

Meeting Minutes

TELECOMMUNICATIONS COMMISSION

Wednesday, February 9, 2000 - 6:00 P.M.

City Water Department - 300 Bliss Avenue

Present: Chairman Rackow, Aldermen Phillips, Walther; Commissioners Bartosz, Colantonio, Curtis, Patton, Pintar, Wyhuske

Also Present: Mayor Wescott, Telecommunications Coordinator Quirk, Clerk Zdroik, Alderperson Sevenich, John Klismet (Park Ridge), Tom Hagen (Whiting), Ken Shibilski (V of Plover), John Holdridge (Hull), Susan Kampmeier (Journal)

1. Approval of minutes of January 27, 2000.

Commissioner Patton moved, Alderman Phillips seconded, for approval of the minutes of January 27, 2000.

Ayes, all; nays, none. Motion carried.

2. Adjourn into closed session at approximately 6:30 P.M. pursuant to Wisconsin Statutes 19.85(1)(e) to discuss telecommunications franchise negotiations.

Commissioner Patton moved, Alderman Phillips seconded, to adjourn into closed session.

Roll Call: Ayes: Chairman Rackow, Aldermen Phillips, Walther; Commissioners Bartosz, Colantonio, Curtis, Patton, Pintar, Wyhuske.

Nays: None. Motion carried.

3. Reconvene into open session to consider instructions to the negotiating committee at approximately 7:00 P.M.

Commissioner Patton moved, Alderman Phillips seconded, to reconvene into open session.

Roll Call: Ayes: Chairman Rackow, Aldermen Phillips, Walther; Commissioners Bartosz, Colantonio, Curtis, Patton, Pintar, Wyhuske.

Nays: None. Motion carried.

4. Charter Communications Extension Resolution.

Attorney Grogan informed the Commission about the modification to the resolution that has been presented to the Commission. The language requiring a 5% franchise fee would be modified to make Charter liable for the 5% franchise fee. Charter will be allowed to begin remitting the franchise fee after the execution of the franchise renewal commencing on February 26, 2000, and continuing through either the date on which **Charter's franchise is renewed or until May 30, 2000, whichever shall first occur.**

Alderman Phillips moved, Commissioner Wyhuske seconded, to approve the Resolution To Temporarily Operate the Cable Communications System in the City of Stevens Point, as written.

Alderman Phillips said the reason for his motion is he feels this is a part of Charter's delay tactics.

Come April 30, 2000, Charter will ask for another extension, the alderman said.

Commissioner Patton suggested the Commission adopt the Resolution per Attorney Grogan's recommendation. If Charter delays the negotiation then the City will go to the formal process to insure an agreement is completed before this summer.

Mayor Wescott asked Attorney Grogan if the Commission and the City impose the 5% franchise fee immediately and require immediate payment, would that invite a legal action?

Attorney Grogan said yes, it will. The attorney is recommending to accept Charter's proposed modification of the resolution on the theory that the time and expense of pursuing enforcement of the resolution as drafted would not be money well spent. The ultimate goal is to get the renewal done and signed and put to bed. We need a mutual agreement on this provision of the resolution and to focus energy on the negotiations as opposed to fighting over the enforcement of the provisions of the resolution.

Alderman Phillips thinks Charter's inability to work on the franchise agreement now shows Charter would not be able to find time to pursue a lawsuit against the City. He feels this delay tactic will take the City where we do not want to go, in the formal process.

Commissioner Patton suggested adopting the resolution as amended. The Commission can then proceed with the negotiations and if it does not work out by April 30, 2000, then we can use our resources in the formal process. He feels the change in the resolution is a minor change.

Commissioner Curtis moved, Commissioner Pintar seconded, to close the debate.

Chairman Rackow asked for a voice vote. The vote was no.

Commissioner Colantonio reported the negotiations are in a good position in terms of being able to address key issues that are beneficial to the City. He is asking the Commission to put its efforts on the big issues instead of this minor modification on the resolution. As long as the requirement for payment is in the resolution, the money will be available.

Chairman Rackow said the Commission has progressed a long way to get Charter to agree to pay 5% franchise fee in the interim and when we get it is less important than the fact that they agreed to do it. The chairman urged the Commission to vote no on the motion on the floor.

Alderman Phillips asked the Commission to look back and see what has happened in the last three to six months.

Chairman Rackow noted that part of the delay is that the Commission need to make a decision on the I-Net, which is not easy. The Commission has chosen as a strategy not to make the decision on the length of the franchise, not to make decision on the PEG channels and I-Net and the financial support for PEG because these are major issues that were identified as "deal points" in the past. To this degree, the Commission is responsible for the delay, the chairman said.

Mayor Wescott stated whatever comes out of the Commission will be presented to the City Council the third Monday of this month. The Council will have the authority to reject or modify the resolution. The Mayor feels a cable company that is not willing to demonstrate an element of flexibility on

something this easy, then what does it say about the overall tone that has been demonstrated in these negotiations. He agrees with Attorney Grogan that it is unfortunate that Charter have taken this posture on something this simple. The Mayor wonders what Charter s position will be when we get to the difficult issues at the negotiating table. The Commission has to keep an open mind and should decide which of the two resolutions in front of us is the best for the process. He feels there are good arguments on both sides. Commissioner Patton, Alderman Phillips and Attorney Grogan have some very good arguments and points at this meeting tonight.

Attorney Grogan recommends acceptance of Charter s proposed modification.

Ald. Phillips said this is a delay tactic on the part of Charter. If Charter does not comply, the City should go to the formal process.

Ayes: Alderman Phillips, Commissioner Wyhuske.

Nays: Chairman Rackow, Alderman Walther, Commissioners Bartosz, Colantonio, Curtis, Patton, Pintar. Motion failed.

Commissioner Patton moved, Commissioner Pintar seconded, to adopt the Resolution authorizing Charter Communications to operate the cable television system in the City, for a period commencing on February 26, 2000, and continuing through either the date on which Charter s Franch is renewed or until May 30, 2000, whichever shall first occur.

Commissioner Curtis does not see where Charter has done us a favor in following federal guidelines. If we are entitled to the money, what is Charter doing by not agreeing to it.

Chairman Rackow reiterated this has not happened in other communities because they have a 5% franchise fee in place. This is not in our current franchise agreement.

Attorney Grogan said there is no case law because in most cases cities are already implementing a 5% franchise fee so there is not a need to pass a resolution of this kind in those cases. Under federal law, the City is allowed to impose a franchise fee up to 5% and Charter has not disagreed with that. In fact Charter has agreed to pay 5% franchise fee in the renewed franchise. The question is can you condition an extension on an existing franchise? There is no case law and that is why there are some questions about it.

Alderman Phillips said good guys finish last and that is what is going to happen here and we are the good guys.

Commissioner Pintar asked what is taking so long? Negotiating the last agreement only took approximately six months.

Chairman Rackow said there are two reasons why the negotiations are taking a little bit longer. One reason is Charter is a bigger company and the other reason is the first company wanted our business, whereas this one does not need our business as much.

Ayes: Chairman Rackow, Alderman Walther, Commissioners Bartosz, Colantonio, Curtis, Patton, Pintar.

Nays: Alderman Phillips, Commissioner Wyhuske. Motion carried.

5. Programming on Community Access Channel, CA-3.

This agenda item was deferred to a later meeting of the Telecommunications Commission.

6. Date, time, and location of next meeting.

The next Telecommunications Commission meeting is scheduled for Wednesday, February 23, 2000, at 6:00 P.M. in the City Conference Room, 1515 Strongs Avenue.

7. ADJOURNMENT - 7:45 P.M.

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