

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MARCH 9, 2006**

The Henderson County Board of Commissioners met for a special called meeting at 4:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Shannon Baldwin, Interim County Manager Justin Hembree, County Attorney Russ Burrell, and Deputy Clerk to the Board Amy Brantley.

Also present were: John Crook, Chairman of the Cable Franchise Renewal Advisory Committee (CFRAC) and John Howell with Telecommunications Consulting Associates.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance.

ADOPTION OF THE AGENDA

Commissioner Messer made the motion to approve the agenda. All voted in favor and the motion carried.

OVERVIEW OF LEGAL REVIEW AND REQUIREMENTS

Russ Burrell updated the Board on the negotiation process. He stated that they were currently in the informal process for the renewal of a cable franchise. Federal statutes allow that a significant time prior to the expiration of a franchise, either the Board or the franchisee can start the informal process. Mediacom had actually started that process about two years ago, on the franchise which will expire in July, 2006. Beginning that process gives a time frame under the federal statutes, for negotiations to take place in an attempt to amicably resolve the renewal issue. The multi-jurisdictional committee that had been established had developed a draft proposal which will be the basis for the negotiations. The actual negotiating process had not yet begun, but would begin shortly. If those negotiations should fail, there is a formal process that is akin to litigation, which takes place before the FCC that then sets up the renewal of the franchise. Mr. Burrell noted that process was primarily detrimental to both sides, and formal negotiation had typically been avoided across the country.

The purpose of this meeting was to hear from the municipalities and the committee set up to develop the draft proposal. Once the Board received the necessary input, and established what it believed was Henderson County's best starting position for the negotiations, they would need to appoint negotiators and move forward. Mr. Burrell also noted that he, along with the attorney's for the municipalities, had reviewed the most current draft which did not raise any legal issues.

Chairman Moyer questioned what the ramifications would be if any contract expiration dates were passed during the negotiation process. Mr. Burrell stated that he believed Mediacom would then institute the formal process, as they would not want their franchise to lapse. However, that did not mean that negotiations would have to cease. John Howell stated that typically before instituting the formal process, if deadlines were approaching the parties could simply agree to extend the contract for a period pending positive movement toward a settlement.

Chairman Moyer noted that several of the Commissioners had just returned from a legislative conference in Washington DC, where cable franchise procedures were a hot topic. There had been a lot of activity, mainly associated with the former Bell operating companies and some cellular companies, and their desire to get a national franchise. John Howell distributed to the Board a press release from earlier in the day which stated "In a setback for cable, key House lawmakers Wednesday night agreed in principle to award a national cable franchise to phone companies and to subject cable operators to continued local franchising requirements until phone rivals have reached 15% local video market penetration." Such legislation would cause counties to lose the ability to negotiate for additional items in the franchise, customer service responsibility, and franchise fees under these models would go down about 20%.

PRESENTATION OF OUTSTANDING ISSUES

DATE APPROVED: _____

John Crook reminded the Board that a year ago, the Board and the municipalities had chartered the Cable Franchise Renewal Advisory Committee (CFRAC). Following many meetings, CFRAC had composed a draft proposal that met the issues and concerns brought to them by a majority of the residents who subscribe to Mediacom throughout the county. One of the committee's key assignments was to come up with provisions that would be acceptable to all six Franchising Authorities (FA). That assignment had boiled down to a few issues that each FA would need to address. Those issues and related questions were as follows:

- Issue 1. CFRAC recommended the FA's establish a "government function" of monitoring and compliance, to insure that Mediacom continues to improve their customer service and accurately pay franchise fees due. A current estimate of cost for this function was \$40,000 annually. If Mediacom were charged with that cost, they would be allowed by federal rule to deduct it from the franchise fees. Therefore, this could not be funded by "extra" financial requirements placed on Mediacom, and would need to be paid from general operating budgets. This function could be housed at the County, one of the municipalities, or at Blue Ridge Community College (BRCC). The estimated cost associated with this function for each FA was: Henderson County - \$23,200, Hendersonville - \$7,600, Fletcher - \$2,800, Flat Rock - \$2,800, Laurel Park - \$1,600, Mills River - \$2,000.
- Alternative An alternative to Issue 1 had also been devised, which would cost about \$5,000. The proposed alternative was for each FA to keep its own log of subscriber calls. Once a year, the FA's would contract with someone such as John Howell's group, to go into Mediacom and do a compliance audit for the 12 month period. The cost to do such an audit would be done on a pro-rata basis.
- Issue 2. CFRAC proposed the reservation of five local access channels in the franchise agreements. Initial uses had been identified as the County government channel 11 which could also be used by the municipalities, one local educational channel to be operated by BRCC, and three unused channels which would be held in reserve for future needs and activated after daily or weekly hours of actual production had been met.
- Issue 3. As part of the renewal process, BRCC had requested the FA's include an "up-to" and up-front capital grant of \$335,000 from Mediacom. This grant was to be matched by BRCC for capital equipment for a Government and Education Channels studio. This would include equipment to allow studio staff to record various municipal/county meetings and community activities on location, edit and replay them over the Government and Educational Channels. It also includes a master video server at BRCC to distribute programming from these local channels to the Mediacom head-end. Every effort would be made during negotiations to keep this grant off the customer's bill. Should negotiation of the issue not succeed, the negotiating team would seek guidance from each FA before proceeding. The FA's were requested to decide: 1) If they support their proportionate share of the grant, 2) Does the authority need additional capital for their own cable television use, 3) Is the FA willing to direct it's share of the \$335,000 to BRCC.
- Issue 4. BRCC requested an additional capital grant of up to \$37,500 to be paid annually in years 5-10 of the agreement. CFRAC had increased this amount to \$50,000 annually. This amount was in addition to the initial \$335,000 grant discussed in Issue 3. The same negotiation issues of pass through discussed in Issue 3 apply to these requested annual capital grants.
- Issue 5. BRCC had estimated their annual "operating costs" associated with the running of the local access channels to be \$125,000. BRCC would be contributing \$221,000 annually to this activity with actual and in-kind funds from the college. This \$125,000 cannot be funded by "extra" financial requirements placed on Mediacom, and must be paid from general operating budgets.

There followed much discussion about the I-Net. CFRAC had concluded that the county's needs were addressed, and that I-Net did not belong in the franchise agreement in this particular situation. Mr. Howell pointed out though, that the agreement did include requirements for Mediacom to run fiber from the Historic Courthouse and BRCC to their offices, and to have all those facilities tethered.

INPUT FROM MUNICIPALITIES

Representatives from the municipalities addressed the questions posed above, giving the answers outlined below:

Question #	Hendersonville	Flat Rock	Fletcher	Laurel Park	Mills River
Issue 1					
1. Do you support funding your share to fulfill the monitoring and compliance function previously identified? Or the alternative of each municipality receiving complaints and handling them with Mediacom?	Supported the alternative proposal, and the annual audit.	Supported the alternative proposal, and the annual audit.	No, but would probably support the alternative.	Supported the alternative proposal, and the annual audit.	Did not support funding at the municipal level, and wished for the County to handle compliance issues.
Issue 2					
2. Do you support the reservation of five local access channels in the agreement? If not, please state the number you do support.	Yes	Yes	Yes	Yes	No. Supported reserving three, including the current government channel.
Issue 3					
3. Do you support the request for a \$335,000 non-pass through grant by Mediacom for capital funding support of Education and Government channel studios and master server operations at BRCC?	Yes	Yes	No	Yes	No
4. Will you assign some or all of your share of the grant to BRCC?	Yes	Yes	No	Yes	No
5. Will you need additional capital for your own cable related capital needs within this initial four year grant period? Additional municipal/county-specific grants could result in that FA's residents seeing a pass through in excess of the 39 cents.	No	No	No	No	No
6. If answer to Question 5 is yes, what is the best estimate of your own capital need and do you support its addition to the grant request of \$335,000?	N/A	N/A	N/A	N/A	N/A
Issue 4					
7. Do you support this request for an additional annual \$50,000 in non-pass through grants by Mediacom beginning in year five for capital needs?	Yes	Yes	No	Yes	No
8. Will you assign some or all of your share of these grants to BRCC?	Yes	Yes	N/A	Yes	N/A
9. Do you expect to need cable related capital funding over and above your proportionate share of the "up-to" grant of \$50,000 during years 5 – 10 of the agreement and, if so, what is your best estimate of need?	No	No	No	No	No
Issue 5					
10. Do you support funding the \$125,000 BRCC operating costs from municipal general funds?	Not a favorable response to franchise fees being used for operating costs.	No	No	No	No
11. If no to Question 10, do you support a County ad valorem tax increase of approximately \$0.0015 cents to cover this cost?	No position taken.	Yes, but for an educational channel only.	No	Yes, for an educational channel.	No
* In favor of a public access channel?	No	No	No	No	No

Mills River Mayor Roger Snyder wished to have included for the record that his wife teaches at Blue Ridge Community College. He did participate in the discussions, but not in the votes.

Dean David Hutto, with BRCC, stated that as educators, they were excited about the opportunity and possibility of an educational channel for the community. BRCC was committed to putting together a high quality educational channel, as well as supporting the work being done for the government channel. The capital request that was part of the draft agreement was important in that it would help BRCC build the necessary facilities. They had already received about \$300,000 in federal funds to help equip the new technology center, and continued to make application to those sources to help with the matching parts of grants. The operational element was also key to making this program work. They anticipated using state revenues for salaries and benefits. They also had both institutional work study, and other work study funds to be used for student assistance. That was part of the \$221,000 in operational support discussed in Issue 5.

He noted that space in the new technology center would be used for studios, editing rooms, and the head-end for the distribution equipment for the cable channel. The cost of maintaining that space was also included in the \$221,000. With any technology based system, there will be requirements to maintain and upgrade the system. The recurring capital request from Mediacom was important to the sustainability of the system. With respect to the annual operating costs, Chairman Moyer questioned the actual annual cash figure and where that would come from. Dean Hutto stated that approximately 70% of the \$221,000 would be state and local funds that would be cash. The other portion of that would be in-kind services or portions of other individuals involved in the operation and management of the station as well as student scholarships. The additional \$125,000 would be for technical and support staff, for student assistance, and for the studio and production staff. BRCC would be looking to the County to provide the annual operating expenses. The total County annual would be \$125,000 plus a percentage of the operational costs, which would be around \$150,000.

Commissioner Young questioned whether BRCC had discussed the possible education channel with the Henderson County School Board, and whether they wished to be partners in the endeavor. Dean Hutto stated that he had not talked to the Board, but had talked with individual staff members and the invitation was there for all parties involved in education. Commissioner Young expressed concern about whether the channel would be utilized to its potential by both the college and the school system. Dean Hutto assured the Board that they would have substantial programming from day one on that channel.

PUBLIC INPUT

1. Jim Tinkler – Mr. Tinkler encouraged the Board to spend some more time discussing the I-Net. CFRAC had made the decision to remove the I-Net from the draft agreement. Their stated purpose was to carry any further discussion regarding the I-Net behind closed doors. Mr. Tinkler felt the public should hear more about what the plans were for this important infrastructure. He encouraged the Board to review the transcript which was available on-line at www.civictrust.net/i-net

Mr. Howell responded that the institutional network discussed earlier would have at least three, and possibly more, points of ingress and egress: Bell South, Mediacom and a possible connection with the ERC network in Asheville. That particular network was not a commercial network for business application, but was a network for institutional use to reduce cost. They are attempting to build a network for government, educational and library use. They can't build a network available to every business and every home, though those networks already exist in this county via Bell South and Mediacom.

2. Joe Glowaki – Mr. Glowaki stated that I-Net was a complicated story. He had difficulty understanding why it was not being placed in the franchise agreement. He felt this was the opportunity to get it into this franchise, and that the County should take the opportunity to study it and make a decision based on whether it was worthwhile at this time or not. He also stated that questions that had come up were based on dollars, and wondered why anyone but Mediacom should take care of the financial matters. He did not feel the educational channel should be taken away from the community because dollars were not available. He felt the dollars were available through negotiations and the franchise. Buncombe County and Asheville had negotiated their franchises in that fashion, and he felt that Henderson County could do the same thing.
3. Maggie Blythe – Ms. Blythe, Senior Manager of Governmental Relations for Mediacom, stated that she had attended a number of meetings over the past year. Her purpose for attending this meeting was to state that

Mediacom had heard the issues and variety of concerns, and had addressed some of those already. She stated that it was Mediacom's intention to negotiate the franchise with the County and municipalities, and they believed it could best be accomplished through the informal process. They were seeking guidance from the Board and each municipality as to who those conversations should be held with.

DISCUSSION BY THE BOARD OF COMMISSIONERS

Chairman Moyer stated that a number of discussions had been held at Local Government Committee for Cooperative Action (LGCCA), and they wished to be in a position to discuss issues and develop a position that would reflect the County and the municipalities. If that can not be achieved, each FA would be on their own. However, he hoped that a position could be developed that everyone would be comfortable with. At that point the LGCCA would determine how to proceed with negotiations and then begin the negotiating process. Chairman Moyer stated that he and Commissioner McGrady were the Board's representatives on the LGCCA, and requested direction from the Board as to how to proceed.

Commissioner Young stated that there had been discussions about customer service, but there had been no decision about how to monitor that service. At one point there had been discussions about Mediacom placing a survey in their bills that would be returned to the County. John Howell stated that could be handled by customer's calls being recorded on a standard log. Performance evaluation sessions were also built into the franchise agreement, which could include surveys, public hearings, etc. There followed discussion about how to best track customer service, including satisfied customers as well as those who call in with complaints. There was also discussion about federal regulations that deal with local programming that can be offered by cable companies.

Commissioner Baldwin requested that Staff develop a matrix so the Board could see where the municipalities were on all the issues. It was the consensus of the Board to have Staff create that matrix, and add discussion on this topic to the Board's March 15th agenda. Chairman Moyer felt that some valid questions had been raised regarding the I-Net, and the County's network. He questioned whether there was a write-up of our network, and how that network would be enhanced by what is being placed in the agreement. It was the consensus of the Board to have Mr. Howell pull together that information, so the Board could show the plan for the network to serve the educational, institutional and government buildings.

Justin Hembree also stated that the County would need to get to the point of putting a negotiating team in place to move forward with the negotiation process. Chairman Moyer stated that he anticipated that if the Board could resolve all the other issues, they would be ready to discuss how the franchise should be negotiated and who should negotiate it.

Commissioner Baldwin stated that he would like to address the possible grant costs that could be passed on to the subscriber. He wished to be able to explain to citizens what they were getting in return for those funds. Dean Hutto had already created such a document, which would be distributed to the Board in advance of the March 15th meeting.

ADJOURN

Commissioner McGrady made the motion to adjourn the meeting. All voted in favor and the motion carried.

Attest:

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman