

Present: Camp and Hirsch - Birmingham
Borgon, Delaney, Pinkos, Woodard – Beverly Hills
Ettenson – Bingham Farms

Absent: Correa, Greenslade, Kuhne, Hollinshead and Wilson – Birmingham
Anderson – Franklin

Also Present: Hagaman - Executive Director
Currier – Attorney for Cable Board
Helwig – Bloomfield Community Television representative
Martinico, Director of Technology, Birmingham Schools
Beller and Parr - Comcast representatives
Pfeifer – Beverly Hills Council liaison

Borgon called the meeting to order at 8:15 a.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road. The meeting began late in order to achieve a quorum due to a number of absences.

APPROVE MINUTES

Motion by Woodard, seconded by Hirsch, that the minutes of a regular Birmingham Area Cable Board meeting held on November 19, 2003 be approved as submitted.

Motion carried.

FRANCHISE FEE REVIEW

Legal counsel Tim Currier referred to his letter of November 26, 2003 to Comcast VP of Government and Regulatory Affairs Michael Parker regarding differences in the way the Board and the cable company view determination of Franchise/PEG Fees. The letter confirms the items on which there has been agreement. The issue that is presently unresolved is precisely how franchise and PEG fees that are based on percentages of the company's gross revenue are to be calculated. Currier explained how the BACB has calculated the applicable franchise and PEG fees by using the arithmetical device suggested in footnote 9 of the Court's Opinion in the Dallas case. He indicated the position taken by Comcast on this method of calculation. Currier related that the Board will have to decide how it wishes to proceed after an official response has been received from Comcast.

In answer to an inquiry, Currier commented on the amount of money involved in the opposing calculations. The difference would be about \$.05 per customer per month. As an example, based on a monthly cable bill of \$100 for approximately 17,000 customers in this consortium, the amount would be about \$10,000 annually but approximately one hundred thousand dollars over the remaining life of the franchise.

APPROVE 2004 MEETING DATES

Motion by Pinkos, seconded by Ettenson, that regular Birmingham Area Cable Board meetings be scheduled for the third Wednesday of each month at 7:45 a.m. at the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

Motion carried.

COMMITTEE REPORTS

PEG Committee

Borgon reported that the Rouge River Watershed programming developed for Channel 15 is progressing. The PEG Committee will review the production in late January, and the Cable Board will have an opportunity to view the program before it airs in February.

Cable Review and Liaison Committee

Senior Discounts

Hirsch stated that there appears to be some confusion as to whether consideration of providing senior discounts is a local or national policy decision of Comcast. The question is whether Comcast is giving serious thought to giving discounts at any level for seniors.

Beller responded that senior discounts is an issue to be discussed at the local level. She suggested scheduling a meeting during the first week in February between Board members and Area VP for the Michigan Region Linda Hossinger to discuss this and other matters. Borgon stated that agenda items for this meeting will include the audit issue and senior discounts.

Comcast response to comparison of rate increases

Beller remarked that subscriber statistics showing a constant subscriber level support the fact that customers continue to see the value in Comcast programming despite rate adjustments. She added that cable programming actually surpassed some of the typical broadcast programming as far as quality and Nielsen Ratings in November.

Hirsch stated that the Board was anticipating a more specific response as to why its calculations differ so much from Comcast calculations in terms of increases over a specific time period.

Beller expressed the view that there are several ways to calculate the numbers to support either position. The end result is that Comcast customers still feel they are receiving value for their dollar in terms of programming.

Borgon referred to the recent removal of the Oxygen channel from the basic programming line up, which lessens the value of the basic service.

Beller informed the Board that it will receive notification at the end of this week that Comcast will be adding the SoapNet channel to the basic tier, a program that serves similar demographics as the Oxygen channel. She added that Comcast was contractually obligated to have Oxygen on its digital tier.

Comcast outlook on the frequency of rate increases

Beller stated that it is Comcast's intention to achieve more consistency within the market with respect to the frequency of rate adjustments. The inconsistency in rates is due to acquisition and mergers and the various stages of franchise agreements. This may be another topic of discussion for the meeting between the Board and Linda Hossinger.

Programming changes that have been made during the last 12 months

The Board has requested a written account of channel or program changes made in the last year and the rationale for those changes. It appears that the recent program changes are an attempt to induce subscribers to upgrade to the premium digital tier. The Board would like to know if and when more of these channel shifts to the higher tier are expected.

Beller stated that the digital platform is the foundation Comcast will use to introduce new products such as digital cable, video on demand, high definition TV capabilities and DVR (Digital Video Recorder) products. She commented that value is still being maintained at the analog level.

Currier related that he received a phone call recently from a Comcast salesperson who asked him to upgrade to digital on the basis that the company's plan is to phase out analog in its entirety. This individual indicated that the plan was not to cut off analog immediately but to continually shift programming to digital. Currier asked Beller to explain this statement.

Beller replied that she has no knowledge of a specific plan to phase out the analog platform. She reiterated that the platform on which Comcast launches its new products, however, is the digital tier.

Delaney suggested that an answer is needed from the Comcast Corporation as soon as possible on whether it is their intention to shift programs to the digital tier with the objective being to phase out analog. This will be an agenda item for the Board's upcoming meeting with Linda Hossinger.

COMCAST RELATED TOPICS

Subscriber Complaints

Three complaints were received this month. Brian Maher from Birmingham (#03-72) complained of intermittent cable service. Hagaman stated that this customer has not returned any follow-up calls from Comcast after the initial contact.

Sue McCuen of Bingham Farms (#03-73) contacted Comcast about downed cable wires in the backyard. Hagaman related that the subscriber called the Village of Bingham Farms to report that the problem had been corrected. The customer did not return Comcast follow-up calls relative to this issue. Hagaman expressed concern that it took three calls to Comcast and one call to the Bingham Farms office before the issue was resolved. There appears to be issues relative to the initial calls for service not being given proper priority at some level.

Tom Groebel of Birmingham (#03-74) filed a complaint regarding problems with poor service to restore his cable service, which had been out for a week. The problem was resolved.

Birmingham Link

Beller reported that Comcast has successfully completed its work on the Birmingham link. The first live meeting of the Birmingham Commission occurred on December 8th.

Monthly Subscriber Statistics

Board members received the corrected October statistics and the November system statistics. A question from Delaney relative to the number of high-speed Internet connections was addressed by Beller. His question related to whether the statistics reflect whether a customer has and is paying for more than one modem in their home. Beller will confirm the formula for this statistic.

EXECUTIVE DIRECTOR'S REPORT

Hagaman and Currier attended a meeting called by the Michigan Municipal League, the Michigan Chapter of NATOA, and the Michigan Coalition to Protect the Public rights-of-way to discuss a class action lawsuit filed against 12 municipalities. The suit charges that collection of franchise fees in Michigan is in violation of the Headlee Amendment.

Currier related that the lawsuit claims that the payment of franchise fees is a tax, and therefore in violation of the Headlee Amendment. This concept as well as other issues in the suit have fatal flaws. It has been determined through case law, most significant of which is the *Dallas* case of 1997, that a franchise fee is rent and not a tax. It is a fair market value charge for renting the rights-of-way through a franchise. Additionally, it is not a fee or a tax or a rent imposed on the taxpayers. It is a rent imposed on the cable provider, which is Comcast in this case. Like all cable providers and all retail salespeople, Comcast has the option of whether to pay that fee themselves or pass that onto the customer.

None of the communities in this consortium have been sued. A meeting was held to introduce potential counsel familiar with the theories of defense to the 12 communities that have been sued and to make other cities aware of those resources. The only two communities that Currier is aware of that have been served with a lawsuit are the cities of Troy and Royal Oak. Those suits are both pending in Oakland County. There is a possibility that the suits may be removed to Federal District Court because of federal law issues involving cable television. Currier will keep the Board advised.

MLTV15/PA18 REPORT

Helwig stated that the Birmingham Commission meeting aired live from Birmingham City Hall on December 8th with no problems.

Helwig mentioned two new programs being produced for MLTV 15. David Sommerfeld shot and edited a program from the Birmingham Historical Museum about trains, and Jim Gillis shot and edited the Birmingham Bloomfield Community Coalition Summit keynote speaker.

A special airing date of the Rouge Watershed program will be scheduled for the Board. Municipal engineers from Birmingham and Beverly Hills have seen the script and are pleased with the program.

Helwig recalled that the Board has indicated that it would prefer locally produced programs from the consortium communities to be shown on MLTV 15. She related that the Oakland County Drain Commissioners office does a show with BCTV staff about various drainage issues. She asked the Board to consider showing this educational Oakland County program on channel 15.

Borgon has no objection to airing this Oakland County Drain Commission programming on MLTV. He asked the PEG committee to become involved with this decision.

Helwig reported that she met with Beverly Hills Manager Brian Murphy regarding program ideas and will have another meeting with key staff people in January.

BCTV produced 32 programs in the last month for PA 18.

A Program Development Committee will be scheduled to consider several new proposals. BCTV will schedule a workshop for late January or February for producers who would like to have their programs reviewed and discussed.

NEW BUSINESS

Pinkos questioned what is needed for digital subscribers who want high definition programming. Beller responded that the subscriber would have to obtain a Comcast high definition box. She informed the Board that a new product will be coming out that will be one box with the capability to run the HD signal through it, eliminating the need for multiple boxes.

In response to a question, Beller stated that it is up to the programmers to start introducing their HD platform products. At this time, there is no additional cost for HD programming other than the equipment fee for an HD box.

BOARD COMMENTS

Delaney stated that the Board has asked Comcast to respond to the question of whether it is Comcast's goal to charge uniform pricing in the Detroit area. It was mentioned by Beller today that Comcast intends to provide "more consistency within the market". Delaney remarked that he will be opposed if the move towards "consistency" results in increasing this consortium's rates.

Pfeifer reminded everyone that beginning in January the Beverly Hills Council will meet on the first and third Tuesdays of the month in lieu of Mondays.

Borgon informed the Board of the passing of Peter Spivak, a valued member of the community and former Cable Board member. Borgon expressed condolences to his family on behalf of the Board.

Borgon adjourned the meeting at 9:00 a.m.