

CABLECASTING BOARD MEETING MINUTES - OCTOBER 20, 1999 - PAGE 1

Present: Abbott, Devereaux, Fleischer, Hall, Kuhne and Spivak - Birmingham
Borgon, Janks and Lowmaster - Beverly Hills
DiSessa - Franklin

Absent: Doctoroff - Birmingham
Leckie - Bingham Farms

Also present: Hagaman - Cablecasting Board Administrator
Martinico - Director of Technology, Birmingham Schools
Gillis - Attorney for Cablecasting Board
Colgan - Municipal/Library Access Channel
DiMaria and Grover - MediaOne representatives
Currier - Birmingham City Attorney
Buterbaugh - Beverly Hills Council representative

Chairperson Hall called the meeting to order at 7:50 a.m. in the Rotary Room of the Baldwin Public Library at 300 W. Merrill Street. He welcomed new Board member Deborah Lowmaster representing the Village of Beverly Hills.

Board members were saddened to learn of the passing of Judge Doctoroff's wife several weeks ago. Hall expressed heartfelt condolences to Judge Doctoroff and his family on behalf of the Board.

Hall mentioned that Don Gillis' administrative assistant Beth has been hospitalized and is now at home. The Board wishes her and her family the best.

DiMaria announced that he and his wife had another baby boy three weeks ago.

APPROVE MINUTES

MOTION by Spivak, supported by Devereaux, that the minutes of a regular Cablecasting Board meeting held on September 15, 1999 be approved as submitted.

Motion passes unanimously.

REQUEST FOR TRANSFER OF FRANCHISE

Board members are in receipt of a memo from Don Gillis dated October 14, 1999 regarding the Transfer of Control of the Cable Franchise from MediaOne to AT&T. Copies of FCC Form 394 announcing the transfer were previously distributed. The Cablecasting Board passed a resolution last month asking its legal counsel to provide a review and opinion on that document.

Gillis remarked that this is not one of the easier Form 394 documents he has encountered for the reason that the consortium is between the expiration of an old franchise agreement and a failure to execute a new agreement. It is his view that the best possible action that should be taken by the Cablecasting Board and its member communities is to approve the transfer subject to conditions.

There are four options for dealing with a request for transfer: 1) consent to the transfer unconditionally; 2) If the communities fail to take any action before 120 days after Form 394 has been received, the law deems that the consent to transfer of control be granted to the transfer unconditionally; 3) deny the request for transfer with reasonable grounds for disapproval; 4) consent to the transfer subject to reasonable conditions.

It is Gillis' view that the information provided in Form 394 is sufficient. The city of Dearborn requested additional information on the basis that material had been redacted from the Agreement and Plan of Merger. Gillis maintains that this is not a severely redacted agreement. Certain disclosure statements and covenants of MediaOne have been redacted. Gillis does not think that they are essential for reasons explained in his memorandum. The main reason that these documents are generally redacted is to avoid revealing the purchase price. There has been sufficient press accounts to indicate that this is a merger involving \$54 billion.

Gillis outlined major issues with respect to these types of transactions. One is the anti-competitive effect of the industry's predilection for clustering. Gillis thinks that the end result will be several giants dominating the country. It is his view that the anti-competitive effect of the proposed acquisition is best left to federal regulatory agencies that are better equipped to deal with this matter and have the tools to implement limitations on such anti-competitive effect.

Another major issue is the impact of the acquisition on subscriber rates which is a matter of local concern. Gillis has asked for and obtained representations from the applicants that this acquisition will not trigger an increase in subscriber rates. It may be difficult to determine whether a price increase following the acquisition is really attributable to high costs paid by the acquiring party or some reason furnished by the applicants. Nevertheless, Gillis would like something on record indicating that this acquisition will not cause subscriber rates to increase.

Another matter is a question of Internet access to competing Internet Service Providers (ISPs). Some ISPs are arguing that AT&T should be required to "unbundle" the Internet service that will be provided over cable systems so that other content providers are not at a competitive disadvantage in providing high-speed services to customers. This is a subject of litigation by the City of Portland, which has objected and denied consent to the acquisition of TCI by AT&T. The FCC has refused to pursue legislative interference at this time. There is no legal requirement obligating the company to make the cable modem platform available to Internet Service Providers on a non-discriminatory basis. Litigation is still pending. Whether the FCC changes its position remains to be seen.

Gillis has prepared a resolution approving the change of control of the Cable Franchise subject to the following conditions:

(a) *The automatic revocation of the Franchise Authority's consent if the Merger Agreement is not consummated by March 31, 2000, or if such Merger Agreement is terminated prior to that time without the same having been consummated.*

Gillis recommends placing a time limit on the transfer because circumstances can change between now and this automatic revocation date which makes the information previously furnished obsolete.

(b) The written undertaking by AT&T, or any intermediate subsidiary of AT&T and Operator, that it will promptly notify Franchise Authority of any change or contemplated change in service or operations of Franchise Authority's cable system and changes in personnel directly responsible for the operation of such system.

(c) A written affirmation by AT&T that consummation of the Transactions will not cause or result in an increase in subscribers' rates.

(d) The prompt remediation of all existing defaults of the Operator as may be specified in writing by Franchise Authority; and a written representation by Operator of the existence of any defaults which have not been waived by Franchise Authority or a written representation by Operator that it has no knowledge of any such defaults.

Gillis stated that the company has been guilty of various defaults under the Consumer Protection Ordinance. Most of those have been waived by the Board with the recognition that they have essentially been caused by the rebuild and considering that the complaints have decreased substantially. Nevertheless, if there are serious matters remaining, they should be rectified as a condition of approval. A written representation should be furnished by the operator of the existence of defaults that have not been waived by the franchise authority or written representation that the operator has no knowledge of any such defaults. Gillis noted that he is calling MediaOne the "operator" because it is not essentially the franchisee.

(e) The full and binding effectiveness of a renewal franchise agreement between the Operator and the Franchise Authority on or before December 31, 1999, and compliance with all applicable requirements of such renewal agreement and Franchise Authority's cable regulatory ordinance regarding transfer, ownership, and control of Franchise Authority's cable system and its cable franchise and franchisee.

(f) AT&T's written acknowledgment that the conditional approval and consent provided in this Resolution shall not constitute a waiver of Franchise Authority's right to demand of its cable operator or cable franchisee that such operator or franchisee furnish non-discriminatory access to its cable modem platform so as to afford such access to other Internet service providers if applicable law confers any such right upon a Franchise Authority.

Gillis stated that the renewal franchise agreement will expressly reserve the right to demand that non-discriminatory access to the extent that the law confers that right on the franchise authority.

(g) AT&T's written acknowledgment that the conditional approval of the Transactions by Franchise Authority is in reliance on AT&T's financial qualifications and financial credibility as reflected in Exhibit 8 to FCC Form 394.

There is no formal written guarantee by AT&T of all the obligations of the franchise agreement under which its subsidiary is bound. Gillis is taking the position that the furnishing by AT&T of its financial statements and our reliance on those financial statements amounts to an implied guarantee by AT&T.

(h) AT&T's written acknowledgment that Operator's existing authority is to operate and maintain a cable system only and is not authorized, and will not be authorized under any renewed cable franchise agreement, to furnish telecommunication services, and that authorization to provide telecommunication services must be obtained separately from Franchise Authority.

Gillis stated that this condition is deemed necessary because AT&T represented that it planned to furnish telecommunication services via its cable system. The company needs separate authority for that.

(i) AT&T's written acknowledgment that it is aware of the current state of negotiations between the Birmingham Area Cable Board (of which Franchise Authority is a member, on behalf of Franchise Authority and the other member communities of the Board) and the Operator for a renewed cable franchise and does not object to the current informal proposals of the Operator regarding such renewal.

The Cablecasting Board has spent a great amount of time negotiating a franchise renewal with MediaOne and is at a point where the parties are very close to a deal. The consortium does not want AT&T to enter at this point with objections to issues that MediaOne has furnished through its informal proposals. The franchise authority requests acknowledgment that AT&T is willing to accept what MediaOne has proposed informally.

(j) The prompt reimbursement by the Operator and/or AT&T of the reasonable costs incurred by Franchise Authority and the Birmingham Area Cablecasting Board incurred on account of their consideration of the Application for Franchise Authority's consent to the Transactions.

Gillis reiterated his position that this consent to transfer should be approved. Issues such as the anti-competitive effect are best dealt with elsewhere. There are local issues which are important and should be added as conditions to the approval. If the Board accepts the recommendations contained in his memorandum, it should adopt a resolution to that effect at this meeting. The Board's recommendation should be forwarded to the member communities with a copy to their attorneys as soon as possible to insure that the 120 day period does not expire before the local communities take action.

The 120 day period begins on the day that FCC Form 394 is received by the communities which was July 16, 1999. The 120 day period ends on November 16, 1999.

DiSessa entered at 8:15 a.m.

Gillis addressed questions from Board members on the transfer of control. It was indicated that this is apparently an interim transfer. The consortium may be receiving another Form 394 later this year

whereby AT&T transfers to Comcast which will then become the dominant cable operator of the Metropolitan Detroit Area. It is believed that AT&T and Comcast avoided a bidding war over MediaOne by entering into a deal swapping 750,000 subscribers, a large portion of which are believed to be in the metropolitan Detroit area.

Gillis commented that non-competitive issues are reviewed at the FCC. As a condition of approving transfers, the FCC often requires that the applicant divest itself of whole cable systems if they have too much power. The FCC has done this in the past but has also gone the other way. The FCC has relaxed its regulation limiting the number of subscribers that may be served by a single cable operator nationally from 30 percent to 36 percent, which enabled AT&T to acquire MediaOne.

Michael Grover, Corporate and Legal Affairs Director from MediaOne, submits that many of the provisions in the proposed resolution will affect AT&T. He believes that AT&T will need to review these issues and have an opportunity to forward questions or concerns to the Board before the proposed resolution is approved by the member communities.

Gillis remarked that the consortium does not want the 120 days to expire before action is taken, but the governing bodies of the communities do not meet every week. The Cablecasting Board does not have another regular meeting scheduled before the expiration date. The 120 day time period for action on the transfer can be extended by agreement.

Grover stated that MediaOne is more than willing to work with the communities to meet their schedules so that an agreement is reached that is acceptable to everyone.

In response to an inquiry, Grover stated that there has been no interaction with AT&T on the renewal that is underway, and MediaOne has had no contact with Comcast about this transaction. DiMaria added that, at this point, no one has interjected anything into the renewal with MediaOne other than Mr. Kreucher, Mr. Gillis, and himself. A third party has not been involved in the franchise renewal process.

RESOLVED by Janks, supported Fleischer, that the Cablecasting Board recommend to its member communities that they approve the transfer of control of its cable operator from MediaOne to AT&T subject to specified conditions as set forth in the Memorandum from the Board's attorney dated October 14, 1999. It is further resolved that a copy of this resolution and such Memorandum and related resolution of approval drafted by the Board's attorney be forwarded forthwith to the Board's member communities and the attorneys for such communities.

Roll Call Vote:
Resolution passes unanimously.

MOTION by Janks, supported by Fleischer, that the Cablecasting Board recommend that the member communities agree to a 30 day extension to the 120 day period for acting upon the

application for consent to the transfer of control of its cable operator from MediaOne to AT&T for the purpose of further review by AT&T if such extension is requested by AT&T.

Motion passes unanimously.

FRANCHISE RENEWAL

Gillis reported on a meeting held late yesterday with Birmingham city attorney Currier and city manager Markus to discuss outstanding legal issues. Some decisions were made that show promise in resolving the remaining legal matters. Gillis has not had an opportunity to discuss them with DiMaria or Jon Kreucher.

There was a meeting held at the end of September to discuss outstanding technical issues involving the School District and the Birmingham I-Net. The meeting was attended by DiMaria and Eric Brown, technical representative from MediaOne, Board chairperson Hall, Attorney Gillis, and Dennis Fasset, technical consultant to the Board. Gillis reported that progress was made at this meeting and matters were resolved subject to placing the agreement into proper written form to the satisfaction of everyone. Gillis is hoping that the parties will now have an agreement in principle on everything with these issues resolved.

Gillis mentioned another point that warrants review. MediaOne has concluded a renewal agreement with Bloomfield Hills and Township. He has requested copies of those documents and has been furnished with some of them. Those documents should be reviewed to make certain that the members of this consortium are not denied certain concessions that are being received by the Bloomfield consortium or by Southfield in connection with renewal agreements.

Gillis believes that the parties have reached agreement on everything outstanding subject to these issues.

Hall commented on the technical meeting. He does not think that there are any outstanding issues with respect to the City of Birmingham's need for an institutional network. There was agreement at the September meeting on the need for technical meetings between MediaOne and the School District on requirements of the Birmingham School District. Meetings and discussions have since taken place. Martinico has reported that progress is being made with a couple of outstanding technical items yet to be resolved. It appears that MediaOne will be able to service the needs of the schools.

DiMaria stated that MediaOne will have a letter on this topic for Martinico's review early next week.

PEG ACCESS COMMITTEE

Janks reported that the committee is continuing to explore the options which are partially contingent on the funding provided in the franchise agreement. He hopes to present a more thorough report at the next meeting.

MEDIAONE RELATED TOPICS

Subscriber Complaints

Board members are in receipt of four written complaints. Birmingham resident Robert Adams was present and related that the clock on his interactive timer is off by two minutes which causes programs being scheduled by the interactive guide to start recording late. Adams commented that he has not been able to resolve this with the customer service representatives at MediaOne.

DiMaria stated that he will receive a report on this problem from the head end people early next week. This will be an item for the agenda of next month's meeting.

A complaint from Birmingham resident Larry Walloch involves difficulty with getting through to the MediaOne call center to charge his payment. He was charged a late fee by MediaOne. This has been resolved.

Beverly Hills resident Jeff Silen has had trouble since mid July with getting MediaOne to install cable at his new home. Cable was installed on September 30. At Hagaman's request, DiMaria will look into why this is happening to some subscribers.

Mr. Repa of Beverly Hills has a concern about the fading sound on College Channel 22. Fleischer stated that the sound on Channel 22 depends on the quality of the program that is being played back through the system which is not MediaOne's problem. DiMaria will check the levels at the head end.

Hagaman requested the name and phone number of the manager of the College Cable Channel to distribute to people with this complaint.

Update on Rebuild

DiMaria stated that there was a recent mailing to all subscribers announcing that digital cable is available. The roll out of high speed Internet access has started and will continue through the end of the year.

Annual Report

DiMaria will have a written document delivered to Hagaman this afternoon that addresses questions from the Board on the Annual Report from MediaOne.

Monthly Subscriber Statistics

System statistics were received from August and September. The August report was redistributed this month because of an error found in the computation of the data received at the last meeting.

DiMaria was asked to include the number of cable modem installations in this report. DiMaria responded that he is not allowed to provide this information in a written report.

Monthly Access Report

The Board reviewed local origination programming for September with questions addressed by DiMaria.

MEDIA ONE UPDATE TOPIC - DIRECT DEBIT

This item remains outstanding.

ADMINISTRATOR'S REPORT

Hagaman has provided Board members with a comprehensive report on the September NATOA conference. Highlights include the issue of open access to the Internet and the impact of mega mergers and related subscriber concerns about pricing and lack of competition. Future trends feature home automation.

MLAC 15

Colgan presented highlights of the October production report.

OLD BUSINESS

Fleischer reviewed that MediaOne has been asked if it was going to update equipment in the mobile van, particularly the sound board. DiMaria will check and report to the Board.

NEW BUSINESS

Janks informed the Board that Fox Broadcasting has come to an agreement with Direct TV that will allow them to broadcast local signals. There is still legislation pending that will probably pass next month to permit this. Janks noted that one of the things that differentiated Direct TV from cable has been that subscribers cannot receive local TV stations. That will most likely change by the end of the year and create further competition for cable companies.

BOARD COMMENTS

Fleischer commented that he would like to be advised of any changes that AT&T suggests to the proposed resolution approving the transfer of control of the cable franchise. Hall stated that Gillis will notify him as soon as he hears from AT&T on this issue. If there are objections to the form of the resolution, a special meeting of the Board may be scheduled to review those concerns. A copy of the objections will be distributed to the Board.

The meeting was adjourned at 9:30 am.