

Present: Bello, Kokubo, Laidlaw, Lane and Spivak – Birmingham  
Borgon, Delaney, Lacroix and Woodard – Beverly Hills  
Ettenson – Bingham Farms  
Anderson – Franklin

Absent: None

Also Present: Hagaman - Executive Director  
Currier and Salhaney – Attorneys for Cable Board  
Martinico – Director of Technology, Birmingham Schools  
Helwig – Bloomfield Community Television representative  
Pfeifer – Beverly Hills Council liaison  
DiMaria, Ebli and Black - Comcast representatives

Borgon called the meeting to order at 7:48 a.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road. Borgon welcomed new board member Arne Anderson representing Franklin.

#### **APPROVE MINUTES**

Motion by Spivak, seconded by Ettenson, that the minutes of a regular Cable Board meeting held on January 19, 2002 be approved as submitted.

Motion passed unanimously.

#### **VICE CHAIR AND TREASURER VACANCIES**

There are vacancies in the positions of Cable Board vice-chairperson and treasurer due to the resignation of Board members Devereaux and Brower. The By-Laws call for an election of the chair or vice-chair the meeting after a vacancy occurs.

Borgon opened the floor to nominations for the office of vice-chairperson of the Cable Board. Laidlaw nominated Peter Spivak for this position. There were no further nominations. Spivak was elected as vice-chair by a unanimous vote.

Borgon asked that Board members interested in serving as treasurer put their names forward. Bello expressed interest in the position and briefly outlined his qualifications.

Laidlaw nominated David Bello as treasurer of the Cable Board. There were no further nominations. Bello was elected treasurer by a unanimous vote.

#### **COMCAST RELATED TOPICS**

##### Comcast Performance

Borgon stated that the Board has been presenting Comcast with letters each month since November to document subscriber complaints in the four communities and place the cable company on notice of new defaults. A letter to Comcast dated February 19, 2002 has been prepared and requires Board authorization.

Currier informed the Board that a Resolution passed unanimously by the Beverly Hills Village Council at its meeting last night addresses concerns about Comcast cable television and Internet access service. Currier read the resolved sections of the Resolution:

***Be it resolved** that the Village of Beverly Hills finds that the current level of high speed Internet access service being provided by Comcast is inconsistent with its advertised claims as well as acceptable standards of service to its cable television services.*

***Be it further resolved** that this Council directs its representatives on the Cable Board to refer this matter to such Board for further review and action as may be appropriate.*

***Be it further resolved** that copies of this Resolution be forwarded to the governing bodies of Cable Board communities as well as to the Governmental Affairs Director of Comcast.*

Currier commented that the Beverly Hills Resolution is consistent with the Resolution that he was directed by the Cable Board to prepare for formal distribution regarding Internet issues. He read the resolved paragraphs of the proposed Resolution:

***BE IT RESOLVED** that the Birmingham Area Cable Board does hereby resolve to recommend to the State of Michigan and the Federal Communication Commission that local franchising authorities and local units of government be vested with authority to enforce Consumer Protection Ordinances for Internet subscriber complaints.*

***BE IT FURTHER RESOLVED** that the Birmingham Area Cable Board does hereby resolve to recommend to the State of Michigan, the United States Congress and the Federal Communications Commission that legislation be drafted and enacted authorizing local franchising authorities to regulate the service that the cable television providers offer to Internet subscribers in the same manner as local franchising authorities have to enforce consumer protection ordinances of cable television.*

Currier stated that there has been ongoing Board discussion of the fact that enabling legislation allows this Cable Board to enforce a Consumer Protection Ordinance with respect to cable television. The Board has no enabling legislation that allows it to do that with the Internet. The Board has received numerous complaints about the Internet issue from frustrated citizens and customers with nowhere else to turn. It is the Board's recommendation that, since those complaints come to this body, it is the appropriate body to handle complaints of its citizens. The Board is asking in this Resolution that the appropriate legislation be enacted so that the municipalities' Consumer Protection Ordinances can be modified to do that.

In the interim, representatives of the Birmingham Area Cable Board have also been in contact with State Attorney General's office, and Internet complaints received by the Board have been forwarded to them for consideration in any potential litigation that may be instituted. Currier noted that no decision has been made by the AG at this point.

Currier remarked that the Cable Board has also tried to act as a conduit for those complaints between the consortium communities and Comcast seeking their resolution although this body does not have enforcement authority.

Today there will be a presentation of the liquidated damages linked to complaints that the Board received to date. The Internet complaints have been separated from the cable television complaints. The Board can only enforce liquidated damages for complaints relating to cable television. Currier introduced attorney Mike Salhaney from his office. Salhaney has organized the presentation on liquidated damages and will describe the process.

DiMaria requested the opportunity to present material that outlined some of the steps that Comcast is taking to resolve the issues.

Currier stated that Comcast representatives requested a meeting with the Board's chairperson, legal counsel, and Executive Director to work on attaining resolution that is satisfactory on all of the issues whether they are Internet or cable television related. The discussion was positive, but there is nothing formal on the table that can be acted upon.

Board members discussed the proposed Resolution to Recommend Local Regulations of Internet Consumer Protection Ordinance. In answer to an inquiry about the next step if the resolution is adopted, Currier stated that the Resolution would be forwarded to the appropriate legislatures for the communities at the Federal and State level and to the Federal Communications Commission. He noted that there have been discussions at the Federal level about how to regulate the Internet.

Laidlaw expressed reluctance to support the Resolution because it was distributed to the Board just prior to the meeting. He maintains that the governing bodies should be aware of this action before it is approved by the Board.

Ettenson remarked that this action was discussed at the last Board meeting. It involves a long process and needs to be done in his view.

Motion by Ettenson, seconded by Delaney, to adopt a Resolution to Recommend Local Regulation of Internet Consumer Protection Ordinances.

Roll Call Vote:

Bello	- yes
Kokubo	- no
Laidlaw	- no
Lane	- no
Spivak	- yes
Woodard	- yes
Borgon	- yes
Lacroix	- yes
Delaney	- yes
Anderson	- yes
Ettenson	- yes

Motion passes (8 – 3).

Borgon asked for a motion authorizing the chair to sign a letter from the Cable Board dated February 19, 2002 addressed to Kate Ebli, Area Vice President of Comcast Cable Communications to accompany this month's subscriber complaints and place Comcast on notice of new defaults.

MOTION by Spivak, seconded by Ettenson, to authorize the chairperson of the Birmingham Area Cable Board to issue a letter dated February 19, 2002 that will accompany subscriber complaints received this month to place Comcast on notice of new defaults.

Motion passed unanimously.

Borgon stated that there was a meeting with Comcast representatives held at the Village of Bingham Farms office on Monday, February 18, 2002. Kate Ebli and Michael DiMaria represented Comcast. Present from the Cable Board were Borgon, Currier, and Hagaman. Comcast called the meeting and asked for an opportunity to address the various issues and present possible solutions.

DiMaria distributed an outline of the presentation made at that meeting. The material included information on Comcast service in the BACB area, the billing system and high-speed Internet conversions, call center improvements, and proactive steps the company is taking to make sure that customer issues are resolved and customers are satisfied with their service.

DiMaria reviewed that it has been a little over a year since Comcast began operating the system in this area. He outlined improvements made in 2001 and Comcast's involvement in the Birmingham area communities. DiMaria addressed the billing system conversion that began in August of 2001, which affected about 400,000 customers. He talked about why it was necessary and the improvements it will provide to the system.

DiMaria discussed changes in the call center since the beginning of the year. Comcast has added 40 new Customer Account Executives and provided them with four weeks of training. The call time has been reduced by 15%. There has been more cross training of representatives to make them more knowledgeable. An important step is that the answering service is no longer being employed. There was a change made in the call routing to allow additional lines to be available. Overnight supervisors are now available for escalations.

DiMaria stated that the high-speed Internet conversion was originally planned for June 2002. The bankruptcy of Excite At Home accelerated the transition of about 950,000 customers nationwide. The only other option was no service. DiMaria maintains that a vast majority of customers did not experience issues during the conversion. Comcast has issued 175 credits worth over \$4,300 to subscribers in this consortium just on Internet service complaints. The company has assigned extensive resources to provide as much call center support throughout the Internet conversion as possible.

An important proactive step that is planned is a survey card that will be sent to all customers in this area. It addresses issues such as picture quality, channel availability, high-speed Internet conversion, customer service issues, and billing. This will give customers an opportunity to contact Comcast regarding the quality of its service. If problems are noted, Comcast will be calling each

customer individually to make sure that their service is where it should be. This will be another opportunity for customers to let Comcast know if there has been a problem and, if warranted, the subscriber may receive additional credits.

There was conversation at Monday's meeting about other steps to reach out to customers, which were not finalized. DiMaria commented that Comcast is attempting to arrive at additional creative solutions to assist customers. Liquidated damages do not help the customer. Comcast will continue to pursue solutions that improve the service to the cable customer. The customer survey is a proactive step that will identify customers who have lingering issues or feel they deserve credit. Comcast will share the survey results with the Board.

DiMaria stated that he and Hagaman continue to communicate on a daily basis. This has been the most positive week and a half that we have had since the billing conversion in regard to calls about issues. Comcast advocates will continue to work to make sure that customers are being served properly.

Borgon commented that the Board is working with Comcast to arrive at a proposal that is amenable to both parties and ultimately benefits the subscriber.

Laidlaw thanked Comcast and DiMaria for their work in trying to resolve ongoing problems.

Lacroix questioned the process used for analyzing customer surveys and commented on the goals of the survey. DiMaria responded that Comcast will provide the data to the Cable Board from the cards.

Bello applauds DiMaria and Comcast for reaching out to the customers with the mailing and for sharing the results with the Board. He asked if Comcast would be willing to share how many cards it sends out, the number of responses received, and the results. **DiMaria responded in the affirmative.**

In answer to questions from Board members on the meeting with Comcast representatives held on Monday, Borgon stated that Currier, Hagaman and he met with three individuals from Comcast for about two and one-half hours. Comcast requested the meeting to make its presentation and to discuss ways to resolve issues to the benefit of everyone in the community. There was not a quorum present and, therefore, no violation of the Open Meetings Act.

Currier added that Comcast wanted to determine what could be done to avoid the assessment of liquidated damages. Mike DiMaria and Kate Ebli gave the same presentation that was given to the Board members this morning. Representatives of the Board expressed personal concerns to Comcast and sought resolution to ongoing problems. No action was taken.

Lacroix commented that he is uncomfortable with the fact that a meeting with Comcast took place outside of the structured cable board meeting format. It is his view that all Board members should be involved and able to provide input if Comcast calls a meeting.

Delaney thanked Board representatives for taking the time to attend this meeting. Those individuals recognized that they had no authority to bind the Cable Board. Discussion of ongoing problems will only assist in improving service to our customers. Delaney is confident that the chair and Executive Director will inform the Board members of what transpires at a meeting outside the Board as a whole. Board members may attend these sessions. If a quorum is present, it is considered a meeting, which has to be posted 18 hours in advance under the Open Meetings Act.

Laidlaw asked that there be a written report of any executive committee meetings.

DiMaria thinks that there was an understanding that the parties would continue to have these discussions and keep an open line of communication to try to resolve issues.

Currier stated that this Board has the authority in the Franchise Agreement and Ordinance to enforce compliance of the Franchise Agreement by the cable provider through liquidated damages. The Board is proceeding on that basis with the problems that have occurred to date. It is recognized that, if this Board assesses liquidated damages today, it provides leverage for the communities to work with Comcast for compliance and better customer satisfaction.

Currier noted that individual customers will not receive any money from liquidated damages. It will come to the Board. The focus of the discussion at Monday's meeting was what Comcast can do to directly benefit each of the customers in this franchise for the problems they experienced during this transition. This type of resolution would be good for Comcast in terms of public relations and good for Cable Board members, who would like to serve their citizens by providing them something for their trouble.

If the Board assesses liquidated damages, Comcast has a period of time to appeal to the individual communities. There may be litigation following the appeals and a long period of time before liquidated damages are received by the Board. There could be expense incurred on both sides, but this is the only leverage available to the consortium.

Currier encourages the Board to keep an open mind with respect to future proposals from Comcast that might have a bearing on whether the Board decides to continue with liquidated damages. He recommends that the Board proceed with the course it has set in order to keep on track and return to its elected bodies and citizens the trust they have given us to perform our job.

DiMaria thinks that the best course of action is for Comcast and the Cable Board to work together to provide something for the customers. He has indicated that things would settle down in mid-February, and that is bearing out. The company is heading where it needs to be with the conversions and with providing good service.

Currier stated that it is recognized that Comcast is contemplating some type of merger with the AT&T cable arm. This will require another Transfer of Control petition. This transfer will involve addressing representations on existing defaults and how they will be rectified. It becomes a pressure point to make sure that the problems get solved and the customers are satisfied. It would be remiss not to move forward and continue the process of assessing liquidated damages. If the

Board does not take advantage of the transfer process at this time, it would have to wait until the franchise expires to have leverage during the renewal process.

Borgon referred to material prepared by Beier Howlett that will be used to assess liquidated damages upon Comcast for uncured defaults.

Currier reviewed that the Franchise Agreement requires that that Board must give notice of defaults to Comcast, which is the reason that the Board has been sending letters to Comcast documenting defaults for the last several months. Currier outlined the default process with respect to the date a complaint is received, when a default occurs, and when the Board gives notice of default by official communication to Comcast. The Franchise Agreement and Ordinances state that the Board is able to assess \$100 of liquidated damages per day for complaints that fall within the Board's jurisdiction. This does not include complaints that involve high-speed Internet service. Also, there are a number of customer complaints that are not considered defaults.

Currier commented that there are customers who have called with multiple complaints in a single day. Not being able to reach customer service and billing errors are two separate defaults. Defaults can be assessed on a per day basis, and some defaults take more than one day to resolve. Defaults are assessed from the day the default begins to the day the matter was resolved.

There must be uncured events of default under the Franchise Agreement in order to assess liquidated damages. Two defaults of the same kind within a 12 month period trigger uncured events of default. The Board is now in a position that it has defaults that have occurred up to February 19, 2002, which pushes the default window for liquidated damages into February of 2003. The more defaults that occur over a period of time, the longer the window is extended whereby Comcast is exposed to having liquidated damages assessed.

Currier stated that the sheets reviewed by Salhaney will indicate those subscribers that we believe have defaults that qualify for the assessment of liquidated damages. There are separate listings for each of the four communities of Birmingham, Beverly Hills, Bingham Farms and Franklin. These are cable television defaults only. The number of days that transpired before the problem was addressed has been determined. After the Board assesses liquidated damages, Comcast has the right to appeal any assessment of liquidated damages to the individual city commissions or village councils.

Currier explained that the first three events of default in a 12 month period trigger the ongoing uncured event of default window and are not subject to liquidated damages. The first two Birmingham complaints and the first Franklin complaint have been categorized as the three uncured events of default in a 12 month period that trigger the window. The rest of the complaints identify the customer, type of problem, date the company was notified by the Board, date of cure, and the proposed liquidated damage, with the total for each community at the bottom of the sheet.

Michael Salhaney went through the complaints and indicated the amount of liquidated damages. The complaints included billing issues, service problems, difficulty reaching Comcast, missed appointments, picture quality, etc. Salhaney stated that the total amount of liquidated damages is \$11,600 through his conservative approach.

The Board will consider passing a resolution to confirm the liquidated damages identified on the schedules and proceed with the appropriate measures allowed in the appeal period. After the appeal period has been exercised, extended, or waived, liquidated damages will be collected. Currier stated that the Board will be asked to do this again next month for the defaults included in the letter to Comcast authorized today.

Board members discussed whether to proceed with the assessment of liquidated damages. There was agreement that the main goal is to fix these problems going forward so that customers do not have to go through this again. The point was made that Comcast has been saying it is going to improve for a long period of time. This is an ongoing process. It was suggested that the Board has this tool and it is its responsibility under the Franchise Agreement to proceed with this action. The subscribers need to know that the Board is working in their behalf. There was some concern expressed about legal fees.

Currier believes that one objective is to fix the problem so it does not occur again. Another goal is to keep the company from continually breaching the contract without some penalty. There are dozens of complaints, and they are ongoing. The Board's alternatives are to enact the liquidated damages today, delay action until next month's meeting, or deny the assessment of liquidated damages. Currier suggested a more expedited process at future meetings whereby the Board assesses damages at the same time it reviews complaints at each meeting.

DiMaria stated that all of the complaints received by the Board have been resolved, including the complaints included in the packet for today's meeting. Comcast is being diligent in trying to fix its problems.

DiMaria introduced Kate Ebli, Area Vice President of Comcast Cable Communications and Bill Black, Regional Director of Corporate Affairs for the State of Michigan.

Ebli asked Board members to keep in mind that the list of customer complaints before the Board does not include the resolutions. It is important to note that these are not outstanding customer issues. Ebli contends that not every one of these complaints is valid. Comcast has documentation and will go through these complaints individually.

Ebli cautioned that Comcast has a different view of the ability to assess the liquidated damages based on individual customer complaints. The comments made are predisposing that, if there are three individual customer complaints in a given year, the fourth one is going to trigger liquidated damages. Ebli maintains that it is not reasonable for any business to assume that there will be absolutely no issues. They are dealing with the general public, and technology confuses some people..

Ebli stated that she has been present at three of the last four Cable Board meetings. Other Comcast representatives have been present. There has been a constant dialog and immediate response to any issues brought to the company. She reiterated that two distinct events have occurred that were not part of the normal course of business – a billing system conversion and the Internet changeover.

Ebli remarked that Comcast has taken responsibility and is addressing its problems. There have been situations that should not have happened.

Spivak commented that it is not as much of an issue that problems are not dealt with but that different people are having the same problems continuously, and they are dealt with best after the subscriber contacts this Board. He remarked that there is a reawakening interest in this country in regulation.

Laidlaw commented that most of the material on this matter was received today, and there is no written resolution before the Board. He made a motion to table action on assessing liquidated damages until next month. The motion failed for lack of support.

Motion by Lacroix, seconded by Bello, that the Cable Board assess liquidated damages as reflected on the schedules for each individual community totaling \$11,600 for the four communities.

Ayes – Anderson, Bello, Borgon, Delaney, Ettenson, Kokubo, Lacroix, Lane and Spivak  
Nays – Laidlaw

Motion passed.

Currier commented that a franchise agreement for cable television is a contract protected by Federal Law. Because the cable company is dealing with members of our community on a daily basis, the law contemplated as did our Ordinances and Franchise Agreement remedies for breaches of the contract other than terminating the contract. That is why liquidated damage provisions were written for these breaches. It is intended to provide incentive for contract compliance without having to result in termination of the contract.

DiMaria stated that this will not conclude ongoing discussions with the Board to continue working towards mutual resolution to these issues.

#### Internet Status

DiMaria stated that the final piece of conversion to the new system was made since last month's meeting. He noted that Comcast has added a Newsgroup service.

#### Birmingham Link

Comcast has received additional suggestions from the Birmingham City Engineer, which will be incorporated into the construction plans. The fiber link should be completed by next month's meeting.

#### Subscriber Complaints

The complaints received at this meeting have already been included in the list of customer complaints used to assess liquidated damages.

#### Monthly Subscriber Statistics

A question regarding a slide running on the Game Show Channel will be investigated by DiMaria. He will provide an answer to the Borgon.

### **EXECUTIVE DIRECTOR'S REPORT**

Hagaman announced that the rebuild of the mobile production van has been completed. Everyone is pleased with the rework of the van. Interested individuals are invited to take a look at the van after the meeting. To date, the Board has paid \$124,938.07 for equipment and installation. ProVideo will walk through the system with BCTV before the van is put into use.

Hagaman indicated that there has been some concern expressed relative to the older equipment was retained and incorporated into the new van design. It is functioning and useable, but may be an item to consider when preparing the budget for 2002/03. The older equipment was retained in order to hold down the cost of renovating the production van.

The BACB web page is up and running. Hagaman has requested an additional page for posting the Cable Board meeting agendas. The web site is now able to receive comments and complaints from subscribers. Hagaman will prepare a press release for the newspapers to publicize this feature. The address of the Board's web site is [www.birminghamareacableboard.org](http://www.birminghamareacableboard.org). Ettenson suggested adding the web site address to the Board's letterhead.

Hagaman reported that calls from subscribers complaining about Comcast have subsided tremendously in the last four days.

### **MLAC15/PA18 REPORT**

Helwig mentioned the passing away of a long time BCTV volunteer, Joan Lewiski. She worked on many productions and will be missed.

Helwig reported on the MLAC and Channel 18 programming over the last month. Problems with the broadcast of two Beverly Hills Council meetings were described. Helwig outlined the reasons for equipment problems and what is being done to prevent problems from reoccurring.

BCTV has been working on implementing weekend scheduling for MLTV. BCTV has purchased and installed equipment that will enable weekend broadcasts of municipal and BACB meetings. Broadcasting began last weekend. This work is outside the scope of the contract, and an invoice will be prepared to cover the expenses associated with weekend programming.

BCTV has also been asked to tape the meetings of the Birmingham Planning Commission, which is underway. This is beyond the scope of this contract and arrangements have been made with the City for payment.

Board members observed a couple of meetings replayed over the weekend without any audio. Helwig will look into this and report back.

Laidlaw questioned whether the Board authorized the purchase of equipment for weekend playbacks of municipal meetings. Helwig recalled that this was discussed at a meeting with former Board member Devereaux about six months ago. The cost of the equipment was \$2,000.

It was determined that the Board as a whole did not authorize the expenditure of funds for weekend playback ability, although there was agreement that it is a desirable feature. Borgon suggested that BCTV bring any cost proposal to the Board for approval if there is something that the four communities want to do beyond the scope of the BCTV contract.

Borgon expressed a desire to see the Birmingham Monthly Programs continued. Laidlaw added that there was a Beverly Hills monthly program produced at one time.

Lacroix asked Helwig if there is a contact person who can be called if a Board member notices a problem on cable television over the weekend. Helwig suggested working on this to make sure there is good coverage all weekend long. However, it would not be economically feasible to have a full time staff member available on weekends.

### **OLD BUSINESS**

Currier anticipates that DiMaria will be contacting the Board to discuss further matters in an effort to resolve issues without assessing liquidated damages. After hearing concerns from Mr. Lacroix about meetings, he asked for a sense of the Board as to whether the chairperson, counsel, and Executive Director can attend meetings with Comcast if they report back to the Board in writing regarding what transpired.

The majority of board members agreed that special executive board meetings could be held outside of the monthly Board meetings if a written report is distributed to Board members. Board members were asked if they wished to be notified of meetings between Board officers and Comcast. Lacroix and Kokubo asked for notification.

### **NEW BUSINESS**

Bello asked if DiMaria can confirm that the tracking of web sites by Comcast has ceased in Michigan. DiMaria said that it has.

Ettenson informed the Board that he received news late yesterday that the Federal Appeals Court ruled to allow the cable companies and television station owners to expand their coverage in the same city with no restrictions. It is estimated that this will open the door to at least six other cable companies coming into this area if the ruling holds through the appeal process.

DiMaria reported that the fiber I-Net for the schools is up and running.

### **BOARD COMMENTS**

Kokubo announced that his term on the Cable Board expires next month, and he will not request reappointment as a Birmingham representative. Borgon responded that the Board appreciated his service.

Lane stated that he too will not be seeking reappointment to the Cable Board

Laidlaw regrets that Lane is leaving the Board. He noted that Lane has indicated that he will continue producing his program, "Talk of the Town". Borgon added that he appreciates everything Lane has done for the Board during the time he has served.

**PUBLIC COMMENTS**

W. A. Zimmerman of 22191 Camelot Court commented on the recent brainstorming session held by officers of the Board and Comcast representatives. He expressed the opinion that meetings called by Comcast become an *ex parte* contact with the Board. Zimmerman asked for equal time for an *ex parte* audience to present the peoples' point of view.

Borgon responded that residents are invited to attend Cable Board meetings and present their point of view during the public comments portion of the agenda.

Motion by Delaney, seconded by Laidlaw, to adjourn the meeting at 10:15 a.m.

Motion passed unanimously.