you ask Mr. James's counterparts in  
8     the City of New York that that was the thought  
9     process behind granting an OVS agreement to RCN.  
10    And by the way, just as a footnote, we are now in  
11    some very preliminary analysis of whether or not it  
12    makes sense to change that OVS to a franchise. That  
13    will take some time and negotiations, but gives you,  
14    I think, as best I can sort of a walk-through the  
15    major RCN markets. We're also operating in San  
16    Francisco -- and what else didn't I touch on? And  
17    Washington, D.C. as well.

18                   COUNCILWOMAN MILLER: So you've been in  
19    business since '97 and you're providing services.  
20    Have you provided us with information around  
21    customer satisfaction surveys and all those kind of  
22    things?

23                   MR. PITTS: I believe -- let me check  
24    one second, Councilwoman.

25                   COUNCILWOMAN MILLER: So you know what



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2 happens. As Councilpeople we get all the calls. If  
3 you're good, we'll get calls; but if you're bad,  
4 we'll get a whole bunch of calls.

5 MR. PITTS: I fully understand that,  
6 Councilwoman. I'm not sure if that was asked.

7 MR. BURNSIDE: While John is going  
8 through that. If you would permit me one  
9 observation along those lines, because I think if  
10 I've had the experience of dealing and doing  
11 business in all the cities we just talked about,  
12 that question has come up in one form or another  
13 virtually in every community, big or small. And  
14 it's a very good question, but part of the answer,  
15 part of the answer is that will help relieve and  
16 does relieve -- we have prove of that. Helps  
17 relieve those calls that you get because in markets,  
18 although there are not many today, in markets that  
19 in fact have competition where there is cable  
20 choice, customers -- and we have most of that  
21 experience, by the way. Where that happens,  
22 customers don't call you as frequently with bad  
23 service or complaints; they simply call the  
24 competitive alternative. And that's ultimately the  
25 underlying desire of the 1996 Telecommunications Act

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2 that promoted local service telephone competition  
3 and direct competition with the incumbent cable  
4 operators.

5 COUNCILWOMAN MILLER: I think Councilman  
6 Clarke asked this question. I'm not really sure.  
7 How much is your basic service? How much would it  
8 be? Is there some rough estimate?

9 MR. PITTS: Around \$31 for basic  
10 service.

11 COUNCILWOMAN MILLER: And that includes  
12 just basic, no HBO or anything like that?

13 MR. PITTS: No premium channels, but I  
14 guess what would be considered basic and expanded  
15 basic here, the ESPNs, the CNNs, and 3, 6, and 10,  
16 17, 29, so on.

17 COUNCILWOMAN MILLER: Okay. I'll have  
18 questions later. Thank you.

19 COUNCILMAN KENNEY: Thank you,  
20 Councilwoman.

21 Councilmember Cohen, did you have some  
22 questions regarding the labor issues?

23 COUNCILMAN COHEN: Yes.

24 COUNCILMAN KENNEY: Please proceed.

25 COUNCILMAN COHEN: Not just on labor.

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2 COUNCILMAN KENNEY: Whatever you'd like,  
3 Councilman, whatever area.

4 COUNCILMAN COHEN: And I don't mean to  
5 diminish the significance of labor issues. I'm a  
6 Councilman-at-large, and therefore, I'm very unhappy  
7 when I hear you say -- that means, not only that I  
8 am free from being prosecuted, I'm at large in the  
9 other sense, politically representing the entire  
10 City as there are a number of other councilmembers.

11 (Laughter.)

12 COUNCILMAN KENNEY: That took me a while  
13 to figure out what that was.

14 COUNCILMAN COHEN: I'm looking around,  
15 I'm not alone in that. So I assume the other  
16 Councilmembers-at-large, and if not, I certainly am  
17 unhappy that you only contemplate, as I understand  
18 it in the first seven years dealing with dealing  
19 with only maybe half the City. However, since I'm a  
20 democratic ward leader in the Northwest and my home  
21 is there, I'm at least pleased that my home area is  
22 part of Councilwoman Miller's district councilship.  
23 She's my District Councilwoman. So I'm please that  
24 that's included, but there at least I want to know  
25 is service going to be made available to the entire

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2 district at one time or will it be piecemeal? Will  
3 I get complaints from members of my ward who cover a  
4 portion of the district that Councilwoman Miller  
5 represents as a District Councilwoman? Will they  
6 get service at the same time that everybody else in  
7 that district of Councilwoman Miller, or will there  
8 be different parts of the district that get service  
9 under your program at different points of time?

10 MR. PITTS: Our plan is to construct  
11 starting from the north, east, and proceeding west.  
12 We have a schedule and a map that we submitted at  
13 the hearing and with the application. After an  
14 areas has been completed the construction process,  
15 then we would start selling and the installation  
16 process while we're proceeding to construct in the  
17 next area. So we come on in phases throughout the  
18 whole period of the seven years of construction.

19 COUNCILMAN COHEN: Well, except I don't  
20 know what you mean by area. Does area cover the  
21 whole district?

22 MR. PITTS: No, it's not tied to  
23 councilmatic districts. It's more of what is a  
24 manageable area of construction.

25 COUNCILMAN COHEN: In the Northeast an

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2 Northwest, how many areas will there be?

3 COUNCILMAN NUTTER: You guys have a map?

4 MR. PITTS: Yes.

5 COUNCILMAN COHEN: Is there a number?

6 MR. PITTS: We can -- let us refer to  
7 the maps. We've submitted maps in a number of  
8 submissions.

9 COUNCILMAN COHEN: Are there 20  
10 different areas, for example? I'm just speculating.  
11 I'd just like to have an estimate.

12 MR. PITTS: Well --

13 COUNCILMAN COHEN: If each area comes on  
14 time separately and there are 20 areas, then there  
15 will be 20 different times when service will be made  
16 available in the larger territory that you expect to  
17 cover during the seven years.

18 MR. PITTS: We would probably activate  
19 areas when construction is underway, a different  
20 area every three or four weeks. So we would be in  
21 one neighborhood or one section of a neighborhood  
22 which might only be maybe 300 homes or 400 homes and  
23 they would be told that there area would be  
24 available for service within a few weeks. And then  
25 within a few weeks after that, there could be

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2 another 3 or 400 homes on adjacent streets. So the  
3 process is continual where we're continually  
4 activating nodes, doing construction, offering  
5 service, and then moving on to the rest of the  
6 paper. So it's sort of a fluid process.

7 COUNCILMAN COHEN: But within that  
8 seven-year program, there may be many different  
9 times when service will first become available to a  
10 segment?

11 MR. PITTS: There will be, absolutely.

12 COUNCILMAN COHEN: One of the District  
13 Councilmembers don't appreciate that, that they  
14 think those of us that cover the City never get  
15 these complaints, but we do, and the major complaint  
16 is "That street three blocks away got paved  
17 yesterday. Why isn't our street included?" Or they  
18 went down around the corner instead of proceeding  
19 straight down the avenue to cover the area. How do  
20 we explain -- am I right, Councilman DiCicco?

21 COUNCILMAN DI CICC0: Absolutely.

22 COUNCILMAN COHEN: It was much quieter  
23 before anybody got any improvements. But as soon as  
24 the improvements begin, everybody wants them and  
25 that's a understandable human reaction. How are we

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2 going to be in any way able to say that what's  
3 happening is happening fairly?

4 MR. PITTS: I think that, you know, my  
5 answer to that, being a long-term operator in the  
6 City of Philadelphia, I understand the realities of  
7 construction and causes of concern, information is  
8 the best way for us to address that. And what we've  
9 been doing in the other areas that we operate in is  
10 we have town meetings and we would go out and talk  
11 to the community to help with their expectations  
12 about our progress. We use the newspaper. Small  
13 newspapers will put streets maps and show streets  
14 and say, in three weeks' we'll be in this area. Or  
15 by six months these areas will be covered. And we  
16 found that that helps a lot. It reduces the number  
17 of calls to offices like yours and helps us so that  
18 when we're on the street doing construction, people  
19 know that we're coming and it also helps us in the  
20 sales effort, to be quite frank.

21 COUNCILMAN COHEN: Let me ask you this  
22 question, which will no link my questions with labor  
23 questions. Will you be what appear to be, to me at  
24 lease, more reasonable if we call you and say, "We  
25 see the schedule, but frankly we think there's a

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2 better schedule or fairer schedule," will be  
3 prepared at least to listen and then explain why  
4 your system is better? Or may be even say, "Well,  
5 yeah, you know you got a point there. Let's look at  
6 it and maybe we're going to change it."

7 MR. PITTS: Absolutely.

8 COUNCILMAN COHEN: Will there be that  
9 ability?

10 MR. PITTS: Yes, there would be.

11 COUNCILMAN COHEN: Because in the labor  
12 area, I don't know whether I can take from your  
13 statement today that you're considering a reply to  
14 that CWA letter offering another election and let's  
15 put an end to lawsuits. Does that fairly what the  
16 letter said?

17 MR. PITTS: Their letter was in response  
18 to our letter asking to drop the lawsuit.

19 COUNCILMAN COHEN: You were the  
20 initiator?

21 MR. PITTS: That is correct.

22 COUNCILMAN COHEN: Has the union  
23 responded.

24 MR. PITTS: They did respond.

25 COUNCILMAN COHEN: They did?



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2 MR. PITTS: Yes.

3 COUNCILMAN COHEN: And there's what, the  
4 now rebuttal stage?

5 MR. PITTS: I think that we need to  
6 respond to the details of their response. I think  
7 that we're in a good place, and you may want to ask  
8 them if they think the same thing.

9 COUNCILMAN COHEN: Well, if they  
10 testify, we probably will. We are interested, to  
11 whatever extent we can have an influence, to promote  
12 a friendly amicable relationship between business  
13 and labor. Many of us happen to believe that an  
14 economic climate is strengthened by a strong labor  
15 movement, you know, putting for the vigorously the  
16 feelings of working people. To me that's  
17 self-obvious when I hear Greenspan talk about he  
18 worries about purchasing power, and I've never  
19 understood a company that thinks it helps the  
20 purchasing power of the community by bringing about  
21 layoffs or by insisting on low wages. It seems that  
22 policy seems to me to be self-defeating if  
23 purchasing power of the consumer is an important  
24 aspect of the economy. From what I hear from Mr.  
25 Greenspan and everybody else that discusses it, the

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2 single most important factor is consumer purchasing  
3 power and even the belief, of the perception by  
4 consumer that their income is going to be steady,  
5 reliable, and sufficient to enable them to purchase.  
6 So I'm really very confused by business  
7 organizations that are hostile to labor groups.  
8 Seems to me in the interest of economic development,  
9 they ought to be favorable.

10 But in any event, we are concerned about  
11 the climate in Philadelphia. Some people think it's  
12 a parochial interest. We don't think so. We think  
13 we're promoting healthy economic climate when we  
14 bring about good relations between labor and  
15 business. And so we encourage you to do whatever  
16 your company can do, and we say the same to the  
17 union, to bring about that kind of understanding.  
18 And, frankly, I've been to your previous material.  
19 I did not understand why you seem to be placing so  
20 many obstacles in the way of union representation.  
21 Sooner or later it's going to happen, and I think  
22 everybody is helped the sooner it happens and in the  
23 more friendly background.

24 What is your sense? Does it seem as if  
25 you're on the road to settlement of that problem?

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2 I know it's not in Philadelphia, but it affects the  
3 same top people of your company are concerned and  
4 labor operations, whether it's in Philadelphia or  
5 outside. Does it seem to you that from your point  
6 of view the climate for the friendly amicable labor  
7 relationship is developing in the proper direction?

8 MR. PITTS: I can only state my view.  
9 In my opinion, we've asked for a fair and open  
10 election to have the employees determine whether  
11 they want to be represented by the CWA. They have  
12 choices: The CWA or no union or at union or maybe  
13 even the union that they had up there for years.  
14 What we want to do is set the rules for a fair and  
15 open election and then abide whatever the outcome of  
16 that is. And if the CWA wants to do that, then  
17 we're in agreement and then we'll move forward.

18 COUNCILMAN COHEN: Why has it taken so  
19 long able to get an agreement? Technic a who is  
20 qualified to work.

21 COUNCILMAN KENNEY: In the interest of  
22 dialog, can we have representatives from the CWA  
23 here at the table, please?

24 COUNCILMAN COHEN: I think that's a very  
25 fair approach.

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2 MR. MOONEY: My name is Edward Mooney,  
3 I'm the vice president of Local 1300 of the CWA.

4 COUNCILMAN KENNEY: Had you completed  
5 your answer?

6 MR. PITTS: Yes.

7 COUNCILMAN KENNEY: Mr. Mooney, please.

8 MR. MOONEY: Thank you. To clear this  
9 up, and as Mr. Pitts just stated, what the company  
10 wants is they want to know if the employees in this  
11 area want to be represented either by no union at  
12 all, their former union, the Twin County Operating  
13 Employees Committee or their current union, the CWA.  
14 As we have contested all along, the Twin County  
15 Operating Committee, as Mr. Pitts just acknowledged,  
16 existed in the Lehigh Valley prior to the CWA ever  
17 being contacted. There was a union there, an  
18 established union with a contract in place. What  
19 happened was they contacted the CWA. They wanted  
20 help in --

21 COUNCILMAN KENNEY: Who is they?

22 MR. MOONEY: They were the stewards of  
23 that organization, the Twin County Operating  
24 Employees Committee. Said they wanted help in  
25 administering their contract to better know how to

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2 bargain with the company. We agreed. We sat down,  
3 met with them, discussed the possibilities and what  
4 we need to do, which is called in the union an  
5 affiliation.

6 I myself as a member of the CWA,  
7 formerly my union was called the Federation  
8 Telephone Workers of Pennsylvania. When we decided  
9 as the FTWP to become the CWA, the employer under  
10 the law has no place in that process. Union members  
11 themselves voted from the FTWP to go into CWA.

12 This process was the same. The Twin  
13 County Operating Employees Committee, the members  
14 who are covered under that existing contract, they  
15 have the vote to come into the CWA. They exercise  
16 that vote. It was affirmed by the majority of the  
17 members there. And was the vote unanimous? No, it  
18 was not. But I can't tell you the small percentage  
19 of union votes in the country today that are  
20 unanimous.

21 Now, what happened after that is the  
22 company took up the torch on the side of the  
23 minority, the group that lost that said they didn't  
24 want to be in the CWA and decided to file all these  
25 lawsuits and all these charges and then ignore the

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2 contract. In their letters they say they're abiding  
3 by everything in the contract except the grievance  
4 procedure and acknowledging the stewards that are  
5 elected. Without that, they have basically no  
6 contract because if the company does something which  
7 we believe is a violation, we have no way to enforce  
8 it other than labor board charges.

9           The company sends us a letter, which we  
10 re-voted internally twice already and notified the  
11 company of that, so they're aware of that. They  
12 want us to withdraw all the litigation, withdraw all  
13 charges. The company has the ability to have all  
14 that go away if they just sit down, acknowledge the  
15 bargaining agent and bargain a new contract. We  
16 don't have to withdraw anything.

17           The other problem is if we go to the  
18 National Labor Relations Board, had they followed  
19 the process that we put in place, which was  
20 affiliation, and these employees were not happy with  
21 the CWA, between 90 and 60 days before the  
22 expiration of the current contract, they could have  
23 filed for decertification of the CWA. Because of  
24 all the violations and the NLRB charges, that thing  
25 could never be entertained by the board; it would

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2 have been tossed out. That's why it never happened.  
3 So if in fact they did not want the CWA as thier  
4 bargaining agent, that has nothing to do with the  
5 employer and everything to do with the members.  
6 We're finding hard to believe why an employer is  
7 involved in this. That's our problem.

8 And in response to the letter the sent  
9 us, we did say again we will agree to a vote of the  
10 membership. The company has to stay neutral because  
11 the company would have been neutral in the original  
12 affiliation, as they should have been. And they  
13 have to be neutral in this.

14 These employees, these members in that  
15 area already chose to be a part of a union. If they  
16 didn't want to be part of a union, they would have  
17 decertified the Twin County Operating Employees  
18 Committee prior to the contract being in place.

19 That's all we're asking for. We want  
20 them to have their right. Their right was the CWA.  
21 Now we ask the employer to sit down and bargain a  
22 collective bargaining agreement. That's it.

23 COUNCILMAN KENNEY: Mr. Pitts.

24 MR. PITTS: Obviously, I disagree with  
25 Mr. Mooney on the events that led us to where we are

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2 today. But it does appear that we at least agree as  
3 to where we are today. I think that suffice it to  
4 say if we're able to come to an agreement on the  
5 terms of an election, there will be an election  
6 fairly soon and we will let the employees decide  
7 going forward how they want to be represented.

8 COUNCILMAN KENNEY: Councilman Cohen.

9 COUNCILMAN COHEN: I'm not sure I'm  
10 clear. Let me boldly put forth what I think the  
11 conclusions both sides are. Seems to me the  
12 communication workers is saying it wants an election  
13 in which it is you vote either for the communication  
14 workers or for no union. The company seems to be  
15 saying if the union is accurate that they want to  
16 ballot that list communication workers, the  
17 independent union or no union. Is that an accurate  
18 picture or am I wrong on that?

19 MR. MOONEY: No, Councilman. In our  
20 opinion, the option of no union is not even  
21 available because if they wanted no union, they  
22 would have decertified the Twin County Operating  
23 Employees Committee. Then, what the question comes  
24 back to is, CWA or Twin County Operating Employees  
25 Committee, in which case the company has no part in



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2 that process.

3 As Mr. Pitts stated, we're close to  
4 where we want to be. This is where we tried to be  
5 sitting at the same table to work out an agreement.  
6 This is the closest we've ever gotten, by the way,  
7 and I want to thank you for it.

8 COUNCILMAN COHEN: Let me ask you the  
9 same question I asked the company representative.  
10 In your opinion, are you moving toward a settlement  
11 of this problem so that you can move forward to  
12 determine what the employees have a right to do, and  
13 that's to make a decision?

14 MR. MOONEY: From our point of view, at  
15 least after the two years or so, they've actually  
16 responded to a letter or have initiated a letter, so  
17 we're pleased with that. We just hope that in their  
18 letter it's phrased in the way, and the company can  
19 speak for themselves what their own intentions are,  
20 it seems to us that the company wants to have  
21 anything washed away as if this did happen, as if  
22 none of these problems existed. In order to do  
23 that, what it does, it leaves ourselves open. If  
24 all the charges are gone, everything's washed away,  
25 and then they begin this process all over again, I'm

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2 looking at another two-year process to get these  
3 issues rectified. Where right now I have a case  
4 that's already been decided in our favor sitting in  
5 front of the National Labor Relations Board in  
6 Washington waiting to be affirmed. And in spite of  
7 all of that, to get to an end to this, we still  
8 agree, we will still forward and have that  
9 bargaining unit vote again on their commitment to  
10 union membership and the commitment to the CWA.

11 COUNCILMAN COHEN: How long will it take  
12 the company to answer the letter that the union sent  
13 in reply to the company's letter?

14 MR. PITTS: Can I make a request,  
15 Chairman, that I answer this question on this  
16 matter. And it appears that we're straying into an  
17 area that I would ask the Chairman if --

18 COUNCILMAN KENNEY: If in your opinion,  
19 this is sensitive legal issue or proprietary  
20 information, certainly we can't you force to answer.  
21 And use your own judgment as to whether you think  
22 that's appropriate or not.

23 MR. PITTS: I would just ask it it's  
24 appropriate for us to go very deep into the  
25 granularity of this issue here?

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2 COUNCILMAN KENNEY: Well, I can't limit  
3 Councilmembers' questions. But I also can't force  
4 you to answer in an area that you believe is  
5 sensitive or to a disadvantage to your company.

6 MR. PITTS: I don't want to seem like  
7 I'm evasive or I don't want to be forthcoming,  
8 because I do want to be open and honest about it.  
9 We feel that we're at a place now where maybe we can  
10 reach an agreement. What I don't want to do is I  
11 don't think it's fair for us to play it out here. I  
12 think the proper place for us to negotiate this  
13 would be --

14 COUNCILMAN KENNEY: I don't disagree.  
15 The only concern that I have as Chair of the  
16 committee is allowing Councilmembers on the  
17 committee and Councilmembers in general to ask  
18 whatever questions they want, but also -- and the  
19 reason I brought Mr. Mooney up here was to make sure  
20 the record is clear. I always feel it's easier when  
21 you're reading the record to read people's discourse  
22 at the same time as opposed to waiting until you're  
23 through and have him come up. It's hard to mesh the  
24 record, in my opinion, from reading the record in  
25 the past. So I'd rather have an answer, question,

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2 rebuttal, you know, that kind of stuff. But  
3 anything that you feel that is inappropriate to  
4 answer or sensitive, please just make that claim and  
5 we'll move on.

6 MR. PITTS: Okay. Let me answer then.  
7 Our goal is to come to a resolution as quickly as  
8 possible, and I think that probably at this point we  
9 may agree on more things than we disagree on which,  
10 I think, is a good place to be at this point.

11 COUNCILMAN KENNEY: Thank you.

12 Councilmember Cohen.

13 COUNCILMAN COHEN: On that optimistic,  
14 I'm prepared to end this line of questioning. I  
15 would hope that that optimistic note is acted on by  
16 both sides so that we really get a sound conclusion  
17 quickly. Thank you. I think it's in everybody  
18 interest.

19 COUNCILMAN KENNEY: Thank you very much.

20 Councilmember Reynolds-Brown.

21 COUNCILWOMAN REYNOLDS-BROWN: Thank you,  
22 Mr. Chairman.

23 Gentlemen, to follow-up on Councilman  
24 Cohen's line of questioning around labor, at the  
25 last public hearing, Councilwoman Tasco, myself, and

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2 a number of members here raised questions, not  
3 necessarily concerns, but questions regarding women  
4 and people of color at all ranks within the company.  
5 So as a follow-up to that, has there been a second  
6 look at how you will do business along those lines  
7 here in the City of Philadelphia?

8 Two questions: What's your track record  
9 with regard to those issues in other communities?  
10 And what will be your plan of action with regard to  
11 recruitment of women and people of color at all  
12 lines of that ladder?

13 MR. PITTS: Yes, Councilwoman, we did  
14 include our track record in the other major markets,  
15 which I believe is a good track record. It's in the  
16 handout that we submitted just following the October  
17 31st hearing. And our goal is to -- we have a newly  
18 formed office of diversity compliance at our  
19 corporate office, and the main focus of that  
20 department is to look at our hiring practices and  
21 promotion practices across the whole company to make  
22 sure that we are reflecting the communities that we  
23 serve and that we are getting as diverse as  
24 possible. And being the area vice president, I can  
25 tell you personally that I am very much committed to

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2 diversity at all levels and I will see to it that we  
3 follow that model.

4 COUNCILWOMAN REYNOLDS-BROWN: At all  
5 levels of the economic ladder?

6 MR. PITTS: At all levels.

7 MR. BURNSIDE: Councilwoman,  
8 specifically, it's Section No. 4. I don't know if  
9 you mentioned that or not. It's Section No. 4 that  
10 has to do employee diversity. You can refer all of  
11 the details which I think are pretty well spelled  
12 out with respect to what John just said in a more  
13 general way.

14 COUNCILWOMAN REYNOLDS-BROWN: Thank you  
15 very much. Thank you.

16 COUNCILMAN KENNEY: Councilmember Nutter  
17 -- I'm sorry, Councilmember Miller.

18 COUNCILWOMAN MILLER: Thank you, Mr.  
19 Chair.

20 I'd still be interesting in seeing some  
21 written information along the lines of customer  
22 satisfaction. You have anything written since 1997?

23 MR. BURNSIDE: I'm sorry, Councilwoman,  
24 could you --

25 COUNCILWOMAN MILLER: Customer

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2 satisfaction surveys, do you have anything written?

3 Do you any results?

4 I know your answer was competition is  
5 good. I understood that. But have you taken any  
6 customer satisfaction surveys? And if so, do you  
7 have written results?

8 MR. PITTS: We are measuring our overall  
9 customer satisfaction benchmarking --

10 COUNCILWOMAN MILLER: I know you're  
11 still kind of new, but still, I know you have  
12 something.

13 MR. PITTS: We do. We have a whole  
14 program devoted to measuring and improving our  
15 customer satisfaction across our whole company. And  
16 we didn't submit that because that was not a request  
17 at the prior hearing.

18 COUNCILWOMAN MILLER: I wasn't at the  
19 prior hearing.

20 MR. PITTS: As we go forward, we would  
21 feel free to share that with you.

22 COUNCILWOMAN MILLER: I'd like to get  
23 that. Thank you.

24 What do you plan to do after year seven?  
25 In year seven it just stops or you're only

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2 interested in what you're doing on the map from one  
3 through seven?

4 MR. PITTS: Well, that's a construction  
5 schedule. We plan to operate all the areas that  
6 have been constructed. But I would think that  
7 between now and then there may be some discussions  
8 about the other areas; that's one possibility.  
9 Another possibility could be that you're involved  
10 with another one of the overbuilders about those  
11 areas. But it's a sizable area. So I think we'd  
12 have our hands full in year seven in operating the  
13 areas that we had just completed constructing.

14 COUNCILWOMAN MILLER: What made you  
15 decide to do the areas that you decided? What made  
16 you decide to start with Area 1?

17 MR. PITTS: Not to start in Area 1?

18 COUNCILWOMAN MILLER: I'm talking about  
19 on your map, year one. Year one. I'm sorry.

20 MR. PITTS: The reason that we chose 3  
21 and 4, and it was a long process as partially Joe  
22 James described, but after we got to the point that  
23 we were talking about two areas and not all 4, we  
24 had to decide which two areas. There were a number  
25 of factors. One, Councilman Clarke talked about,



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2 you know, being close to the plug. There were some  
3 technical issues, but there also was the issue of  
4 Areas 3 and 4 as already being established as one  
5 area with Comcast having operated those areas  
6 together as one company, you know, with one company  
7 for many, many years, it seemed that if we had to  
8 choose two areas that that had already been  
9 established and that there probably wouldn't be much  
10 discussion. We weren't quite right in that  
11 estimation that there wouldn't be discussion.

12 In terms of the order, we tried to just  
13 choose an order that sort of logically progressed  
14 just so we could have contiguous construction. Also  
15 being cognizant of the different neighborhoods to  
16 make sure that we wouldn't be leaving any particular  
17 group till later in the construction process. We  
18 wanted to be fair and go across a diverse area of  
19 neighborhoods in what could be considered fair by  
20 anyone who looked at it. So we started at one end  
21 and we moved across to the other, and we thought  
22 that it proceeded in a way that was without regard  
23 to who lived where or what.

24 MR. BURNSIDE: Councilwoman, excuse me.  
25 Just to add to what John said, in the written

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2 response from the previous hearing, Section B  
3 Paragraph No. 3, which is the technology explanation  
4 goes into just a little bit more detail again and  
5 more specifics on what John just described. So I  
6 would just refer you to that if you want some  
7 additional information.

8 MR. PITTS: There is an issue of where  
9 our sonant ring would enter the City and so on. And  
10 as Scott Burnside described, that is in that section  
11 that he mentioned.

12 COUNCILWOMAN MILLER: Because, you know,  
13 it's not diverse. You just mentioned that it's kind  
14 of diverse and diversity was included in the  
15 planning. That is not really -- when I looked at  
16 the map, that's not a representation of diversity.

17 Are you -- where are you closest to  
18 Philadelphia right now? Are you in Bucks County or  
19 Montgomery County.

20 MR. PITTS: Delaware County. Probably  
21 Upper Darby.

22 COUNCILWOMAN MILLER: See, that's what I  
23 -- there's some comments up here, but someone told  
24 me that you were coming the way you were coming in  
25 because you were already connected or wired in that

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2 particular section geographically. But you're all  
3 the way up here in the Northeast and then Delaware  
4 County us all the way over there on the other end.  
5 This doesn't kind of make sense to me.

6 MR. PITTS: I understand the confusion.  
7 The sonant ring that will feed Philadelphia, it  
8 comes from Bucks County. It swings around. Like we  
9 have a ring that, I think I described it in my  
10 testimony before, that circles the entire area, and  
11 we would be heading south from Bucks County down  
12 into Areas 3 and 4. And we have to do that to --  
13 the technical reason is probably, if I had to rank  
14 them, probably at the low end of the reasons why we  
15 chose it; it's just one thing. We were asked why,  
16 so we gave you all the reasons. But I think  
17 probably the larger or what I would rank the first  
18 reason would be that it had already been established  
19 as one area. And if we were going to build two,  
20 building two that were already considered to be or  
21 operating as one area seemed to make more sense than  
22 two independent areas.

23 COUNCILMAN KENNEY: Councilmember Miller  
24 is yielding to Councilmember Nutter.

25 COUNCILMAN NUTTER: Thank you. Mr.

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2 Pitts, I have no idea what you were saying. On a  
3 couple of occasions you used the phrase "one area."  
4 What do you mean by that? I don't understand that.

5 MR. PITTS: For many years as -- again,  
6 this was during discussions and trying to figure out  
7 what we would bring forth. For many years Areas 3  
8 and 4 have been operated by one company, Comcast.  
9 And from our view, that in itself, whenever I would  
10 -- as an operator in the City of Philadelphia, we  
11 would refer to Area 1, Area 2 and then 3 and 4 as  
12 one area. Even though they're two areas, because  
13 there's one company, you know, one management team,  
14 that it was referred to as on area. So when I say  
15 that, it had already been established as one  
16 operating entity, that's what I mean. That one  
17 company was already operating it. If we had to  
18 choose two areas --

19 COUNCILMAN NUTTER: What's that got to  
20 with where you come into the City and how you  
21 determine where you're going to put up service and  
22 any of that? What difference does that make?

23 MR. PITTS: Well, if we start from the  
24 point of view that we're not going to build all four  
25 that we're going to build two, then the question is,

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2 well, which two? So we bounced around. We first  
3 talked about what Areas 1 and 2.

4 COUNCILMAN NUTTER: I don't understand  
5 the building two strategy which is a part of the  
6 next round of questions, but you can go ahead.

7 MR. PITTS: We decided, you know, would  
8 it be Areas 1 and 2, would it be areas 2 and 4? One  
9 of the reasons that 3 and 4 made more sense than 1  
10 and 2 was because of what I just said, that we  
11 figured that it was already established as one  
12 operating entity already. So for another company to  
13 come in and ask to operate in that same entity  
14 seemed -- I didn't think that there was much push  
15 back there because it was already established.

16 COUNCILMAN NUTTER: What about 1 and 3,  
17 what about 2 and 3?

18 Councilwoman, I appreciate the extended  
19 yield.

20 I guess what I'm not understanding in  
21 terms of where you lay cable or fiberoptic or  
22 wherever it's going or wherever it's eventually  
23 going to be, what different does it make who the  
24 operators are, is it considered one area, is not one  
25 area? I don't necessarily know that we technically

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2 consider it one area or not. What difference does  
3 it make to you?

4 MR. PITTS: I think this process  
5 illustrates part of the reason why we had the kind  
6 of discussions and came to the conclusion that we  
7 did. Regardless of what area we chose, what two  
8 areas, someone would ask the question, why these two  
9 areas? If we chose 1 and 3, we would be answering  
10 the same question, why 1 and 3.

11 We -- and I know you're going to get to  
12 why we chose to do two areas instead of four, but  
13 once we decided that it was going to be two areas,  
14 then we had to decide what two areas are logical for  
15 us to build. And under scrutiny, what could we have  
16 an answer for. And it just seemed that it made  
17 sense that if we had to choose two, that we would --

18 COUNCILMAN NUTTER: You didn't choose  
19 your areas based on what you thought was going to be  
20 the best answer to give us in a public hearing. You  
21 chose your areas based on some array of  
22 circumstances, opportunities, situations,  
23 demographics, who's going to sign up, who's not  
24 going to sign up, who's going to pay a bill, whose  
25 not going to pay a bill, and a whole host of other

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2 factors having nothing to do with anything you might  
3 have to answer for us one day.

4 MR. PITTS: I beg to differ, Councilman.  
5 We figured that this is a political process and we  
6 would have to answer to -- I mean, I've operated in  
7 the City prior to working for RCN. We would have to  
8 answer for why we chose those areas. So we were  
9 very sensitive to not being accused of doing this  
10 and not being accused of doing that --

11 COUNCILMAN NUTTER: So when you put all  
12 of that together, it's a multi-billion dollar  
13 company, investors all over the country and Wall  
14 Street and whole host of things, and what it finally  
15 came down to was, "Well, we have to have a good  
16 answer for the Philadelphia City Council and we  
17 figured we'll just do 3 and 4 because, well, we  
18 always considered them to be one area and it's one  
19 company so that makes sense so we'll pick 3 and 4."  
20 Is that how it goes?

21 MR. PITTS: That sounds like a strange  
22 answer if we didn't think that any combination of  
23 the four areas would have been okay for us. And we  
24 did think that. We would have been fine with Areas  
25 1 and 2 or Areas 2 and 4, but we felt that we had to

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2 come up with a combination that made sense. But in  
3 terms of our strategy of wanting to get into a high  
4 dense area and offer all three of our services --

5 COUNCILMAN NUTTER: Did you do like  
6 focus groups on trying to figure out which two if  
7 you put them together would be more likely that  
8 people would think made sense or be politically  
9 acceptable?

10 MR. PITTS: No. Politically acceptable?

11 COUNCILMAN NUTTER: That's your  
12 phraseology.

13 MR. PITTS: Right. Not focus groups,  
14 no. Internally, we discussed. We had to submit  
15 something. We would have been -- originally, we  
16 talked about all four areas, originally. But we  
17 agreed, we came to a mutual agreement that it was  
18 going to be 2 instead of 4.

19 COUNCILMAN NUTTER: Let me say this,  
20 though. But you're after all of this back and  
21 forth, because I think I've given you about a half  
22 of dozen opportunities. You're going to not say  
23 that at least some of the elements in terms of  
24 making this decision did not entail the demographic  
25 population of the area served, the income levels



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2 involved, proximity of neighborhoods, and who you  
3 would have the opportunity to go head to head with;  
4 are you telling me that none of those factors came  
5 into play in terms of making this decision? It's a  
6 yes or no question.

7 MR. PITTS: Some of those did, but I'd  
8 like to explain what I meant.

9 COUNCILMAN NUTTER: How about all of  
10 them?

11 MR. PITTS: I think for the reverse of  
12 what --

13 COUNCILMAN NUTTER: I mean, it's okay.  
14 It doesn't really matter to me.

15 MR. PITTS: We felt that -- a number of  
16 things. One, there was a technical consideration  
17 and that's in our response to you. The area of it's  
18 a political process so we had to have a logical  
19 reason for choosing two areas and we didn't want to  
20 be accused of two areas at the expense at some other  
21 areas. Also, we think that if you look at Areas 3  
22 and 4 that if you look at the entire area that it  
23 represents a cross-section of the City so that we  
24 didn't think that we would be accused of trying to  
25 avoid a certain area or certain areas of the City.

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2 COUNCILMAN NUTTER: How about this. You  
3 said it about a half dozen times about this oh so  
4 political process. You know, I guess that's a fair  
5 statement. We happen to be politicians and I guess  
6 we act in a somewhat political fashion. What's the  
7 political dynamic or political benefit of you doing  
8 3 and 4 versus 4 and 1, 2 and 3? I mean, what  
9 difference does it make? Don't you think you end up  
10 answering all the same question?

11 MR. PITTS: No, I don't, Councilman. We  
12 were concerned that, say, if we chose Area 2 that we  
13 might be accused of going after a new company in  
14 Urban Cable Works that wasn't established and we  
15 might have answer question of why were we going  
16 after them. We thought --

17 COUNCILMAN NUTTER: Are you talking Area  
18 2 that's Urban Cable Works which is a subsidiary of  
19 a little firm up in New York called Time-Warner, you  
20 were worried that somebody might be upset that you  
21 competing with Time-Warner?

22 MR. PITTS: These were discussions that  
23 go back two years now, over two years.

24 COUNCILMAN NUTTER: I don't no that  
25 Urban Cable Works existed two years ago.

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2 MR. PITTS: They were in transition  
3 because when I was still at Greater Media --

4 COUNCILMAN NUTTER: So you didn't come  
5 to Area 2 because you were afraid that people would  
6 be upset that you were coming into Area 2.

7 MR. PITTS: People would ask, well, why  
8 wouldn't we pick on some our own size, for lack of a  
9 better term. I know --

10 COUNCILMAN NUTTER: What's our RCN's  
11 size compared to Time-Warner's size?

12 MR. PITTS: Well, I meant that in terms  
13 of my knowledge of operation of the City in --

14 COUNCILMAN NUTTER: Who is the operator  
15 of the area, Time-Warner, correct?

16 MR. PITTS: Correct.

17 COUNCILMAN NUTTER: What's your size  
18 compared to Time-Warner's size.

19 MR. PITTS: We're smaller than  
20 Time-Warner.

21 COUNCILMAN NUTTER: So what's the  
22 problem?

23 MR. PITTS: Well, my view from being an  
24 operator in the City all these years is that in  
25 terms of who had the highest penetration, in terms

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2 of, you know, that there were some concerns. And we  
3 didn't want -- maybe we made a mistake here, but I'm  
4 telling you our thought process. We thought there  
5 could be concerns that we were going after a company  
6 that may be less able to handle competition head-on  
7 than Comcast would. That was one issue. I mean,  
8 there were a number of factors. We didn't want to  
9 go into an area where it might be considered that we  
10 were avoiding certain demographics.

11 COUNCILMAN NUTTER: Did you ask anybody  
12 while all y'all was sittin' around thinkin'? Did  
13 you ask anybody, all these people that you were  
14 worried about possibly accusing you of all these  
15 savory competition-type charges? Did you contact  
16 anybody and say, "What do you think about this?"

17 MR. PITTS: Councilman, we would have --  
18 I'm submitting to you now that regardless of what  
19 areas we chose, we would have to answer to somebody,  
20 "Why didn't you choose the other areas?"

21 COUNCILMAN NUTTER: Sure. That's a fair  
22 question, right?

23 MR. PITTS: I'm trying to answer.

24 COUNCILMAN NUTTER: All right.

25 Councilwoman, I appreciate the yield.

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2 Thank you.

3 COUNCILWOMAN MILLER: Did you do the  
4 demographics of the areas that you chose by year 1,  
5 2, 3, et cetera? Did you do demographics? You  
6 looked at the demographic, am I not correct, of year  
7 1?

8 MR. BURNSIDE: Yes, of course, we looked  
9 at demographics.

10 COUNCILWOMAN MILLER: You looked at  
11 demographics of year 2 and year 3 through 4?  
12 Certainly, you couldn't have found a whole bunch of  
13 diversity.

14 MR. BURNSIDE: In years 1 or 2?

15 COUNCILWOMAN MILLER: Diversity is just  
16 an issue for me. I mean, all this indicates that  
17 diversity was not a part of why you chose where you  
18 start from year 1 through year 4. I just really  
19 want to make that statement because this is what  
20 you've chosen. Politically, if you'd asked me, if  
21 I'm going to be concerned about competitive prices,  
22 then I want to see it spread out in the income  
23 brackets in my councilmatic district. And  
24 certainly, this is not an example of getting all of  
25 my citizens in my district to have the opportunity

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2 to participate in competitive pricing. So  
3 politically, that's where I would have come from.

4 I don't have any more questions. Thank  
5 you.

6 COUNCILMAN KENNEY: Councilmember  
7 Clarke.

8 COUNCILMAN CLARKE: Thank you, Mr.  
9 Chairman. Mr. Chairman, I apologize for having to  
10 step out of the room for a moment. I had a meeting  
11 across the hall. But as I come back, it's quite  
12 amazing to me that we're talking about this whole  
13 issue of placement and I hear another story.  
14 Earlier on we talked about the power line and the  
15 connection to Princeton. Then I thought we kind of  
16 concluded that it had something to do with the  
17 economics of the deal in the first phase. Now I'm  
18 hearing there's certain political considerations.  
19 And I'm wondering as a Councilperson for a district  
20 that's not represented, are you now telling me that  
21 the politicians associated with 1 and 2 don't have  
22 the level of influence of the politicians in Areas 3  
23 and 4? I mean, what are you talking about? I don't  
24 understand.

25 MR. BURNSIDE: Councilman, that is not a

1     2/1/01 - PUBLIC PROPERTY PUBLIC WORKS - BILL 000452  
2     correct conclusion. We simply chose to do two  
3     areas. I, for one, wanted to compete directly with  
4     Comcast, and a lot of us did and we chose those two  
5     areas for all of the reasons we've just explained.  
6     And if you want to add a couple more, it's easier to  
7     construct in those areas. We did all of the  
8     homework we could do. Economically we couldn't do  
9     more than two areas. We chose Areas 3 and 4 for all  
10    the reasons we've talked about. It has nothing to  
11    do slighting you or any other representative from  
12    districts other than 3 and 4. But all John was  
13    saying is that no matter what process you go  
14    through, it's a political process. And we knew that  
15    we would have tough, tough, tough questions  
16    regarding why it was we only chose two out of four  
17    and why we chose the two that we did. I think we've  
18    answered that in a number of different ways. I  
19    don't know what other information we can give you.

20               COUNCILMAN CLARKE: That's my problem.  
21    You've answered it in so many different ways, I  
22    don't know which one to believe.

23               MR. BURNSIDE: We gave you a number of  
24    answers all pointing to the same decision.

25               COUNCILMAN CLARKE: I'm afraid I

1 2/1/01 - PUBLIC PROPERTY PUBLIC WORKS - BILL 000452  
2 disagree with that conclusion.

3 MR. BURNSIDE: I understand that, but  
4 I'm telling you we had a number of issues,  
5 construction issues, technical issues, political  
6 issues, economic issues. We've gone through all of  
7 them. You can arrange them in any way you want --

8 COUNCILMAN CLARKE: Would it be possible  
9 for you to do this for me then: Can you arrange  
10 them in whatever order that you may choose as it  
11 relates to levels of priority?

12 I'm assuming when you make  
13 determinations as to what you do from a business  
14 sense, you prioritize them. Would it possible, so I  
15 can have a sense of what went into this  
16 decision-making process? Because at some point, I'm  
17 going to ask Mr. James, assuming this will achieve  
18 the level of better service and level of competitive  
19 nature of the company will reduce these rates, I'm  
20 going to ask Mr. James and the City of Philadelphia  
21 to get proactive in other areas, particularly in 1  
22 and 2 so we can get some competition that people say  
23 ultimately will drive down the rates. It will be  
24 helpful to us if we know what, in fact, will create  
25 that environment that makes people make these



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2 decisions. So if you can somehow list them in order  
3 of some priority or categorize them so I'll  
4 understand what the correct nature of the business  
5 decision is.

6 MR. BURNSIDE: Councilman, those reasons  
7 that we have given without any particular reference  
8 to order here in this process, because the questions  
9 weren't coming in any particular order, are all  
10 answers in Section 2. And I think if you read those  
11 responses, you will see, and I think they are  
12 properly ranked --

13 COUNCILMAN CLARKE: I didn't recall the  
14 political decision being in Section 2.

15 MR. BURNSIDE: I think there are  
16 references. I may not use the word "political," but  
17 there are reasons listed that I would consider --

18 COUNCILMAN CLARKE: I'll ask you like  
19 this: Can you do me a favor as we move ahead? Can  
20 you incorporate a summary of the decision-making  
21 process as it relates selections of areas from a  
22 business standpoint?

23 MR. BURNSIDE: I think there is a  
24 summary, sir, Section 2. If you read that and  
25 determine that that's not enough --

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2 COUNCILMAN CLARKE: My point is that I'm  
3 hearing things that I didn't hear before. And I'm  
4 asking you -- you know, because at some point we're  
5 going to have to come to some conclusion on this  
6 issue. I'm asking you for me as a favor, because  
7 you don't have to do anything, right, I'm being told  
8 by the Telecommunications Act that nobody has to do  
9 anything, right.

10 MR. BURNSIDE: We're not talking about  
11 the Telecommunications Act.

12 COUNCILMAN CLARKE: As it relates  
13 decision-making process, I just ask you if you kind  
14 of prioritize this whole process, because I don't  
15 know. I'm probably the only person in this room who  
16 does not have cable. I don't have cable, so this is  
17 about the business of the people that I represent,  
18 it's not personal because the rates right now for me  
19 are free.

20 MR. BURNSIDE: Let me try it one more  
21 time, all right, in terms of prioritization. If you  
22 were an engineer, if you were engineer or a  
23 technician, you would prioritize it by saying, "I  
24 can't build it unless I come in in a logical  
25 fashion." That says from that priority, the sonant

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2 ring has to come in from Bucks County, that's  
3 priority No. 1.

4 If you are a government affairs guy or a  
5 regulatory guy, you say, "We have a lot of concerns  
6 with respect to how people accept the decision to  
7 build only two." So it might be if you're one of  
8 those guys, that's your No. 1 priority.

9 And if you are a construction guy --

10 COUNCILMAN CLARKE: Are you saying all  
11 these different people are in your company?

12 MR. BURNSIDE: All of these thought  
13 processes go into making up this company.

14 If you're a construction guy, you say,  
15 "Where can I build this thing quickest? Because the  
16 pressure's on to build it and get customers up."  
17 And you say, "I can more easily build it in this  
18 section. There's lots of underground in this  
19 Section.

20 And then if you're marking guy, you say.  
21 "I don't want to go downtown the City because that's  
22 where the offices and buildings and businesses are  
23 and our market is the residential market. So  
24 depending on who you are, that's how you prioritize.  
25 And the composite of all of those discussions added

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2 up once we realized that economically we had to make  
3 a choice how we made. Now, I don't know how else to  
4 tell you.

5 COUNCILMAN CLARKE: So these various  
6 priorities within the company pretty much reflect  
7 the different nature of the responses to our various  
8 questions over this last year?

9 MR. PITTS: But I think the question was  
10 asked and it was asked for us to elaborate and our  
11 response in Section 2 lays out the competitive  
12 considerations, the demographic considerations, and  
13 the technical considerations, and I think overall  
14 the order that they're in are the prioritized order.  
15 And, again, it's one-page and one-paragraph summary  
16 I think clearly states our position there.

17 COUNCILMAN CLARKE: I'll Councilman  
18 Rizzo.

19 COUNCILMAN RIZZO: Thank you. Based on  
20 your priority list and let's say that we didn't want  
21 to do this. You hear the concerns at this hearing.  
22 Could you revisit your plan and still do the  
23 build-out and do it in a way that would satisfy the  
24 concerns that you're hearing today? Technically,  
25 again, you're trying to make the best business

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2 decisions you can, but now maybe the person that  
3 you've gotten political slot making the decision is  
4 a little weak and didn't give you really enough  
5 information on how to come here today. What could  
6 you do to tweak this priority list to accomplish  
7 what you're hearing in your concerns.

8 MR. PITTS: Two separate issues. If  
9 we're talking about do we want to revisit areas of 3  
10 and 4, I would say we would not want to do that. If  
11 the question is the construction schedule, and I  
12 think that would address some of the concerns where  
13 we're starting and what's in year one through --  
14 that is something that -- I think, as it exists, the  
15 agreement calls for us to submit a construction  
16 schedule after signing of the agreement. And at  
17 that point, we would negotiate that construction  
18 schedule. So that is open to tweaking.

19 COUNCILMAN RIZZO: You said something  
20 that put my antenna up, "after we sign the  
21 agreement." What kind of construction schedule  
22 could you give us to assure us that after the --

23 MR. PITTS: I don't want to -- Joe James  
24 may have something to add to it, but --

25 COUNCILMAN RIZZO: Again, you're hearing

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2 the concerns here, and honestly, once it's done, we  
3 need to have some confidence that this is going  
4 to --

5 DEPUTY COMMISSIONER JAMES: If I can  
6 just jump in for a minute. The way the agreement is  
7 set up, Councilman, and it's very similar to what's  
8 been done with the other providers, is that once --

9 COUNCILMAN RIZZO: Could I stop you just  
10 for a second, Commissioner?

11 DEPUTY COMMISSIONER JAMES: Sure.

12 COUNCILMAN RIZZO: Why do we always have  
13 to refer back how we did it. This is a new deal. I  
14 don't think that we have a book of rules on how to  
15 do this. If we do, I've never heard of it. Do we  
16 really -- is what we did any past any concern of  
17 ours here?

18 DEPUTY COMMISSIONER JAMES: Well, yes,  
19 it is. It's only from a sense that we want to ensure  
20 equity because everyone refers to this whole  
21 discussion regarding a level playing field. So we  
22 want to make sure that everyone understands that  
23 we're trying to make this as level as possible.

24 COUNCILMAN RIZZO: By law, is equity  
25 required?

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2 Again, just tell me. Do we have to look  
3 back in this deal at all?

4 DEPUTY COMMISSIONER JAMES: No, we don't  
5 have to look back. But to satisfy some of the  
6 concerns that are always expressed is to make sure  
7 -- about the issue about parity and the issue about  
8 equal distribution of the benefits and the  
9 opportunity, we're trying to make it as level as  
10 possible so that we don't create an undue burden  
11 upon the operator who is attempting to construct or  
12 the operator that is currently in place. The only  
13 point I was trying to make is that our process in  
14 the Department of Public Property is to request from  
15 the operator to submit a detailed construction plan.  
16 That detailed construction plan happens after they  
17 have the authorization to proceed. Where we get  
18 down to real specific minute details about the  
19 routes, about the areas they're going to pass, about  
20 the specific distribution system they're going to  
21 use, and we can get into those issues that we talk  
22 about as far as making sure -- if there has to be a  
23 modification in their plan because they want to go  
24 any specific route that somehow creates an undue  
25 equity issue, we can make that modification before

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2 they are able to proceed.

3 COUNCILMAN RIZZO: If that plan did not  
4 satisfy the Department of Public Property, could you  
5 stop the process?

6 DEPUTY COMMISSIONER JAMES: Yes, we can  
7 because the process is for them to submit to us a  
8 detailed plan within the six months from the date  
9 that this authorization and the bill is passed.

10 COUNCILMAN RIZZO: And you're not  
11 satisfied, what happens?

12 DEPUTY COMMISSIONER JAMES: We enter a  
13 set of discussions and modifications because they  
14 can't pull their permits to do their construction  
15 until we sign off on their plan and give them the  
16 authorization to proceed. What we further have done  
17 is that in our process, we're providing details down  
18 to the Council level about the activities that  
19 they're operate under construction, that's part of  
20 the amendment which is to give you the assurance  
21 that you know where they're going and that they've  
22 been approved where they're supposed to go. And if  
23 you have a concern about the route that they're  
24 taking and you would like them to make an  
25 adjustment, we have the opportunity to make that



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2 change before we create an inequity. It's not a  
3 perfect plan, but it's an attempt to interject the  
4 department in the process as a regulator to regulate  
5 their activities ensure that there's fairness and  
6 equity in their build-out in their construction  
7 schedule.

8 COUNCILMAN RIZZO: Thank you,  
9 Commissioner.

10 Thank you, Mr. Chairman.

11 COUNCILMAN KENNEY: Before I recognize  
12 Mr. Singley, I'd just like to compliment you on what  
13 I call the David L. Cohen slide. I saw you at the  
14 back of the room, and then in the middle of room,  
15 and then the front row, and you finally made it up  
16 here. I was wondering exactly when you were get  
17 there. And for eight years, seven, eight years I  
18 watched David L. do that same thing. As things were  
19 going down hill, he just started moving forward and  
20 forward. So the Chair recollect Mr. Singly.

21 MR. SINGLEY: Thank you very much, Mr.  
22 Chairman. My name is Carl Singley. I'm Council to  
23 RCN, and I suppose I learned that at the feet of the  
24 master.

25 I have heard, and one of the reasons

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2 that I elected to come forward is that in an effort  
3 to assist RCN in answering the questioning that have  
4 been posed by the committee, both today as well as  
5 in the previous hearing, I thought I understood  
6 someone to say that there are concerns. And I don't  
7 know that the concerns have been clearly articulated  
8 from this Council. Now, the reason I chose to come  
9 forward is that I think that there may very well be  
10 some type of undercurrent that has not been clearly  
11 articulated that suggests that perhaps RCN's  
12 decision about what areas they would build in what  
13 order may have in some way been influence by  
14 improper considerations. Because I think I heard it  
15 earlier said the phrase "racial disparity" was used.  
16 I think what I have heard certainly during the  
17 earlier hearing that somehow the determination that  
18 was made by RCN to build out the areas that they  
19 wanted to build and the order in which they build it  
20 may have been based on those improper  
21 considerations. If in fact those are the concerns,  
22 as Councilman Rizzo and others expressed, if you are  
23 concerned that perhaps that might have been a  
24 consideration, I think in fairness to RCN they need  
25 an opportunity to have it expressed in that way and

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2 to address it directly.

3 Now, between the past hearing, the  
4 previous hearing, and today's hearing, we were given  
5 a significant number of questions. We have  
6 addressed fully each and every one of those  
7 questions. Today for the first time, they now find  
8 themselves put in the position that they are asked  
9 to justify the business considerations or the  
10 business decision that was made as to what areas.

11 So I thought that if perhaps that is in  
12 fact a part of the undercurrent and unease that we  
13 hear, then I'd like to know that and I'd like for  
14 them to be given an opportunity to respond to it  
15 directly.

16 COUNCILMAN KENNEY: Well, let me say for  
17 the record that you are correct, there are a number  
18 of extensive questions that have been asked of RCN  
19 through the course of this very lengthy process.  
20 Understand from a historical standpoint, I think the  
21 record should understand it, too, is that two years  
22 ago I was not Chair of the Public Property  
23 Committee. I don't believe anybody on this panel  
24 was -- I was a member of the Public Property  
25 Committee, but not the Chair. And the first foray

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2 into the Rendell administration, which had been  
3 clearly explained in the recent "Inquirer" story,  
4 may have created this impression that somehow when  
5 it finally got to us, we had been part of this  
6 two-year loop.

7           We received the legislation sometime, I  
8 guess, mid-May, went out in summer in mid-June, came  
9 back to a major problem with the City and that was  
10 the issue of construction sports facilities which  
11 took up an inordinate amount of our time, and then  
12 had a hearing in October. As a result of that  
13 hearing, you are correct, there were a number of  
14 questions raised. But I think it's important for  
15 the record to understand, from our perspective,  
16 we're not professionals in this business. We don't  
17 understand the industry as the people at the table  
18 understand the industry. And we are given the  
19 responsibility of trying to make a decision that's  
20 both fair for the citizens and cable viewers of the  
21 City of Philadelphia along with the company that  
22 wants to enter into this marketplace. So I guess  
23 our questions arise as a result of ongoing dialog.  
24 Sometimes that happens. I mean, as Chairman of the  
25 committee, I am happy with the way in which RCN

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2 responded to those questions from the October 31st  
3 hearing and have been happy with the cooperation  
4 I've received on some of the amendments that I've  
5 asked for. However, as chairman of the committee, I  
6 am only one member. There are other members at this  
7 table who, during the course of the hearing,  
8 questions are raised, we go in different directions,  
9 other questions are raised. I mean, that's part of  
10 the good and bad of the public hearing process.  
11 Issues are discussed in an open foreman and  
12 sometimes they go in a direction that we don't  
13 anticipate.

14 As chairman, obviously, any  
15 Councilmember of this committee can asked any  
16 question they want. I do think I understand you'd  
17 like perhaps members to be a little more specific as  
18 to what -- if the concerns are those of demographics  
19 and ethnicity and income, that we air them. That's  
20 up to each individual committee member. But I think  
21 it's important that we understand that I've tried  
22 and I think the members of this committee have tried  
23 to perform in a diligent way to examine this issue  
24 which is very, very complicated and important and  
25 expensive issue, and to do the best we can to move

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2 it in a position to be approved at some point in  
3 time. That's where I am as chairman of the  
4 committee. I think the record needed to reflect the  
5 fact that despite the consternation and perhaps the  
6 frustration of this company in dealing with the City  
7 of Philadelphia as a whole, it's not all been a  
8 Council issue. It's been an administration issue,  
9 actually the last administration's issue, for a year  
10 and then the new administration's issue year, and  
11 then finally we've had it in reality for about six  
12 months, five or six months. So I think I do  
13 understand where you're coming from, but I want you  
14 to understand that we're doing our best to  
15 understand and move this thing forward.

16 MR. SINGLEY: I do understand, Mr.  
17 Chairman. And if I might just for a moment, there's  
18 been a lot of discussion fairness, fairness to the  
19 consumers, fairness to those persons who are  
20 potentially affected by the matter that is pending  
21 before you. But I come to you to talk about basic  
22 and fundamental fairness to this company.

23 Now, there is, as you have heard us  
24 articulate in other forums, a belief that this  
25 company is being subject to a double standard. When

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2 I hear questions being asked, for example, as to why  
3 you chose this location, what did you consider, what  
4 were the demographics, it is clear to me that that  
5 is a legitimate inquiry that this body is entitled  
6 to make. By way of analogy, for example, if a Fresh  
7 Fields made a decision to open a new supermarket in  
8 Center City, if they made a decision to open a new  
9 supermarket in Chestnut Hill, if by chance they had  
10 to come before a public body to seek public  
11 approvals and then would be grilled and examined on  
12 the business considerations that went into the  
13 choice to locate a business in Center City  
14 Philadelphia, in Northwest Philadelphia, and the  
15 implication being that you chose areas that were  
16 economically profitable to you. We think that that  
17 is legitimate prerogative of a business. Here we  
18 have a company that seeks to come into Philadelphia  
19 and has been for the last two years to build a  
20 project that's going to be in excess of \$200 million  
21 and questions get asked as to their business  
22 motivation. We certainly understand that that's  
23 your right, that is your prerogative, and we  
24 understand that. But what our appeal to you here is  
25 the fundamental fairness.

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2                   And lastly I'll say, because I don't  
3 think my clients expected me to say this at all.  
4 But I think one of the concerns, obviously, is the  
5 implication is that if we can't bring competition  
6 and reduce rates to all of the citizens of the  
7 Philadelphia, that perhaps we shouldn't bring them  
8 any of the citizens of Philadelphia. I don't think  
9 that that is your intention, but that would be the  
10 implication of a line of inquiry that suggest if  
11 you're not building out the whole City, then there  
12 are some folks who are disadvantaged and perhaps  
13 nobody should get the benefit of the competition and  
14 the reduced rates.

15                   COUNCILMAN KENNEY: I do understand your  
16 position and your analogy to Fresh Fields. However,  
17 I'm sure you will agree that cable TV not the same  
18 as arugula. There's a little more involved in high  
19 speed internet service, telephone service, cable TV  
20 service. I think part of what has Councilmembers  
21 concerned is that the reasoning behind having this  
22 company come in is competition and ultimately  
23 stabilized or reduce rates. And I guess because  
24 some of them are district council people, there is a  
25 parochial view that we agree with that, but we want



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2 our people to experience it too. I don't think it  
3 goes as far to the extent as saying we don't anybody  
4 to get it if our people can't get you. But you can  
5 also understand why Councilmember Miller or  
6 Councilmember Clarke or somebody may get a call and  
7 say, "You know, I been talking to my cousin across  
8 town and their rates actually went down \$5 a month.  
9 Why can't we have that?"

10 So I think that's what these questions  
11 kind of come from, is that people want to know, --  
12 well, for example, why year one and two it seems to  
13 be a more economically advantaged area that we're  
14 building in and we really don't start getting some  
15 people modest or low-income means until year three.  
16 And then we don't even get to some other modest or  
17 low-income people until year six.

18 I think their questions as to what the  
19 business decisions are relative to that I think are  
20 germane.

21 And I do understand and take account of  
22 what you've had to say.

23 Councilmember Clarke.

24 COUNCILMAN CLARKE: Thank you, Mr.  
25 Chair.

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2 Mr. Singley, I understand your concern  
3 for your client and being before us today, but you  
4 need to understand the concern for the 150,00  
5 constituents that I represent in an area that is not  
6 being discussed here for the potential cable  
7 franchise that allegedly may make more competitive  
8 rates. I am going to ask the questions as it  
9 relates to a business decision to anyone who comes  
10 before this body if I think it effects my 150,000  
11 constituents. And I don't think that you would  
12 expect me not to.

13 MR. SINGLEY: Not an at all.

14 COUNCILMAN CLARKE: So I'm trying to get  
15 a sense why you feel we're somehow being unfair. As  
16 Councilman Kenney said, we are novices at this; at  
17 least I know I am. I don't even cable, to show you  
18 how much I know about it. I have to ask these  
19 questions because if in fact this happens and if in  
20 fact the residents in my district are forced to pay  
21 higher rates, they're going to want to understand  
22 why I didn't ask these types of questions and why  
23 they're not getting the rates that they're getting.  
24 So I hope you understand why we ask these questions  
25 here today and will continue to ask these question

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2 regardless who is at that particular witness table.

3 MR. SINGLEY: Absolutely, Councilman.

4 And I wouldn't presume to tell this body how to do  
5 its business. But I would urge the body and just  
6 reemphasize the fact that we recognize that for this  
7 committee, this has been relatively new process.  
8 But for these for this company, it has been a  
9 two-year other deal. And given the reality of who  
10 this company has elected to compete against --

11 COUNCILMAN CLARKE: I'm new here, Mr.  
12 Singley, so I wasn't here for the two years.

13 I'm done. Thank you.

14 COUNCILMAN KENNEY: Councilmember  
15 Nutter.

16 COUNCILMAN NUTTER: Thank you, Mr.  
17 Chairman.

18 COUNCILMAN NUTTER: As Councilman Clarke  
19 said, I also appreciate, Mr. Singley, your concern  
20 for your client, but I think you've also  
21 simultaneously made the case that they have certain  
22 rights to make certain decisions and we certainly  
23 have certain rights to ask certain questions. I  
24 think you've known me long enough to know that I'm  
25 going to ask whatever question I want to ask.

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2 MR. SINGLEY: And nobody can stop you,  
3 Councilman.

4 COUNCILMAN NUTTER: Thank you. When the  
5 map was presented and decisions have been made, I do  
6 again agree with my colleague Councilman Clarke that  
7 it does raise a question as why did you decided to  
8 do X versus Y. And we have to assume that business  
9 people have good business reasons for doing certain  
10 things. If it answer makes sense, we move on to the  
11 next question. If it doesn't, you'll continue to  
12 pursue it.

13 One of the items that we've discussed up  
14 here is, has been said 15 different times during the  
15 course of this exchange back and fourth is, you  
16 know, the company tried to make some quote/unquote  
17 political decisions or deal with the political  
18 process.

19 As some of my colleagues have said,  
20 people ask us different questions than they're ever  
21 going to ask the representatives of the company  
22 because more than likely, they will never talk to  
23 the representatives of the company. And that's no  
24 disrespect to RCN because on most days, they  
25 probably don't talk to the senior vice president of

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2 Comcast or the senior vice president of Time-Warner,  
3 Urban Cable Works or anybody else. But they can  
4 call us. And if you don't have the answer and you  
5 had an opportunity to get one, then I think that  
6 that responsibility falls on us. So I don't know  
7 the answer to that particular question.

8           It is clear, though, that moving down  
9 from the Northeast, there's a year one, a year two,  
10 a year three, and then simultaneously year three  
11 skips to the top end of North Philadelphia, skipping  
12 over a couple areas. I don't know, you know, what  
13 the technology is that allows for that to happen,  
14 but it certainly seems to indicate that other  
15 variations on this same theme might be possible.

16           Look, I appreciate the company feels  
17 that they've been going through a long drawn out  
18 process. I said it the other day, I think I've said  
19 it privately, I'll say it again publicly. That time  
20 was on somebody's clock. I'm not taking  
21 responsibility for that. That was in another forum.  
22 I think that we have tried to deal with this in as  
23 timely a fashion, all other things considered, as  
24 possible. You are now here and we've had this  
25 opportunity on a second occasion to get into this.

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2 But, you know, I don't have any control over what  
3 you did or didn't do with the City Administration.  
4 And as far as our process is concerned, quite  
5 honestly, you haven't been with us that long.

6 In addition, I will also say that at  
7 some level it has not been helpful, some of the  
8 comments that have been made, if not at times some  
9 of the threats. I don't respond to threats at all  
10 under any circumstance. Haven't in the past, won't  
11 today, won't in the future. So if we're going to  
12 deal straight and be realistic about this, we can go  
13 through the Q and A process. We'll ask our  
14 questions, hopefully you'll answer as many of them  
15 as possible, and we'll move forward.

16 Now, can you tell me about any  
17 variations on this build-out plan?

18 MR. BURNSIDE: Let me try to take a shot  
19 at it, John, and then you can pick up.

20 As Mr. James said, Councilman Nutter,  
21 that the finite details of the construction plan  
22 within Areas 3 and 4 can be adjusted for a number of  
23 reasons.

24 COUNCILMAN NUTTER: Can or cannot?

25 MR. BURNSIDE: Can, can be adjusted.

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2 COUNCILMAN NUTTER: Can be adjusted.

3 MR. BURNSIDE: Can be adjusted. And I  
4 can tell you from experience they will be. There  
5 will be lots of reasons over the next seven years as  
6 to why our plan isn't in sync with what the City  
7 wants. But to forecast exactly what all of the  
8 details of the construction plan will be prior to  
9 even having a license to come into this City is just  
10 not economically feasible. That's exactly why the  
11 language in the agreement is written as it is  
12 written, to give the City once the agreement has  
13 been inked or the license has been issued, the  
14 authority and the responsibility to look at the  
15 detailed plans and adjust them to whatever  
16 conditions are influencing that. It may be  
17 something as simple as, let's say, the City of  
18 Philadelphia is fortunate enough -- and I say  
19 fortunate enough, not everybody may agree -- is  
20 fortunate enough to have another political  
21 convention four years from now. And in the midst of  
22 that, any street construction may have to be  
23 adjusted to accommodate whatever was going on. And  
24 that's just one example. There maybe others.

25 You may have interests, you personally,

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2 and you convey them. This is the second point I  
3 wanted to make. You will not lose the opportunity  
4 to have input through the document, through the  
5 license. But in addition to that, you will not lose  
6 the opportunity to communicate with the company,  
7 just like you can communicate with existing  
8 companies in this City. Anybody in their right mind  
9 trying to operate a business like we're attempting  
10 to do in this City has to be available on a regular  
11 basis. And to that end, you will have that access,  
12 obviously.

13 COUNCILMAN NUTTER: I understand that  
14 Mr. Burnside. I don't mean to talk across you, but  
15 I think what you have to understand about us and  
16 what we do, for the most part, this is pretty much  
17 the last time we will see you folks. You'll be  
18 around, you'll build whatever you're going to build,  
19 you'll send to billings to customers, you'll have  
20 operations, you'll have buildings and all of that.  
21 From a process standpoint, this is the last time we  
22 will see you. All the other agreements and  
23 everything else you signed, most of your dealings  
24 will be with the Department of Public Property going  
25 forward. And so not only by way of the company, but



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2 also certainly your time here in the City. Again, I  
3 appreciate the two years and I don't discount what  
4 two years mean. You've been in business for about  
5 three or four years. You've been in this process  
6 for about two. You seek to do something which very  
7 well could be a good thing. We're in a public  
8 hearing process reading documents, talking to people  
9 that we really don't know. You may have actually  
10 signed an agreement with us, and you will then go  
11 away. So whatever's going to happen and whatever's  
12 going to be said more often times than not is going  
13 to happen right here in this process. And if a  
14 person is handed a piece of paper and it says this  
15 is the build-out schedule, from our perspective,  
16 more than likely that's the build-out schedule. If  
17 there are options, if there are variations, I'd  
18 certainly like to hear about them.

19 DEPUTY COMMISSIONER JAMES: Councilman,  
20 if I could just interject for a second. The way the  
21 agreement is structured does not preclude the  
22 opportunities for RCN to come back to this table.  
23 As explained in the agreement, they've already  
24 expressed the intent to obtain a traditional cable  
25 franchise, which means they will be back here again

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2 before you for Areas 3 and 4 to obtain that  
3 franchise, hopefully, with a detailed construction  
4 plan for the areas with you having, again, and the  
5 full body having again to ask those specific  
6 questions and have a better understanding of their  
7 capabilities and what they want to establish. So  
8 the process does not presume that you will not have  
9 the opportunity, hopefully, when they will come back  
10 for Areas 1 and 2 as well.

11 COUNCILMAN NUTTER: I understand. But I  
12 think, Mr. James, you are very much aware, and  
13 certainly Vince Costello and other folks, about the  
14 realistic nature of what any opportunity there is to  
15 move a cable company to do certain things or perform  
16 in certain fashions. We had the issue last year,  
17 and apparently it's an ongoing issue this year, with  
18 the -- last year it was Time-Warner and Channel 6.  
19 And this year out of last year it's Comcast and  
20 Channel 6. Now, these are mega companies. They'll  
21 always take our phone calls, they'll always try to  
22 be responsive. Whether something actually happens  
23 or not is a whole other story. We can deal with the  
24 Comcast/Channel 6 issue at another time in another  
25 forum.

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2 I also understand, though, that RCN has  
3 apparently some unresolved business with a local  
4 television station Channel 48. I'd like to get an  
5 understanding if what's going on in that situation.

6 DEPUTY COMMISSIONER JAMES: To the first  
7 point, we do look forward to them coming back for a  
8 cable franchise. And that cable franchise from RCN  
9 for Areas 3 and 4 has to be granted by City Council;  
10 it cannot be granted by the Administration so they  
11 do have to come back before you because they can't  
12 get the 15-year term that they really want and the  
13 certainty that they will get through a cable  
14 franchise. They were not obtained in this interim  
15 agreement.

16 COUNCILMAN NUTTER: I understand that.  
17 Is it also true, though, if they never come back,  
18 they get 10?

19 DEPUTY COMMISSIONER JAMES: They would  
20 have the ability to get 10, yes.

21 COUNCILMAN NUTTER: Without ever coming  
22 back to the door, correct?

23 DEPUTY COMMISSIONER JAMES: I don't  
24 think 10 works for their funding, but, yes.

25 COUNCILMAN NUTTER: I understand that.

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2 DEPUTY COMMISSIONER JAMES: I think  
3 that's a debatable issue over what certainty they  
4 prefer, but the opportunity is preserved if they  
5 want to get the cable franchise.

6 On the second issue, on the issue  
7 related to WTGW, Channel 48 --

8 COUNCILMAN NUTTER: WGTW?

9 DEPUTY COMMISSIONER JAMES: WGTW. I  
10 don't watch it that often, but Channel 48, there was  
11 the issue about the channel allocation prior to this  
12 hearing. There's been further discussion with  
13 representatives from Channel 48 and from RCN. And  
14 to my understanding, and Mr. Pitts can speak to it,  
15 that there is no issue related to their placement on  
16 the Philadelphia system and that that issue is not  
17 an issue that's open right now that they have any  
18 contentions about as far as where they're going to  
19 be located once they get on the RCN system in  
20 Philadelphia.

21 COUNCILMAN NUTTER: Well, when did the  
22 issue get resolved? Because it did not appear to be  
23 resolved yesterday.

24 DEPUTY COMMISSIONER JAMES: Well, from  
25 the discussions, I understand, there was just a

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2 misunderstanding over the channel number. But that  
3 seemed an easy conclusion once they had an  
4 opportunity to talk this afternoon.

5 COUNCILMAN NUTTER: Mr. Chairman, I get  
6 the impression that that is necessarily the case, at  
7 least if my ears are serving me correctly. Just so  
8 that the record is very clear, Channel 48 is located  
9 in my district on Main Street, and I'd like to get a  
10 better understanding of what's going on in terms of  
11 whether the station is going to be carried.

12 COUNCILMAN KENNEY: Just let me make a  
13 suggestion. Again, similar to what we did with the  
14 labor issue, in the interest of having a coherent  
15 record, I believe Ms. Brunson is here. You want  
16 come forward?

17 You may proceed.

18 MR. PITTS: There are two issues that  
19 were pending. One was -- both of them related to  
20 channel placement of Channel 48, one of them on our  
21 Philadelphia market systems and the other in our  
22 Lehigh Valley market systems. The agreement was in  
23 Philadelphia for us to put them on Channel 18. I  
24 believe that was to be done as of January 1st, and  
25 that has been done -- December 1st; excuse me. So

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2 as of December 1, 2000 in the Philadelphia market,  
3 Channel 48 is now on Channel 18. It was on Channel  
4 16. There was a discrepancy before this session  
5 started of whether that it happened already but it  
6 has happened and I believe that they know that.

7 The issue that is still outstanding is a  
8 disagreement about the placement of Channel 48 on  
9 our Lehigh Valley systems in the Allentown area.  
10 There's a request to put it, I believe, on either 48  
11 or 18, and there's some technical issue there that  
12 we need to resolve before we can agree to do that,  
13 and I think that issue is still open.

14 COUNCILMAN KENNEY: Ms. Brunson, would  
15 you please identify yourself for the record and make  
16 whatever comment regarding this particular situation  
17 you feel is appropriate.

18 MS. BRUNSON: My name is Dorothy Brunson  
19 and I'm the president general manager of Channel 48  
20 television.

21 RCN has been very convenient in  
22 isolating the issue. But there is a federal law  
23 which allows me the right to be on their cable  
24 system. They have abridged that right. And since  
25 October of 1999, I have been trying diligently to be

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2 placed on those cable systems on my right channel.  
3 All of the cable systems have complied, and as  
4 recent as December 14th after numerous FCC cable --  
5 let me read it. My attorney sent me a fax. That  
6 the Cable Service Bureau authorized RCN to place me  
7 on their cable systems at my appropriate number for  
8 the last year and a half. And for the last year and  
9 a half, RCN has refused to do so and very  
10 conveniently within the last few weeks they placed  
11 me on Channel 18 in this market because they knew  
12 they were coming before this body. But it has been  
13 a two-and-a-half-year fight, and only one portion of  
14 that fight which has been authorized and granted by  
15 law to me has been adhered to by RCN. They have  
16 appealed, kept me courts, asked for extensions,  
17 filed that it was too expensive, and I have at least  
18 seven inches of papers documenting that RCN has  
19 refused to carry me on their entire system.

20 COUNCILMAN NUTTER: So you've had your  
21 own two-year odyssey in terms of trying to get  
22 something done.

23 MS. BRUNSON: Since October of 1999 .

24 COUNCILMAN NUTTER: Mr. Pitts.

25 MR. PITTS: Well, I disagree with some

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2 of the particulars.

3 COUNCILMAN NUTTER: I bet you do.

4 MR. PITTS: In this market, we've been  
5 operating since March of 2000. And when we  
6 initially launched the system in March of 2000, we  
7 put Channel 48 on Channel 16. And I don't know --

8 COUNCILMAN KENNEY: What's on Channel  
9 48?

10 MR. PITTS: I'm not sure. I think that  
11 their desire was to either be on 48 or to be on a  
12 lower channel.

13 COUNCILMAN NUTTER: Generally people  
14 want to have like the channel number that goes with  
15 their chance. Do you have 6 on 6 or do you have  
16 them on 16?

17 MR. PITTS: No, we have 6 on 6. But the  
18 request was either to put them on 48 --

19 MS. BRUNSON: I requested 48. But in  
20 order to compromise --

21 COUNCILMAN NUTTER: We need you to talk  
22 into the microphone.

23 MS. BRUNSON: I requested 48. They came  
24 to me throughout approximately August of this past  
25 year and asked could we negotiate. I said most



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2 certainly. What would be most convenient to you?  
3 They said that we could do this on Channel 18. I  
4 then agreed. At least with the 18 being very  
5 similar to the 48, that that would be somewhat of a  
6 compromise. It is only within the last several  
7 weeks that that was finally accomplished just in  
8 this market. But prior to RCN come being in to the  
9 Philadelphia market, they are in the surrounding  
10 areas as well. And since our signal covers those  
11 areas, the Federal Cable Commission has authorized  
12 and the Federal Communication Commission, must carry  
13 on your channel in those areas that you cover. And  
14 those, they have failed to deal with me at all on  
15 and they have fought me in court even though I  
16 received approval by law to be carried as recently  
17 as December 14th of 2000 again when I challenged  
18 their appeal to be put on those cable systems on my  
19 number. They have since repealed for that. Yes,  
20 they did put me on it Philadelphia within the last  
21 few weeks.

22 COUNCILMAN KENNEY: Mr. Pitts.

23 MR. PITTS: So in looking at the  
24 chronology, we launched in March, we launched on  
25 Channel 16. We got a complaint. We compromised, we

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2 agreed to put them on 18 and we came up with a date  
3 that we would do that.

4 In the Philadelphia area, it was a  
5 matter of making an adjustment in the head end. In  
6 the Lehigh Valley system, it's a much more  
7 complicated issue and that was filing for some  
8 relief in that regard because moving them from a V  
9 band channel to Channel 48 would require us to trap  
10 everyone that doesn't have the level of service that  
11 where Channel 48 resides and because of the  
12 technical considerations and the amount of truck  
13 roles that it require, we asked for some relief and  
14 we were trying to work through that process, which  
15 the law allows us to do.

16 I would ask that since we have resolved  
17 the matter of Philadelphia with Channel 48, that  
18 this body would allow us to, in a forum that  
19 probably makes more sense than here, for us to come  
20 up with an agreement on how we can deal with it in  
21 the Lehigh Valley.

22 COUNCILMAN NUTTER: Ms. Brunson, did you  
23 tell me that all the other cable systems are  
24 carrying you?

25 MS. BRUNSON: Yes, sir.

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2 COUNCILMAN NUTTER: In Philadelphia and  
3 outside the City?

4 MS. BRUNSON: In Philadelphia and  
5 outside of Philadelphia. At one time, sir, there  
6 were 45 different cable companies, and on 45  
7 different cable companies we were carried. Of  
8 course, there's been major consolidation. On all of  
9 those systems without any hesitation, we were put on  
10 Channel 48. In one or two we accepted Channel 18  
11 which was what I suggested to them as a compromise.

12 Albeit, even though they're willing to  
13 talk now, there has never been any dialog, and I  
14 have consistently been put into courts to try to  
15 defend my position as it relates to the systems just  
16 in Princeton and other surrounding areas.

17 Prior to their having entered into the  
18 Philadelphia market, it has been a very tedious,  
19 very long, and very expensive process.

20 COUNCILMAN NUTTER: Have you had this  
21 problem with any other company?

22 MS. BRUNSON: No, sir.

23 COUNCILMAN NUTTER: Thank you.

24 COUNCILMAN KENNEY: Councilmember Rizzo.

25 COUNCILMAN RIZZO: I may have missed

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2 this, but could someone explain the rationale why  
3 you would want -- why you would not Channel 48 on  
4 48? What's on 48 that's prohibiting you to put  
5 Channel 48 on Channel 48?

6 MR. PITTS: In this market, Cartoon  
7 Network is on 48. And moving it to 18 as we  
8 compromised was a relatively easy thing to do, like  
9 many of the other operators, and we did that.

10 In Lehigh Valley system, our Allentown  
11 market is a legacy system; it's not a brand-new  
12 system like our system is here it. And there's some  
13 other issues. It would involve us going -- because  
14 we have different level of services in the field.  
15 So in order for us to ensure that everyone gets  
16 Channel 48 and does not get the other channels that  
17 they don't pay for because they don't subscribe to  
18 that level service, we would have to install traps  
19 on thousands of customers' homes that don't have  
20 traps now. We were trying work out a way not to  
21 have to do that.

22 And let me just say that the issue of  
23 must carry or retransmission was talked about  
24 before. That's a contentious issue between  
25 broadcasters, and it's not particular to RCN, and

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2 we'll work through this issue like we came up with a  
3 compromise and we worked it out in Philadelphia,  
4 we'll work it out in the Lehigh Valley as well.

5 COUNCILMAN RIZZO: Thank you for  
6 explaining that. It's clearer now to me exactly  
7 what the situation is.

8 There's other television station over  
9 the air, I believe, 33 -- I'm talking about the one  
10 Philly News.

11 MS. BRUNSON: Channel 51.

12 COUNCILMAN RIZZO: Is that going to be  
13 on Channel 51?

14 MS. BRUNSON: No.

15 MR. PITTS: No.

16 COUNCILMAN RIZZO: Why?

17 MR. PITTS: The way I understand the  
18 rules are that the broadcast channels are to be on  
19 their designated channel or another channel that you  
20 agree to. We tried to do that. I think -- now, I  
21 don't want to -- I wasn't associated with the Lehigh  
22 Valley through the whole history of this situation,  
23 but I don't think that it was from day one that one  
24 side wanted one channel and the other side said no  
25 and that they stayed there. I think that the

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2 request changed a few times. That's the way I  
3 understand it, anyway. But we are where we are.  
4 There are no issues with channel placement in the  
5 Philadelphia market.

6 COUNCILMAN RIZZO: So Channel 51 will be  
7 on Channel 51 in this market?

8 DEPUTY COMMISSIONER JAMES: Excuse me,  
9 Councilman. Channel 51 on the cable system is the  
10 School District channel.

11 COUNCILMAN RIZZO: I realize that, but I  
12 know that there's some conversation between Comcast  
13 now to try to do a swap for -- I mean, really, it's  
14 really inconvenient if I want to see something  
15 that's on 51, I don't have a clue where to find it  
16 unless I go to the menu.

17 DEPUTY COMMISSIONER JAMES: I don't want  
18 to confuse you. The plan that's been submitted for  
19 the channel line-up mimics, again, the incumbents  
20 and puts Channel 51 on the School District channel.  
21 If that should change as a compromise with Comcast,  
22 and that would probably change in the RCN plan, but  
23 right now it's the School District channel.

24 COUNCILMAN RIZZO: But from what I  
25 understand, there is some conversation to work that

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2 out like you worked it out with Channel 48.

3 MR. PITTS: And we will abide by --

4 COUNCILMAN RIZZO: I don't I really want  
5 to get to this nitty-gritty, but I recollected  
6 getting a letter from an individual that complains  
7 that Channel 51 wasn't on 51 and then I found, as  
8 you just described, that it's the School District  
9 channel and I learned that there is some  
10 negotiations to try to rectify that situation.

11 DEPUTY COMMISSIONER JAMES: If 51 moves,  
12 then they will move it.

13 MR. PITTS: We will.

14 COUNCILMAN RIZZO: Thank you.

15 COUNCILMAN KENNEY: Thank you very much.

16 While we have a quorum I need to do a housekeeping  
17 bit of business. I want for just short period of  
18 time recess the committee hearing.

19 (Public hearing recessed.)

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2                   COUNCILMAN KENNEY: I want to convene  
3 the public meeting. I want to recognize  
4 Councilmember Nutter for the purposes for approving  
5 the amendments which have been offered earlier in  
6 the hearing by Deputy Commissioner James.

7                   COUNCILMAN NUTTER: Mr. Chairman, just  
8 so I'm certain, there were two packages, as I can  
9 best understand, of amendments. One is amending  
10 various sections of the bill, and the other it says  
11 substitute for Appendix J to the current Exhibit A  
12 to the bill the Appendix J which is attached here  
13 to.

14                  Mr. James, does that comprise all of the  
15 amendments?

16                  DEPUTY COMMISSIONER JAMES: That's  
17 correct.

18                  COUNCILMAN KENNEY: They've been  
19 distributed to members of the panel and also to the  
20 stenographer.

21                  COUNCILMAN NUTTER: Mr. Chairman, I move  
22 that the first set of amendments, which is amending  
23 Sections 1, 2, 6, 3 and a variety of other sections,  
24 that set of amendments be adopted.

25                  COUNCILMAN KENNEY: Is there second?



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2 (Duly seconded.)

3 COUNCILMAN KENNEY: Moved and seconded.

4 All in favor?

5 (Aye.)

6 COUNCILMAN KENNEY: There are none  
7 opposed. The amendments as offered by Mr. James in  
8 earlier testimony moved by Councilman Nutter are  
9 approved.

10 We now recess the public meeting and  
11 return to our public hearing.

12 DEPUTY COMMISSIONER JAMES: The appendix  
13 which was submitted back in October J needed to  
14 be --

15 COUNCILMAN KENNEY: Let me re-recess the  
16 public hearing and reconvene the formerly recessed  
17 public meeting to recognize Councilmember Nutter for  
18 an additional motion on an amendment.

19 COUNCILMAN NUTTER: Thank you, Mr.  
20 Chairman. I also move the adoption of the second  
21 set of amendments with regard to Appendix J. I move  
22 that those amendments be adopted as well.

23 (Duly seconded.)

24 COUNCILMAN KENNEY: Moved and seconded.

25 All in favor?

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2                   (Aye.)

3                   COUNCILMAN KENNEY: There are none  
4   opposed. The amendment to Appendix J are approved.  
5   We now recess the public meeting and return again to  
6   the public hearing.

7                   (Public meeting recessed.)

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2 (Public hearing resumes.)

3 COUNCILMAN KENNEY: Councilmember  
4 Nutter.

5 COUNCILMAN NUTTER: I think we were just  
6 having a discussion or there was some back and forth  
7 on the Channel 48 situation. What's the end of  
8 that? What's the end result?

9 MR. PITTS: The Philadelphia issue is  
10 resolved and we need to work towards a resolution  
11 with Lehigh Valley. It's a more complicated issue  
12 that cannot be resolved at this table today.

13 COUNCILMAN NUTTER: How long would  
14 estimate that's it's going to take? Why is it  
15 complicated for you?

16 MR. PITTS: Because of the cost involved  
17 and the trapping issue. And I'm not fully versed on  
18 where we are with that, so I wouldn't want to make a  
19 guess on time here and have it be as a part of the  
20 record.

21 COUNCILMAN NUTTER: Have you been in  
22 regular discussions and conversation about this?

23 MR. PITTS: I have not.

24 COUNCILMAN NUTTER: Why not?

25 MR. PITTS: There have been others in my

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2 company that --

3 COUNCILMAN NUTTER: I'm sorry?

4 MR. PITTS: Well, I have not been  
5 involved in it. But I will get involved. I will  
6 put that into the record.

7 COUNCILMAN NUTTER: I would hope that  
8 you would certainly understand -- I mean, it's a  
9 very serious issue for me.

10 MR. PITTS: I'm sorry?

11 COUNCILMAN NUTTER: I said I would hope  
12 that you would have some sensitivity that it's a  
13 very serious issue for me. Ms. Brunson and the  
14 company, good corporate citizen here, she's a  
15 constituent in the district that I represent, and it  
16 seems to me that you should be able to get this  
17 resolved.

18 MR. PITTS: I will work hard to do that,  
19 Councilman.

20 COUNCILMAN NUTTER: But it also puts me  
21 in a difficult position as it relates to the matter  
22 in front of me. If you haven't been having  
23 discussions. It's a very serious issue. You're  
24 able to resolve it in one particular location.  
25 Can't seem to resolve it somewhere else. They're

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2 not having this problem anywhere else. And now  
3 you've come before us and you want to do certain and  
4 other things, and that causes me a problem.

5 MR. PITTS: Well, let me clear that the  
6 Philadelphia market issue has been resolved. There  
7 is not issue with channel placement in the  
8 Philadelphia market.

9 COUNCILMAN NUTTER: I understand that,  
10 but you still have an unresolved issue, whether it's  
11 Philadelphia-based or not. It's a Philadelphia  
12 company, they're in the district, and you're before  
13 us.

14 What I want to know is how we're going  
15 to get to a resolution of it.

16 MR. PITTS: I think the first step would  
17 be for us to sit down at the conclusion of this  
18 proceeding and try to work out a resolution, and I'm  
19 prepared to do that.

20 COUNCILMAN NUTTER: A day, couple days,  
21 take a week? I mean, you've got to give me a little  
22 bit better than that.

23 MR. PITTS: With us meeting?

24 COUNCILMAN NUTTER: No, resolved.

25 MR. PITTS: See, the resolution, it's a

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2 process, it's not an event.

3 COUNCILMAN NUTTER: I'm sorry?

4 MR. PITTS: The resolution involves a  
5 process, not an event. It's not a flip of a switch  
6 in the head end. It's a process of visiting  
7 thousands of homes and making some changes. So even  
8 if we agree to it in a short period of time, we then  
9 would have to agree to over what period of time we  
10 complete that process. I'm willing to enter  
11 directly into those discussions and try to move it  
12 to a quick conclusion.

13 COUNCILMAN NUTTER: Okay. I hear your  
14 testimony. I'm not pleased with it, not satisfied  
15 with it or anything else, but I hear your answer.

16 MR. BURNSIDE: Councilman Nutter, let me  
17 see if there's a way to clarify this. We are not at  
18 all contesting the right of Channel 48 to be on the  
19 system in Allentown or in the Lehigh Valley.  
20 They're already there. We're not contesting that.  
21 So if there's any misunderstanding about their  
22 ability or legal rights to be on the system, let  
23 there be none. They are on the system.

24 COUNCILMAN NUTTER: Well, what's the  
25 issue then?

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2 MR. BURNSIDE: The issue, as Mr. Pitts  
3 explained to Councilman Rizzo, is an issue of  
4 technically, if you will, I hate to use the word  
5 obsolete, but an older cable system that in order to  
6 comply with the demands of the broadcaster, there  
7 are certain and expensive and --

8 COUNCILMAN NUTTER: Whose cable system  
9 is it?

10 MR. BURNSIDE: It's RCN's, but it is a  
11 system that was acquired by RCN. When John said  
12 it's a legacy system, that perhaps was misleading.  
13 We refer to systems that we've acquired, older  
14 technology systems that were built by other people  
15 or owned by other people, both, and are not built  
16 along the same technical standards that we're  
17 building our network today. So that network up  
18 there was an acquired or, as we say, legacy system  
19 and there are some technical difficulties in  
20 accommodating. There's no question that we will  
21 work out the details, but it's not possible to sit  
22 here and tell you exactly how long it's going to  
23 take, whether it's a day or a week or a month. So I  
24 just want to make sure that you're clear about what  
25 the argument is.

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2 COUNCILMAN NUTTER: Well, I guess, let  
3 me just then say this in response. You've expressed  
4 a certain level of frustration about your desire to  
5 make something happen. You've expressed it in a  
6 number of ways, some direct, some indirect; some  
7 nice, some not so nice. And that's okay. Now,  
8 someone else is in a situation where they've been  
9 sitting around for a couple of years trying to get  
10 something resolved, and now all of a sudden it's,  
11 well, you know, we're working on it. We'll try to  
12 work it out we'll try to get to it. We'll try to  
13 work it out. We'll try to get to it. There's 10  
14 different ways maybe to address it. There's all  
15 these technological issues that we have to get into  
16 and, you know, we'll deal with it when we can.

17 Do you expect me to take that?

18 MR. BURNSIDE: I've given you the best  
19 answer I possibly can give you. Whether you accept  
20 it or not, is entirely up to you. But they are the  
21 facts. It is the situation. And I understand the  
22 frustration. At least I think I understand the  
23 frustration that Channel 48 has had. I have had  
24 really very little personal knowledge of the  
25 problem. I can only give you from John's word and



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2 my word a commitment that we're trying to get it  
3 resolved or will get it resolved.

4 And I think the other thing that I think  
5 needs to be said in the record just for the benefit  
6 of this issue, is the fact that we quickly fixed the  
7 problem here in the Philadelphia market when the  
8 issue was raised. I think that ought to be at least  
9 deserving of some credit and indication that it is  
10 in our best interest as well as Channel 48 to get  
11 this thing behind us.

12 So I'm not going to explain, because I  
13 can't, what all the details and ramifications that  
14 were involved in this two-year or however long the  
15 issue went on. I have no idea. But I'm telling you  
16 that we can and are committing to you to fix it.  
17 Don't know how else to explain it.

18 COUNCILMAN NUTTER: Well, I want to care  
19 about that issue like you want us to care about your  
20 issue. That's all I'm asking.

21 MR. BURNSIDE: What else can we do that  
22 will demonstrate --

23 COUNCILMAN NUTTER: What you can do is  
24 tell me that you're going meet with the lady as  
25 quickly as possible, you're going work out whatever

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2 the problem is or lay out a schedule that's going to  
3 lead to a work-out in a reasonable period of time,  
4 and then you should bring that back to us as a part  
5 of this entire package and say "We had an  
6 opportunity to sit down. These are all the issues.  
7 We think we have a schedule that leads us to a path  
8 to get somewhere, go get a resolution to that  
9 particular problem because we care about that  
10 problem like you want you to care about our issue.

11 MR. BURNSIDE: Let me see if I  
12 understand.

13 COUNCILMAN NUTTER: And if I saw that,  
14 then I'd know that somebody was taking the situation  
15 seriously.

16 MR. BURNSIDE: Are you making any  
17 decision on this process in front of you contingent  
18 on resolving that problem? Just so I understand.

19 COUNCILMAN NUTTER: I'm taking all the  
20 information into consideration.

21 MR. BURNSIDE: I need more a specific  
22 answer. Is the fix of this problem as we've  
23 described it contingent on moving forward here in  
24 Philadelphia?

25 COUNCILMAN NUTTER: Let me say this to

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2 you. You're eagerness to solve this particular  
3 problem will certainly influence my eagerness to  
4 deal with your issue.

5 MR. BURNSIDE: Well, I don't know how  
6 else to say what we've said a couple or three or  
7 four times. We are going to fix the problem. But  
8 in this forum, I cannot and will not commit to  
9 exactly how long it takes because I simply don't  
10 know.

11 COUNCILMAN NUTTER: I didn't ask you to  
12 commit right here and now. What I asked you to do  
13 is go and have a series of meetings and come back to  
14 us and tell us what came out of it.

15 MR. BURNSIDE: And I'm telling you we  
16 are going to do that. I've said that three or four  
17 times.

18 COUNCILMAN NUTTER: Then thank you very  
19 much.

20 MS. BRUNSON: I'd like to thank the  
21 committee for the opportunity to stand before you.  
22 And I'm sure after this event that we will have some  
23 dialog. We have not been able to have any up until  
24 this point, and I hope that this will precipitate it  
25 so that we can come to a conclusion. I'm not

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2 unreasonable, as I was not in dealing with the  
3 Philadelphia situation. As soon as they came to me  
4 with their problem, I proposed a compromise and  
5 within the last few weeks they've been able to  
6 satisfy that. I am not unreasonable. I am someone  
7 who can be worked with and will do everything I can  
8 to resolve the problem. But I have to get to the  
9 table to be able to do that. And over two and a  
10 half years I have not even had a response, much less  
11 getting to the table. So I want to thank you for  
12 this opportunity.

13 COUNCILMAN KENNEY: Thank you very much.

14 We are now after 5 o'clock. The  
15 Chairman of the committee polled everyone on the  
16 panel that's been here today, and the sentiment  
17 amongst all of the members of the panel is that this  
18 is not the day that they intend move this particular  
19 piece of legislation out of committee. Therefore,  
20 as Chairman of the committee, what I'd like to do is  
21 announce that we're going to recess the hearing  
22 until February 26 at 1 p.m. in this Chamber. And  
23 the reason for that date, there are two dates, the  
24 only two dates available next because of the budget  
25 is February 26th or February 28. We're choosing

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2 February 26th at 1:00 and we will recess until that  
3 time.

4 MR. BURNSIDE: Mr. Chairman. May I,  
5 first of all, express my sincere disappointment in  
6 that decision, obviously. But also ask you and  
7 anybody else on the committee what specific  
8 information you would like us to provide you in the  
9 interim or at that hearing.

10 COUNCILMAN KENNEY: What I would  
11 suggest -- obviously, there's been things that have  
12 been raised today that are very clear from the  
13 record. My suggestion, and again, there's really no  
14 need to come and talk to me. What I would do is I  
15 would make arrangements between now the 26th to talk  
16 with various members Councilmember Miller,  
17 Councilmember Blackwell, Councilmember  
18 Reynolds-Brown, Councilmember Clarke, Councilmember  
19 Nutter and Councilmember Rizzo to see what specific  
20 issues there are. I mean, there are a number of  
21 substantive stuff that was raised today that  
22 obviously is on the record for discussion. But my  
23 suggestion is to arrange those meetings as soon as  
24 possible. Hopefully, by February 26th at 1 o'clock  
25 we will have some resolution. Thank you very much.

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2 (Council adjourned at 5:20 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing  
proceedings of the Council of the City of  
Philadelphia of February 1, 2001, were reported  
fully and accurately by me, and that this is a  
correct transcript of the same.

RE: COMMITTEE ON PUBLIC PROPERTY AND PUBLIC WORKS

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Lisa C. Bradley, RPR  
and Notary Public