

CABLECASTING BOARD MEETING MINUTES - FEBRUARY 17, 1999 - PAGE 1

Present: Abbott, Devereaux, Doctoroff, Fleischer, Hall, Kuhne, Spivak - Birmingham  
Borgon, Janks and Saunders - Beverly Hills  
Leckie - Bingham Farms  
DiSessa - Franklin

Absent: None

Also present: Hagaman - Cablecasting Board Administrator  
Gillis - Attorney for Cablecasting Board  
Cannon and DiMaria - MediaOne representative  
Buterbaugh - Beverly Hills Council representative

Hall presided and called the meeting to order at 7:45 a.m. in the Rotary Room of the Baldwin Public Library at 300 W. Merrill Street.

**APPROVAL OF MINUTES**

MOTION by Devereaux, supported by Leckie, that the minutes of a regular Cablecasting Board meeting held on Wednesday, January 20, 1999 be approved as submitted.

Motion passes unanimously.

**FRANCHISE RENEWAL**

Kuhne announced on behalf of the negotiating committee that there has been an agreement in principle reached with MediaOne on franchise renewal. Don Gillis will summarize the terms and the status of the agreement.

Hall introduced and welcomed Greg Cannon who is MediaOne's lead counsel replacing Jon Kreucher.

Board members have received a memorandum dated February 3, 1999 from Gillis to the Cablecasting Board members indicating that certain action must be taken on or before March 31 in connection with MediaOne's formal renewal. Copies of this memo were delivered to the attorneys for the member communities. The memo states that there may be an extension of the time period within which action must be taken on the company's formal proposal depending on progress made in the informal negotiations.

Gillis read a letter dated February 12, 1999 that he received from Jon Kreucher, Vice-president of law and public policy for MediaOne. Kreucher states that the letter is written to confirm their understanding regarding consideration of MediaOne's formal proposal. It has been noted in Gillis' February 3 memorandum that federal law requires a franchising authority to either accept or preliminarily deny a formal proposal not later than four months after that proposal is received. Because all parties feel that substantial progress is being made negotiating MediaOne's franchise renewal informally, Kreucher believes that the consideration of the formal proposal by the consortium members will likely be unnecessary. Therefore, MediaOne has agreed to toll the four

month period in which the consortium communities must consider its formal proposal. MediaOne will provide a separate written notice in the unlikely event that the remaining period should begin to run again. MediaOne looks forward to completing these negotiations with Gillis and the Cablecasting Board soon.

Gillis commented that this letter from Kreucher confirms that the parties are close to a final agreement and precludes the necessity of adopting the resolution suggested in Gillis' February 3 memo.

The most recent discussion took place between members of the negotiating committee and MediaOne on Thursday, February 11. It is the position of the negotiating committee that an agreement in principle has been reached on a number of major issues subject to the concurrence of this Board and the ultimate acceptance by the member communities. Gillis reported the results of the informal negotiations to date.

The major areas of agreement were in significant measure driven by the pending renewal agreement between MediaOne and the City of Southfield. The negotiating committee stressed that it could not accept any agreement that placed its member communities in second class status as compared to Southfield's franchise agreement.

Issues that are not fully resolved are not as much areas of opposition and contention but those that require further clarification. The negotiating committee and MediaOne representatives are making cooperative efforts to arrive at solutions which will accommodate the interests of both sides.

Gillis stated that the current status of the informal negotiations are in outline form only. He will present an abbreviated summary of the points discussed. Gillis has not attempted any chronological descriptions of the changes between the company's initial proposals and its present informal proposal as a result of negotiations.

The first item is the rebuild of the cable system. The company has undertaken a rebuild of the system to a state-of-the-art 750 MHz system. The rebuilt system will have the capacity for both increased and enhanced programming and other cable services. Detailed descriptions of the new system and its capabilities have been furnished previously to the Board. The company almost from the beginning of renewal negotiations agreed to complete construction and activate the rebuilt system in all four of the Board's member communities by June 30, 1999. The company has not withdrawn that undertaking and is diligently pursuing construction. The company is doing so in the absence of a renewal agreement which is viewed by the negotiating committee as a strong indication of the company's faith in renewal negotiations. It has helped considerably to establish a positive and beneficial tone to the negotiations.

Failure to complete construction and activation in accordance with the timetable will result in substantial per diem damages subject only to acts of god and other circumstances beyond the company's control.

MediaOne will pay 5% of its gross revenues as franchise fees throughout the term of the renewal agreement. Payments will be made quarterly. For purposes of both the five percent franchise fee and the periodic PEG access fee, gross revenue will be defined as excluding advertising revenue, home shopping revenue, and leased access fees but as including Internet access fees from subscribers to that service.

The company will maintain the Eton Road facility for a period of six months as a local office after the franchise renewals become effective. After the expiration of a six month period, the company will maintain what it calls a "presence" in the City of Birmingham to receive payments from subscribers. This presence will be in the form of an office staffed by a person who may not be a company employee.

Gillis reported on the negotiations with respect to Public, Education, and Governmental (PEG) access. Three PEG access channels will be provided. Subscribers will receive the educational access channel of the school district in which the subscriber resides. In the short term, Bloomfield Schools will continue to be shown on a separate fourth channel. There will be provision for additional PEG channels in accordance with a formula based on usage. There will be no public access studio provided by the company except for the Eton Road studio for the six month period noted.

Free service presently provided to schools and municipal buildings will continue to be furnished. That free service will be extended to new facilities whether they are additions or relocations except in extreme cases. New facilities located at a substantial distance from the trunk line will be subject to a line extension policy and required to pay a portion of the incremental cost resulting from distance in question.

The company will convey title to the Birmingham mobile production van and the equipment in that van. The company will also pay, shortly after the effective date of the franchise renewal, \$50,000 to upgrade the equipment in the mobile van. Also shortly after the effective date of the franchise renewal, the company will pay \$350,000 towards the upgrade, repair and replacement of other PEG equipment and facilities of which \$50,000 will be allocated to the wiring of the Beverly Hills Village Hall. It should be noted that this \$350,000 will be subject to a moderate pass through charge to subscribers as permitted by the FCC and a monthly charge throughout the terms of the agreement of up to 11.25% per annum as an "internal investment" permitted under current FCC rules.

The company's informal proposal also includes payments for the PEG facilities in the amount of 3% of the company's gross revenues throughout the term of the franchise. These payments will also be made quarterly.

There are several open issues not fully resolved such as the Birmingham I-NET, local origination programming, and level playing field provisions.

The company's proposal is conditioned on two factors: 1) a waiver of any existing defaults except those specifically excluded; 2) a release from any claims arising out of transactions with TCG. Any

such release would not include the obligation of MediaOne to pay franchise fees on the rental income for the lease of what is called "dark fiber". Dark fiber means excess capacity on the system.

The company has agreed that the waiver of defaults would not apply to any underpayment of franchise fees revealed by an audit or any liability for excessive late payment charges.

Gillis stated that the regulatory ordinance will be based on existing ordinances subject to appropriate amendments because of changes in the law and changes in other circumstances. Work on these documents has been completed by counsel for both sides as early as March of 1997. The company has indicated it wishes to again review the amendments made.

There has been discussion of using the pending MediaOne Southfield franchise agreement as a model in order to expedite final closure of this matter subject to such modifications deemed necessary by the negotiating committee. The company's proposal is subject to its approval of franchise documents, and the committee is satisfied that the company will not withhold that approval unreasonably.

Gillis remarked that the company's informal proposal as outlined in his presentation represents a substantial improvement over the formal proposal dated December, 1998 and a significant improvement over its prior informal proposal. It is his opinion that the members of the negotiating committee - Lex Kuhne, Judge Doctoroff, and Brian Janks as well as Steve Hall who is ex-officio member of the committee as chairperson of this Board - should be commended for their major contributions in the negotiations and for their productive efforts in moving the renewal process much closer to a successful conclusion.

Hall explained that there is no document to distribute to Board members today because this agreement in principle occurred at the end of last week and there has not been an opportunity to draft a summary to be reviewed by both parties. He opened the floor for questions from the Board.

In answer to a question on the renewal process, Gillis stated that the formal proposal is being held in abeyance while the parties pursue the agreement in principle that was outlined today. The four month period in which the communities must take action has been tolled which means it has been stopped. If this informal process is put off track for any reason and the parties are unable to reach an agreement, that formal proposal becomes revived and the Board will receive notice to that effect. The Board will then have approximately one month in which to adopt appropriate resolutions.

Gillis could not specify the timing for distributing a copy of the terms of the informal proposal to Board members. He believes that his representation is accurate but that MediaOne deserves to have a look at it before it is distributed. Gillis noted that continuing negotiations may alter some of these terms. It is a status report only and may change. The availability of Mr. Kreucher may be a factor. Gillis remarked that the official document will be more important than his outline.

Hall stated that there will be ample time available for the Board to review the proposal and for the communities to review the franchise agreement. No deadlines have been set. Hall mentioned that there is a 75 page ordinance that has to be reviewed and recommended for approval.

Board members voiced comments and questions on the provisions of the proposed agreement which were addressed by negotiating committee members.

There were questions regarding PEG access. The Board was informed that MediaOne is going out of the PEG access business and will not be providing a studio at the Eton Road facility. The Board will take on the responsibility of managing PEG access. The initial grant of \$350,000 will be used to implement some of the decisions and the ongoing 3% of gross revenues will be used to fund PEG access. Grant money for the mobile production van will be turned over to the Board to use as it sees fit for improvements.

This will be an opportunity for the Cablecasting Board to provide the PEG access services that have been available to the communities and do a better job than had been done in the past by the cable company. The Board and the municipalities will have major decisions to make relative to PEG operations such as whether such operations should be operated at an independent studio or whether a partnership should be formed with the School District. It is evident that people want to maintain a local presence within the franchise area with their public access. This can be done by controlling public access within this organization and through our governing bodies. The Board will be making decisions on how much money goes towards public, educational, and government access channels. This is something that the Board and its governing bodies will pass judgment on.

In answer to an inquiry, it was explained that the company is allowed by the FCC to pass through a charge to the subscribers which represents a return on investment up to 11.25% per year. It was noted that all rate regulation will end within the next 30-90 days.

It was emphasized that it is difficult under federal law to unseat the franchisee. Fifteen years ago, cable companies made promises in order to be awarded the franchise. Many of those promises never were fulfilled because the technology never developed.

Members of the negotiating committee indicated that they addressed public access issues during negotiations and attempted to obtain as much as possible for that part of the constituency that is interested in public access. The majority of people want a new cable system with extra services and channels, better receptivity, and Internet connectivity.

DiSessa commented that Franklin is a small community and relies on cable television to communicate with its residents. Janks affirmed that all consortium community council and commission meetings will continue to be televised by a contractor such as CreateTech. It was the committee's understanding that Franklin did not want its historic building rewired for stationary equipment.

Gillis commented that he recently completed negotiations for 11 communities in the ICCA consortium which has both Ameritech and TCI as its cable providers. He noted that TCI and Ameritech are both offering 1% of gross revenue for PEG support.

Gillis stated that cable companies have traditionally over valued their costs for operating PEG access. A major figure in those numbers is payroll. There are few examples where PEG employees of cable companies are entirely devoted to PEG access. Gillis thinks it is better to get the equivalent amount of cash annually plus the up-front money which the Board controls rather than the cable company.

Gillis stated that there is no obligation for the Cablecasting Board to accept the agreement if they are unhappy with it. The Board can reject it with the consequences that would entail.

### **MEDIA ONE RELATED TOPICS**

#### Update on Rebuild

DiMaria reported on the status of the rebuild. The main line rebuild continues and MediaOne is close to turning the system on for the residents in the outer perimeter of the rebuild. In response to an inquiry, DiMaria stated that there is not an option to purchase the receivers at this time, only the remote.

Hall referred to a letter dated February 4 from MediaOne announcing the new hours for the Eton Road facility. Beginning March 8, the new office hours will be Monday through Friday from 9 a.m. to 5 p.m.

#### Direct Debit

As part of the change in its billing system, MediaOne will now offer direct debit payment for its subscribers. Information will be provided in their monthly bill.

#### Subscriber Correspondence

A letter dated February 2, 1999 has been received from Dr. David Harris of Birmingham in which he requests the History Channel and C-SPAN2 after 6:00 p.m. DiMaria has sent a reply to Mr. Harris. DiMaria related his response to Andrew Tanner who filed a complaint brought up at last month's meeting regarding his failure to receive a Pay-Per-View program. The problem was explained. There was no charge to the subscriber's account.

#### Follow-up MediaOne topics

There was a question at last month's meeting regarding whether MediaOne's new telephone number is a local phone call. DiMaria acknowledged that it was.

MediaOne's Y2K compliance plans were questioned at the last meeting. Hagaman has sent a letter to MediaOne requesting a letter of compliance from them on this issue. This will be an agenda item when a response is received.

**ADMINISTRATOR'S REPORT**

Hagaman commented on the revenue and expense reports for the Cablecasting Board and the Cable Administrator budgets.

**MLAC9 REPORT**

Colgan presented highlights of the February production report. He commented on an equipment problem which does not allow any updates to the bulletin board. This will be an agenda item for next month's meeting.

**BOARD COMMENTS**

Kuhne stated that former Cablecasting Board member Ron Zate has relocated to Manhattan and is now an off-Broadway producer. The Board received a card announcing a play called "Get to the Part About Me" which is produced by Zate Entertainment.

**PUBLIC COMMENTS**

Stewart Laidlaw of 704 Cottingham in Birmingham commended the negotiating committee and MediaOne for arriving at a tentative franchise agreement.

Laidlaw reported that he spoke with an individual at the Michigan Government Television Station in Lansing who said that there was no problem with the local cable authority airing their station at times other than between 10 a.m. and 2 p.m. They request that no segments be edited.

Laidlaw commented on his project of videotaping various Birmingham commission and board meetings with the hope of cablecasting those meetings. At the present time he is preparing tapes to be shown on public access channel 11. Laidlaw commented on the time required to transfer the tapes over to the proper format if it were to be shown on Channel 11.

Laidlaw stated that he attended a downtown merchant's meeting earlier this morning. There was discussion about the implications of using cable for advertising.

DiSessa thanked Colgan and his staff for doing a professional job working with the Village of Franklin on the election process.

Joan Ritter of 990 Davis Avenue stated that she would like MediaOne to include the International Channel in its channel line up. She was informed that the Cablecasting Board has no jurisdiction over the cable company's channel selection. Ritter was advised to write a letter to MediaOne stating her request for this channel.

The meeting was adjourned at 9:15 a.m.