

CABLECASTING BOARD MEETING MINUTES - NOVEMBER 15, 2000 - PAGE 1

Present: Brower, Devereaux, Kokubo, Kuhne, Laidlaw, Lane and Spivak - Birmingham
Borgon, Lacroix and Pfeifer - Beverly Hills
Leckie - Bingham Farms
DiSessa - Franklin

Absent: None

Also present: Hagaman - Cable Administrator
Currier - Attorney for Cablecasting Board
Colgan - Municipal/Library Access Channel
Martinico - Director of Technology, Birmingham Schools
MediaOne representative - DiMaria

Kuhne called the meeting to order at 7:53 a.m. in the Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

APPROVAL OF MINUTES

MOTION by Spivak, supported by Leckie, that the minutes of a regular Cablecasting Board meeting held on October 18, 2000 be approved as submitted.

Motion passes unanimously.

PEG ACCESS

Board members are in receipt of a copy of the Agreement for Cable Access Management with Bloomfield Community Television for management of the consortium's municipal and public access channels. The contract has been prepared by legal counsel Tim Currier based on requirements of the board and has been discussed with representatives of BCTV. The Agreement is before the Cablecasting Board for review and approval. Counsel for BCTV has yet to review the most recent draft of the contract.

Kuhne outlined the proposed changes in the contract from the draft distributed at the last meeting. He has received no comments from board members on the contract since the October board meeting. The changes were discussed by the board. There was a consensus to modify the wording of a paragraph under the compensation section of the document.

MOTION by Spivak, supported by Devereaux, that the Agreement for Cable Access Management between the Birmingham Area Cablecasting Board and Bloomfield Community Television be approved as amended.

Ayes - Brower, Devereaux, Kokubo, Kuhne, Lacroix, Laidlaw, Lane, Leckie, Pfeifer, Spivak
Nays - Borgon
Motion passes (10 - 1).

BY-LAWS COMMITTEE REPORT

A draft copy of proposed by-laws for the Cablecasting Board has been distributed to board members. Borgon, chair of the by-laws committee, stated that committee members Brower, Laidlaw, DiSessa and legal counsel Tim Currier met to formulate by-laws for this board.

Kuhne asked that board members review the proposed by-laws for discussion and possible approval at the December meeting. Board members were asked to direct comments or suggestions on the by-laws to Borgon.

Currier presented background on the charge of the by-laws committee. The group met with the idea of developing by-laws, which the board would adopt for its internal operating purposes. Through its comprehensive discussions, the by-laws committee attempted to separate internal by-laws that can be approved by the Cablecasting Board for its own operation from those matters that require authorization from its member communities. Following the adoption of the by-laws, it is anticipated that a committee would be established to work on a revision to the Intergovernmental Agreement between the member communities.

Board members Kokubo and Pfeifer offered their comments and suggestions on the proposed by-laws. Additional board comments should be directed to Borgon prior to the next board meeting.

DiSessa entered the meeting at 8:22 a.m.

REQUEST FOR TRANSFER AT&T/COMCAST

Currier referred to his opinion letter dated November 13, 2000 to the Birmingham Area Cablecasting Board indicating that he has reviewed the documents furnished by the parties regarding the transfer of AT&T Broadband Cable Television System and Franchise to Comcast Cablevision of the South, Inc. Currier stated that he has had the benefit of meeting with Comcast and MediaOne representatives on a number of occasions due to this transfer being the subject of consideration not only by the BACB but of cable authorities he represents in other consortium areas.

Currier hopes that the board will review the proposed resolution granting consent to the Transfer today, make any modifications to the resolution, and adopt a resolution that this board can recommend and forward to its member communities for their consideration later this month or in December. Time is of the essence in that the member communities legally have until the end of December to act on the request. If no action is taken, the request is automatically granted.

Possible actions of the local franchising authorities include the following: 1) Fail to take any action, which will deem the consent to be unconditionally granted; 2) Consent to the transfer; 3) Disapprove of the application, which would lead to a myriad of litigation or other procedural activities; 4) Consent subject to reasonable conditions. Currier stated that he has not seen a member community object to a transfer that has successfully halted that transfer. The option of consenting with conditions seems to be an effective way for member communities to have input in transfers of cable franchises.

Currier stated that a positive aspect of this situation is that the consortium has recently gone through a franchise renewal process that has corrected a lot of problems with the current cable provider. The board has had the benefit of dealing with MediaOne representatives with whom the consortium has developed a good working partnership.

Currier explained the circumstances that led to this transfer of the cable television franchise. A situation developed where Comcast and AT&T were bidding for control of MediaOne. AT&T and Comcast agreed to cease competing for MediaOne through a settlement that involved an exchange of assets. AT&T would buy MediaOne and transfer to Comcast subscribers in various locations so that Comcast and AT&T would be better able to cluster their cable operations to provide a more efficient operation for their member communities. The Detroit area is one of those areas that is being transferred to Comcast in settlement of that bidding war.

One of the things the municipalities face with the transfer of the franchise to Comcast are concerns about Comcast's reputation. Currier remarked that Comcast personnel understand that the company has to deal with its reputation, and the company had made changes before they brought this transfer to the table. Comcast has been actively attempting to hire MediaOne employees. Comcast has made commitments to continue with what MediaOne has been doing as far as being a good corporate citizen.

Another major issue is servicing subscriber complaints. Comcast will become a major player with millions of customers. The call center that will be covering this area will be handling many more customers than our consortium has been accustomed to under the MediaOne operation. Concerns have been expressed as to whether this can be done efficiently. Comcast has represented that it will enhance the current call centers by building a new, state-of-the-art call center in Macomb County to service the east side of the metro Detroit market and, further, it will develop a university to train its employees. Employees are being added in the Detroit area. Currier stated that these are positive steps being taken by Comcast to address servicing of subscriber complaints. It is a positive sign, but it is not an absolute answer.

The third area of concern is a situation that is intertwined with telecommunications. Currier stated that he reviewed the major transfer documents with some care including the assets being exchanged and the assets being excluded. One of the assets that was initially identified as being excluded in the asset exchange agreement were the leases for the excess fiber optic capacity that AT&T has already entered into. Currier made specific inquiry of Comcast representatives as to what was being done with respect to lease of excess fiber optic capacity in our communities. If they are excluding those leases, Comcast is receiving the lease payment on which the consortium should be receiving payment of franchise fees. He questioned whether the leases are with telecom providers and whether they have the required right-of-way permits under Michigan's Telecommunications Act.

This has been a sensitive area for both parties. The local franchising authority is permitted to evaluate the financial, managerial, and technical ability of Comcast to run a cable television franchise. It is not permitted to evaluate their ability to run a telecommunications operation. That is

not within the purview of this board. Telecommunications issues are within the jurisdiction of the municipalities.

Currier understands that there are no excluded leases of excess fiber optic capacity which AT&T intends to keep with respect to this local franchising area. Any lease of fiber optic capacity that is going to have lease payments from the telecom carrier to the cable provider will be included in the gross revenues of Comcast; therefore, this consortium will receive the five percent cable franchise payment and the three percent PEG payment on that particular revenue stream.

Currier alerted the board to the state of flux that the telecom industry is in today. He related concerns about the rights of local municipalities with respect to road rights-of-way. A telecommunications rights-of-way permit must be secured from local municipalities by any provider who wants to offer telecommunication service. There are issues that are not resolved regarding the charges that can be levied by local municipalities for processing and granting a permit and for the annual use of that portion of the right-of-way that the telecom provider uses.

Currier addressed questions from board members on the telecommunications aspect of the asset transfer. The local franchising authority will be transferring the control of the cable operation. There will be further issues in the next few months that Currier will be addressing with the telecom entity, MediaOne Telecommunications, Inc.

Currier related that the cities of Birmingham and Rochester were sued by an entity called Coast to Coast under the Michigan Telecommunications Act. There was some hope on the part of municipalities and providers that this would be a test case that would provide guidance to telecommunications providers and municipalities as to what municipalities could do with respect to permit terms and conditions, rights-of-way costs, and other telecom provider issues.

Currier stated that a resolution granting the consent to the transfer of the cable television franchise has been drafted for the board's consideration. He expects to work through the document with the board members and DiMaria to arrive at a mutually acceptable resolution that can be recommended to the member communities for adoption. Currier has had discussions over the last several days with Mike DiMaria from MediaOne, Jon Kreucher from Comcast, and attorney John Gibbs representing MediaOne and Comcast in an attempt to draft language that can be mutually agreed upon by all parties.

The resolution is fairly standard with respect to transfers pursuant to 394 applications. Currier outlined a couple of specific items of concern. The first is that the consortium does not have a complete rebuild of the system completed with all of the nodes certified. One of the provisions in the resolution is to either escrow the necessary funds to make sure that it is completed or some other arrangement that is satisfactory to the franchising authorities.

Currier stated that there is a cost associated with reviewing these transfer agreements. He wants to make sure that Comcast or other parties to the transfer are going to reimburse the member communities for costs associated with reviewing the consent to transfer. One of the benefits of

reviewing four agreements that involve over 30 communities at one time is that some of the costs are able to be shared with those communities.

A revised resolution prepared by DiMaria late yesterday was copied and distributed to the board this morning. The language that MediaOne and Comcast wish to add is underlined and the wording they wish to delete is lined out.

The revised resolution was discussed. Currier indicated the changes proposed by DiMaria that he recommends being accepted. Questions from the board on the language were addressed by Currier and DiMaria. A few wording changes were agreed upon by the board and DiMaria.

Currier objected to omitting a paragraph that contains provisions to place a sum in escrow to complete the upgrade of the cable television system or other assurances that are acceptable to the consortium if the rebuild is not completed prior to the asset exchange.

DiMaria responded that MediaOne technically considers the physical rebuild complete. New services are being offered. There are two nodes that are not certified for high speed data in the downtown Birmingham area. One is expected to be certified within the next two weeks. The other needs substantial rework in some of the buildings in downtown Birmingham and will take longer to certify. There is digital service available on these two nodes, but not high speed data service. From MediaOne's standpoint, 98% of all residential customers in the market can receive all three of its products.

Currier and DiMaria agreed to retain the paragraph in question with revisions that were acceptable to both parties and the board.

MOTION by Leckie, supported by DiSessa, to recommend that the Resolution granting consent of transfer of the cable television franchise from MediaOne of Michigan to Comcast Cablevision of the South, Inc. as discussed and modified today be approved by the Birmingham Area Cablecasting Board and forwarded as a recommendation to each of its member communities.

There was board discussion of the proposed resolution.

Roll Call Vote:

Brower	- aye
Devereaux	- aye
Lane	- aye
Laidlaw	- aye
Kokubo	- nay
Kuhne	- aye
Spivak	- aye
Borgon	- nay
Lacroix	- aye

Pfeifer - aye
DiSessa - aye
Leckie - aye

Resolution passes (10 - 2).

Kokubo explained that he voted against the motion on the basis that he has insufficient time to understand all the implications of this document and is not comfortable voting under this time limitation.

Currier stated that the changes discussed today will be included in a final draft and submitted to the communities for review and approval.

MEDIAONE RELATED TOPICS

Update on Rebuild - Internet

DiMaria stated that there are 800 subscribers who are affected by the two nodes that have not been certified for high speed Internet service. Both nodes are in the downtown area. MediaOne expects to have one of the nodes complete by the end of this month. Certification of the second node will be more difficult because it necessitates work being done on private property in downtown Birmingham.

Emergency Alert System

DiMaria reported that the digital fix is complete on the emergency alert system. The equipment that limits the warnings to zones and removes alerts for storm watches is still on back order.

Monthly Subscriber Statistics

There were no comments on the system statistics for October.

ADMINISTRATOR'S REPORT

Hagaman reported that the Michigan Municipal Risk Management Authority (MMRMA) has provided the BACB with a quote to insure the mobile van. The annual premium will be \$1,999 with a \$250 deductible to cover approximately \$75,000 of equipment in the van and/or physical damage to the van. Hagaman requested authorization from the board to enter into a contract with MMRMA for insurance on the van once the details are finalized for storage of the van.

MOTION by Kokubo, supported by DiSessa, to authorize expenditure of an annual premium of \$1,999 for insurance coverage through the Michigan Municipal Risk Management Authority for the mobile van that will be transferred from MediaOne to the Birmingham Area Cablecasting Board.

DiMaria stated that MediaOne will provide the BACB with a letter stating that MediaOne will pay any repair bills after the board has the integrity of the vehicle checked by a mechanic.

Motion passes unanimously.

Kuhne stated that a report from Martinico on the Birmingham Public Schools proposal to the BACB for consideration during the refranchising process will be discussed at next month's meeting.

MLAC 15 REPORT

Colgan presented highlights of the November production report.

DiSessa asked Colgan for clarification of the schedule for rebroadcasting Franklin council meetings.

The meeting was adjourned at 9:37 a.m.