

CABLECASTING BOARD MEETING MINUTES - FEBRUARY 16, 2000 - PAGE 1

Present: Abbott, Devereaux, Hall, Kuhne and Spivak - Birmingham  
Borgon and Lowmaster - Beverly Hills  
Leckie - Bingham Farms  
DiSessa - Franklin

Absent: Doctoroff and Fleischer - Birmingham  
Janks - Beverly Hills

Also present: Hagaman - Cablecasting Board Administrator  
Gillis - Attorney for Cablecasting Board  
Colgan - Municipal/Library Access Channel  
Cannon - MediaOne representative  
Buterbaugh - Beverly Hills Council representative  
Christ - Birmingham City Attorney's office

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.

**APPROVE MINUTES OF REGULAR CABLECASTING BOARD MEETING HELD ON JANUARY 19, 2000**

On page 2, third paragraph from bottom of page, line one, change "is" to "it".

MOTION by Spivak, supported by Borgon, that the minutes of a regular Cablecasting Board meeting held on January 19, 2000 be approved as amended.

Motion passes unanimously.

**FRANCHISE RENEWAL**

Hall reported on what has occurred since the January meeting of the Cablecasting Board when the franchise renewal documents were recommended to the municipalities for approval. Three changes were made to the documents.

Typographical errors have been corrected. A change was made in Section 2.13. There was concern at the last meeting that wording in Section 2.13 relative to free cable services provided to the schools and municipal facilities could be subject to misinterpretation. The agreement stated that schools and municipal facilities would receive free service except for premium channels, pay-per-view, and digital services. Martinico expressed concern about the phrase "digital services". A change was made so that the document now reads "... free service except for premium channels, pay-per-view and *premium* digital services...". This is acceptable to Jon Kreucher, head negotiator for MediaOne, and to Martinico, representing the Birmingham School District. The third change was made to include a paragraph in the franchise renewal agreement that incorporates the fact that the side letters are part of the agreement.

The revised documents have not been redistributed to board members. Clean copies have been forwarded to the communities along with an executive summary prepared by Gillis and edited by Kuhne and Hall. It is assumed that the elected officials of the member communities will receive copies of the ordinance and franchise agreement for their review. Gillis conducted a briefing of the attorneys for the four communities. A schedule of public hearing dates for the four communities is not yet available.

Hall stated that there is a separate letter between MediaOne and the Birmingham School District that is not incorporated into the franchise renewal documents. At the time MediaOne upgraded its system, an arrangement was made to lease land owned by the School District in exchange for a private fiber network for the schools. That letter includes details on how the schools are going to connect to the Internet with MediaOne's system. The letter has been prepared and signed by both parties. Martinico has confirmed to Hall that she has reviewed this letter, and it is totally acceptable to her.

Borgon asked if the board members have received copies of the entire franchise agreement including the side letters. Hall responded that the franchise renewal document received prior to last month's meeting is substantially the final document except for the word "premium" in Section 2.13 and the addition of a legal clause mentioned earlier.

Gillis stated that there are three side letters. The letter of agreement between the Birmingham Schools and the cable company has been signed and delivered. The company wanted this as a side letter because it confers benefits on the Birmingham School District that have not occurred elsewhere.

A second side letter drafted by Gillis is in the consortium's favor. It has been approved by Jon Kreucher from MediaOne but has not been signed and delivered to Gillis as yet. Gillis will insist that it be delivered prior to the adoption of the agreement by the communities. This side letter provides an additional adjustment to any reimbursement the communities would have to make in the event that competition enters the marketplace. The additional credit will occur if the company seeks to obtain a return on its investment involving the \$350,000-\$400,000 PEG support payment. Any monies they recover from subscribers is also an offset that the Birmingham Area consortium is entitled to against any reimbursement to the company.

The third side letter will be drafted by Kreucher. It has to do with the claim of the company that it is entitled to an 11.75% return on its investment for PEG support of \$350,000-\$400,000. The City of Southfield acknowledged that the claim was valid. The Birmingham area consortium documents say that it is a claim. Gillis is not totally satisfied that it is valid. The negotiating committee agreed by way of compromise that the consortium would not litigate its validity, but the consortium has the right to take advantage of anyone else litigating that issue.

Hagaman will provide Borgon with a copy of the appropriate side letters from the municipalities. She will request a copy of the school agreement. Borgon will obtain a final copy of the cable ordinance and franchise agreement after it is formatted for Beverly Hills.

Borgon understands that the city of Birmingham recently awarded a cable franchise to McLeod and questioned if this affects the competition clause in the franchise agreement. Hall remarked that the agreement with this contractor has nothing to do with cable television. McLeod USA is a contractor designated by Oakland County to construct a Wide Area Network (WAN) for the Oakland Intermediate School District. McLeod is also constructing a Metro-Area Network/Wide Area Network for Oakland County. This is a county-wide project. Beverly Hills has approved a similar agreement to permit construction of a fiber optic network informational system in its rights-of-way. All the work will be aerial on existing utilities.

Abbott questioned whether there is anything in the franchise agreement or in a side letter that addresses technology concerns. He asked whether the consortium has any guarantee that the current cable modem is not going to be the company's height of technology 15 years from now.

Gillis responded that there are provisions in the documents that deal with upgrading the system. A clause stating that the cable company must maintain the same technological standards as offered by other companies in the Detroit metropolitan area was the subject of negotiation.

Kuhne commented that the consortium is going into this franchise agreement with a large company with a lot of resources as opposed to the last agreement of 18 years ago with Booth. He believes that the nature of competition in this industry will take care of any technology contest issues in terms of people's choices. If this cable company allows the condition of its equipment and its offerings to deteriorate, it will be acquired by another company or people will switch to digital TV.

Abbott remarked that the consortium may want to safeguard against this franchise being sold to another company that has less regard for keeping its subscribers up to date.

Kuhne stated that the agreement safeguards the subscribers to the extent that the cable company must maintain the standards of those invested in the regional Detroit area by other companies. This board would prefer to have the maximum number of subscribers in order to fund PEG going forward. However, if the cable company opts to allow its system choices to deteriorate, that is their decision. Kuhne believes that the consortium has negotiated the best possible language in order to keep the company in the forefront with respect to current technology.

Hagaman questioned the standard being applied should only one company service most of metropolitan Detroit. She thinks it would behoove the municipalities to make a current technology clause a condition of any future transfer.

#### **PEG ACCESS COMMITTEE**

Leckie reported that Janks has had conversations with Birmingham School District representatives who have agreed to work with this consortium on PEG access if the board chooses to proceed in that manner. Bloomfield Community TV has not responded to the committee's request for proposal. Options are still being considered. Leckie estimates that the consortium is about a year away from having an operational studio available. The committee will prioritize the projects under PEG. The mobile van will be a priority.

Lowmaster expressed concern about partnering with the schools to provide PEG access. She stressed the public aspect of PEG access programming and believes that the school district's schedule and need for programming would be too demanding to provide adequate facilities for public access. She urges that the board seriously consider this course of action.

Hall thinks that partnering with the schools would mean sharing of equipment and facilities as well as providing students with an opportunity to learn programming operations. He stated that there will be more discussion prior to any decisions being made about PEG access.

Abbott expressed concern relative to the possibility of religious activities being taped in the schools. There is a possibility that public access programs could involve filming a religious service on school property.

Kuhne questioned how separation of church and state issues would be different from the fact that this board is a governmental body having oversight of the PEG channel as it is now. Hall stated that these issues will be addressed.

In response to an inquiry, Colgan stated that a "Meet the Candidates Night" sponsored by the League of Women Voters and an event sponsored by the Franklin Historical Society have been determined by the board to be public access programs rather than government programming. People producing these programs were referred to MediaOne for coverage of these events. MediaOne is still under obligation to provide public access programming to the communities.

The question was raised as to whether MediaOne's Eton Street studio is open. Cannon from MediaOne will check into this and advise the board.

Hall stated that Hagaman should be contacted if there is a problem with reaching MediaOne for public access programming. Whether there is a local studio is a legal issue that Cannon will investigate. The new documents state that an individual in the consortium needing studio facilities can use the Southfield studio if the Eton Street studio is not available.

Hall remarked that public access channel 18 has been off the air for more than a week. He noted that the board has received no complaints or calls about the fact that the public access channel has been blank for over a week.

## **MEDIAONE RELATED TOPICS**

### **Subscriber Complaints**

There have been more than 20 complaints received this month. Hagaman summarized problems being experienced by subscribers.

One complaint addressed the issue of drop off payment facilities. A notice is sent to subscribers who are behind in payments giving them a 1-800 number to call. The recorded message says that a convenient payment drop off service is available for a customer to pay the delinquent account. When

you punch in the 48025 zip code, the customer is told that convenient centers are located in either Ann Arbor or Ypsilanti. The Eton Street office is not mentioned.

MediaOne has responded that there was a problem in the operation of this automatic device. Hagaman stated that, until this complaint was received, no one at MediaOne knew that this automated voice unit was not operating properly. If the Eton Street office is not open, which is in violation of the franchise agreement, perhaps there is no other location to drop off a payment.

Many of the complaints deal with the slow pace of Internet service installation. The rebuilt system has been complete for six months, yet there are areas that do not have the availability of Internet service. MediaOne is not giving the customers acceptable answers to their questions. People are told that someone will call them back, but no one ever does.

Hagaman received a complaint from a customer who is disappointed that MediaOne does not offer the International channel. It is offered in the Southfield franchise but not in the Birmingham area franchise. She would be interested in an explanation of how the cable company determines what channels are offered in specific areas. Hagaman would also like to know how MediaOne handles requests for new channels. She asked for a response from MediaOne on this matter.

A Birmingham resident called MediaOne about poor reception on local channels. MediaOne told her there is nothing they can do about it. This individual feels that MediaOne does not care about the subscribers and refuses to correct the problem. The problem was eventually resolved.

Customers have complained about the change in HBO channels. Subscribers are receiving fewer channels for the same charge. MediaOne has not answered this complaint. People are feeling that they are being exploited because there is no competition from another cable provider.

There are many complaints about the customer service department at MediaOne. Hagaman commented on the lack of communication between the customer service representatives (CSR) and the subscribers and between the Internet technicians and this board. No one knows what is going on.

Kuhne believes that people's perception that the Internet service is available is MediaOne's own doing. If it is not available, MediaOne should not be advertising high speed Internet connections. The service has moved from being imminent to indefinite. While MediaOne has completed negotiations with this board for franchise renewal, the board still must explain the franchise renewal documents to four elected bodies. For political purposes, the franchise renewal and the day-to-day complaints from customers are very much intertwined. He suggests that MediaOne get its act together quickly to avoid having complaint sessions in front of four governmental agencies.

Spivak asked Cannon who at MediaOne sees the complaint list. Cannon responded that the complaints go to him and to DiMaria. They are forwarded to the customer advocate's desk and to the manager of the CSRs. Each complaint is reviewed and followed through until there is a satisfactory resolution. Cannon explained a system used by CSRs whereby they document every conversation with every customer and identify the record as theirs. In answer to an inquiry, Cannon stated that

there are regular meetings with the CSRs held by the supervisors to discuss new products, timing, and what is going on as far as the product roll-outs.

Cannon shares the board's frustration with the Internet roll-out. He will see what he can find out about the delay. He elaborated on the certification process, indicating that the data lines have to be 100% reliable before MediaOne certifies a node and starts offering service. Manpower can be an issue. It is difficult right now to find contractors that are able to do this specialized work.

Hall requested a presentation by MediaOne at next month's meeting on exactly what is going on with the Internet roll-out and how MediaOne is communicating with its subscribers. Hagaman would like a response to her inquiries about the channel selection process when there are differences between what our consortium and neighboring communities have. Hall asserted that it would be helpful if there was better communication to board members so they could explain these situations to their constituents. He asked that the board be provided with a better understanding of MediaOne's process for dealing with complaints and how the CSRs are educated on these issues.

#### **NEW BUSINESS**

Hall brought up an item of new business that needs to be addressed. The board has been advised by legal counsel Don Gillis that he is in the process of becoming special counsel for cable and telecommunications matters to Tim Currier and his firm of Beier Howlett. In the future, Mr. Currier will become the lead counsel for all of Gillis' cable clients with Gillis continuing to act in a special counsel role. This will not happen until after the franchise renewal documents are approved by the communities.

Hall remarked that Currier has attended the majority of the board meetings over the past three years and is familiar with the board's operations and issues. He serves as city attorney for Birmingham and village attorney for Franklin. His office has been responsible for completing the final drafts of the cable ordinance and franchise agreement.

The board considered a motion that acknowledges this upcoming change in legal counsel and agrees as a board to engage the services of Tim Currier and his firm until such time as the board may desire other legal assistance.

MOTION by Kuhne, supported by Spivak, to approve Tim Currier as the lead legal counsel and Don Gillis as special counsel for the Cablecasting Board.

In answer to an inquiry, Gillis stated that he cannot speak for Beier Howlett, but he thinks the fees will be the same.

Gillis stated that he will be special counsel to Mr. Currier and his office. Currier has been working closely with him on cable and telecommunications matters. This change will not officially take place until such time as the member communities agree to the franchise documents. Gillis is doing the same with the firm he is presently associated with in his practice other than cable, so he will be special counsel to two separate law firms.

Hall mentioned that the board's normal mode of operation when it is not involved in a franchise renewal is not to have legal counsel at most of its meetings. The active participation of legal counsel at meetings will change in the future.

Gillis stated that he will have suitable expressions of his happy associations with this board at the time the franchise renewal documents are approved by the communities.

Motion passes unanimously.

### **Monthly Subscriber Statistics**

Hall observed that the system statistics indicate that there are about 40 people on the old system. Cannon will check on this and report back to the board.

### **Monthly Access Report**

The local origination report was not distributed to the board this month. MediaOne was requested to submit it with next month's report.

### **MLAC-15 REPORT**

The Textscan Computer that runs the MLAC-15 bulletin board reverted to 1900 on January 1 of this year. This is MediaOne's equipment. Colgan has been informed by MediaOne that nothing can be done with the existing equipment, and the company is not going to purchase new equipment. Colgan stated that he has opted not to remove the date and time from the bulletin board.

Cablecasting Board members do not think that MediaOne's response to this problem is acceptable. They asked that MediaOne either replace the defective equipment or send the board a letter stating that they are not going to do this. This equipment failure does not meet the compliance representations that MediaOne made to this board for being Y2K compliant. Cannon will look into this.

### **NEW BUSINESS**

Hall referred to a press release from MediaOne announcing Pierce Elementary School's award for outstanding educators.

### **BOARD COMMENTS**

Spivak suggested that the chair send a communication to Judge Doctoroff saying that he is missed and appreciated.

The meeting was adjourned at 9:20 a.m.