

Meeting Minutes
SPECIAL COMMON COUNCIL MEETING
Council Chambers
April 7, 1999
County-City Building
6:00 P.M.

Mayor Gary W. Wescott, presiding

Roll Call: Present: Alderpersons Sevenich, Walthers, Pazdernik, Perlak, Kedrowski, Barr, Rackow, Aldinger, Nealis, Phillips, Niedbalski
Also Present: Director Gardner, City Attorney Molepske, Clerk Zdroik, Telecommunications Coordinator Quirk, Telecommunications Commissioners Bartosz, Colantonio, Patton, Pintar, Wyhuske; Jack Curtis, John Holdridge (Hull), John Klismet (Park Ridge) Susan Kampmeier (Journal) Chad Holmes (WIZD), Steve Behn (Charter Communications)

2. Presentation by Telecommunications Consultant Attorney Brian Grogan.

Attorney Grogan gave a presentation on steps to cable renewal and items to cover in negotiation for cable television.

He explained the reasons why the City is entering into a formal or informal negotiation with Marcus Cable/Charter Communications. Procedures are set up by federal law which the cities have to follow when addressing a request by a cable operator for franchise renewal. Three years before the expiration of a franchise agreement, the cable operator send a written notice to the City of its intent to seek renewal. This notice must be sent in a timely manner. The City will then have six months after receipt of the cable operator's letter to take a number of steps. The City has to determine its future cable needs and interest and review the cable operator's past performance under the franchise. After the City assesses its needs, those are then presented to the cable operator and the cable operator is given the opportunity to present a proposal to the City trying to meet the City's needs. After receipt of the proposal from the cable operator, the City has four months to decide whether to grant or deny the franchise. If the City decides to deny the cable operator's proposal, it can do so based on four reasons: (1) deal with the cable operator's past compliance with the existing franchise, (2) the cable operator's delivery of services under the franchise. With these two reasons, the only way the City can successfully deny is if it has provided the cable operator with written notice of non-compliance with a chance to cure that non-compliance. Without paper trail or record, the City can immediately discount the first two reasons as unusable for the City. Attorney Grogan noted that Stevens Point, as with almost every other jurisdiction in the country, has an insufficient record to base denial based on those two factors, (3) the cable operator's legal, technical, and financial qualifications to own and operate a cable system. Since the City just completed a review of the transfer of the system to Charter Communications, the City will be hard pressed to prove that they are not legally or technically qualified. With Paul Allen's multi-billions and the strength of the company, the cable operator's financial qualifications are sufficient to run a cable system in Stevens Point, and (4) the cable operator's proposal does not meet the City's needs, taking into account the costs of meeting those needs.

The Needs Assessment prepared by the City's Telecommunications Commission and City staff is a factor on which we base the renewal or denial. If the City denies on this criteria that the cable operator fails to meet our needs, the cable operator will challenge that decision in an administrative proceedings, wherein they will bring in technical support challenging our needs. This will ultimately be decided by a judge. The cable system is expensive, selling for almost \$4,000 per subscriber. The cost of the cable system in Stevens Point is in excess of 35-40 million dollars. The cable operator will go to court and fight any attempt by the City to deny the renewal.

Since the federal law went into effect in 1986, only two franchising authorities have successfully denied franchise renewal, one is in Missouri based on technical incompetence and the other one is in Sturgis, Kentucky, based on the cable operator's failure to meet future needs. Attorney Grogan represented Kentucky and they prevailed. This happened only twice where the cable operator was kicked out of town. It is rare to get rid of an operator and start fresh with someone else.

Ten Steps to Successful Franchise Renewal is a paper prepared by Attorney Grogan which is updated each year (copy is available in the City Clerk's Office) based on new developments in the industry.

Attorney Grogan explained the formal process and the informal process of negotiations. The informal process is where the cable operator and the City sit down and try to negotiate a deal that fits everybody's interest and see if they can reach a compromise. If a mutual agreement is not reached, the only recourse is to go to the formal process.

The Commission and City staff have done a good job in putting the Needs Assessment together. The City is embarking on negotiations in an informal sense hoping to reach an agreement with Marcus Cable/Charter Communications.

The Franchise Agreement is then presented to Marcus Cable/Charter Communications and the City will ask them to respond. Once they respond, the City will sit down and negotiate and this is the process that the City is about ready to go into, pending review by the Common Council.

The things that are addressed mostly before franchise renewal are how to control rates and programming issues. On the question of rates, everyone thinks the cable rates are too high, that the cable operator has a monopoly and something should be done about it. The FCC has laid out a certain number of rules that tells us what we can and cannot do in rate regulation. The bottom line is that the City cannot regulate the rates for premium services such as HBO, Showtime, Cinemax, pay-per-view rates. The City also cannot regulate rates for the expanded tier or cable programming service tier which consists of satellite channel, animal planet, discovery channel, CNN, ESPN. The cable operator is free to charge whatever they may choose to. The FCC and the First Amendment allow the cable operators do those things.

The only thing the City has control of is the broadcast basic cable service tier which is the smallest and lowest tier of service. This service includes the over the air broadcast stations, local public access channels, and might also include other channels that the cable operator may want to put in the basic service, but does not have to. This tier of service is regulated and can be regulated by the City.

This is a very complicated process to regulate based on the formula that the FCC has set up pursuant to some very complicated forms. It necessitates the hiring of an accounting firm or a specialist in this area to assist in reviewing the forms. It also applies to the equipment to receive this tier of service.

What can the City do about rate regulation? The City's hands are somewhat tied on how we can best approach it. The federal government tends to change its mind about every five years on how they will approach the issue. We can draft the franchise agreement as flexibly as possible to reserve the City's rights. There is not much the City can do to keep the rates low. It is simply at the discretion of the cable operator.

A resolution regarding regulation of rates charged for basic cable service will be discussed in the April 19, 1999, Common Council meeting, denying the rate increase for the broadcast basic cable service. The cable operator submits forms to the City to justify its rates. When these forms are

received by the City, the City has the right to approve or reject the forms but it has to be based on reasonable criteria. The Telecommunications Commission put forth a recommendation because the Commission believes that the rates were raised to an unreasonable level. At Mayor Wescott's request, Attorney Grogan has provided an estimate of what an accountant would charge to do a thorough audit of the forms. Attorney Grogan cautioned the Council that any kind of reduction or credit on the broadcast basic cable service tier that the subscribers may obtain, can be offset by the cable operator on the expanded tier. The only people that will benefit from the lower rate are those that subscribe to basic cable only. That is about five to seven percent of the total subscribers.

The most common programming issues are too much sex on TV, too much violence, too much music TV, too much sports and too much home shopping. These are all programming issues and a matter of preference and taste to various subscribers.

Attorney Grogan advised that this is a no win situation no matter what constituency you choose to side with. The First Amendment in cable language prohibits the government dictating to a third party the kind of programming or speech that it will put out to the public. You cannot tell the newspaper what headlines to put in, what editorials to write, or whether they can have sports, business, or classified sections. The newspaper makes those decision and we keep the government out of it for reasons ensuring that we have free press. The cable operators are very analogous to that and enjoy a lot of protection. The City can impress upon the cable operator the desires of its residents.

Another hot issue deals with technical standards. The FCC in the last five or six days released an order on how far cities can go in mandating technical standards on cable operators. The order limits to some extent how aggressive cities can be in mandating certain technical specifications that deviate from what the FCC imposes. This is another issue that the City has to deal with.

Attorney Grogan touched on the direction the City is heading regarding franchise renewal. After the City has a chance to review the franchise documents and after we are able to incorporate the issues that are brought to our attention to be addressed in the franchise agreement, the City will then finalize the documents, package these documents and send them to Marcus Cable/Charter Communications for their review and consideration. Marcus Cable/Charter Communications will then review and digest it and formally respond. The City will ask Marcus Cable/Charter Communications to respond in writing giving them approximately four weeks to prepare the response. Upon receipt of their response, the City will reconvene and establish some type of a negotiating team on behalf of the City for the Telecommunications Commission. This team will meet with Marcus Cable/Charter Communications representatives to try to go over the differences between the two sides, reach a compromise position and then come back to both the Telecommunications Commission and Council and report the agreements that we have been able to reach and perhaps seek further input from the Commission and Council. The ultimate goal is to present final documents on the issue and allow the Telecommunications Commission to provide a recommendation to the Council and the Council taking formal action to decide whether or not that is an acceptable franchise going forward.

Alderson Pazdernik asked if the City has any control over charges to connect and disconnect services?

Attorney Grogan said this is regulated by the FCC based on what the hourly service charge is, averaging it on a regional or national basis. The City can review and challenge this fee but it is subject to FCC regulation.

Mayor Wescott asked about the issue of the \$5 late fee?

Attorney Grogan stated that the late payment fee is not an issue governed by FCC regulation. It is generally handled by state law and usually tied to the administrative cost that the cable operator incurs to process the late fee.

The Mayor assured the residents of the City of Stevens Point the issue of the \$5 late fee will be on the table for franchise negotiations.

3. Alderson Barr moved, Alderson Perlak seconded, to adjourn into closed session pursuant to Wisconsin Statutes 19.85(1)(e) to discuss telecommunications franchise negotiation.

Roll Call: Ayes: Aldersons Sevenich, Walther, Pazdernik, Perlak, Kedrowski, Barr, Rackow, Aldinger, Nealis, Phillips, Niedbalski
Nays: None. Motion carried.

Alderson Barr moved, Alderson Rackow seconded, to reconvene to open session.

Roll Call: Ayes: Aldersons Sevenich, Walther, Pazdernik, Perlak, Kedrowski, Barr, Rackow, Aldinger, Nealis, Phillips, Niedbalski
Nays: None. Motion carried.

4. Reconvene into open session (approximately one and a half hours) for possible action on refranchising matters.

Alderson Rackow moved, Alderson Walther seconded, that the Informal Needs Assessment, the Draft Regulatory Ordinance, the Draft Franchise Agreement, and associated documents are approved, with the understanding that they may be modified before submission to the cable operator by the Mayor, City Clerk, and the Chair after conferring with the Consultant.

Ayes, all; nays, none. Motion carried.

5. Adjournment - 7:45 P.M.

The meeting minutes reproduced on this website are derived from the computer files used to produce the official minutes for the City of Stevens Point, but are unofficial. The minutes on this web site cannot be certified under s. 889.08, Wis. Stats., and cannot be considered prima facie evidence under s. 889.04, Wis. Stats. Certain tables, maps, and other documents that are a part of the official minutes are not included in the files reproduced on this website. Please consult the printed minutes, available in the City Clerk's Office, for the official text. The decisions made by City of Stevens Point boards, committees, and commissions (other than the Police & Fire Commission) are advisory only and are not binding on the City until affirmed at a meeting of the Common Council. Some of the minutes on this web site might not be approved by the Common Council as of today.

Bottom of Form