

ANNOTATED MINUTES

Tuesday, November 1, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

B-1 Paragon Cable Franchise Renewal Process. Presented by David Olson and Julie Omelchuck.

DAVID OLSON, JACK ADAMS, AND JULIE OMELCHUCH PROVIDED PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

Thursday, November 3, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:30 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan saltzman present.

CONSENT CALENDAR

AT THE REQUEST OF COMMISSIONER KELLEY, ITEM C-4 WAS REMOVED FROM THE CONSENT CALENDAR FOR EXPLANATION AND DISCUSSION.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY HANSEN COMMISSIONER, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-3 AND C-5 THROUGH C-13) WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointments NANCY REHBOCK to the Animal Control Advisory Committee, Neighborhood Association Member Position; and SUSAN FORD BURNS to the Animal Control Advisory Committee, Hearings Officer Position**
- C-2 In the Matter of the Appointment of LEE COLEMAN to the Multnomah County Commission of Children and Families**
- C-3 Ratification of Amendment No. 2 to Intergovernmental Agreement, Contract**

#400142, between Multnomah County and the City of Portland to Provide Printing and Duplicating Services on a Requirement Basis, Effective Upon Signature through September 30, 1995

SHERIFF'S OFFICE

- C-5 Dispenser Class A Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for MULTNOMAH FALLS LODGE, BRIDAL VEIL*
- C-6 Dispenser Class A Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for CHINA HUT RESTAURANT, 16721 SE DIVISION, PORTLAND*
- C-7 Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for 3-D MARKET, 1739 SE 139TH AVENUE, PORTLAND*
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- C-9 Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for K.S. FOOD MARKET, 15231 SE DIVISION, PORTLAND*
- C-10 Package Store Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for BOB & ANN'S GROCERY, 11811 SE HAROLD, PORTLAND*
- C-11 Retail Malt Beverage Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for DAILY DOUBLE TAVERN, 1607 NE 162ND AVENUE, PORTLAND*
- C-12 Retail Malt Beverage Liquor License Renewal Application Submitted by Sheriff's Office with Recommendation for Approval, for PLEASANT HOME SALOON, 31637 SE DODGE PARK BLVD., GRESHAM*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-13 ORDER in the Matter of the Execution of Deed to Julius Gaussoin*

ORDER 94-211.

SHERIFF'S OFFICE

- C-4 Restaurant/New Outlet Liquor License Application Submitted by Sheriff's Office with Recommendation for Approval, for BIG BEAR CROWN POINT MARKET, 31815 E. CROWN POINT HWY., TROUTDALE

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF C-4. MIKE EBELING, CITY OF PORTLAND BUREAU OF BUILDINGS, PRESENTED EXPLANATION AND RESPONSE TO BOARD QUESTIONS REGARDING DETAILS OF REQUEST FOR NEW OUTLET LICENSE AND STATUS OF PREVIOUS SEWAGE DISPOSAL PROBLEMS ON THIS SITE. MOTION TO APPROVE C-4 WAS UNANIMOUSLY APPROVED.

COMMISSIONER COLLIER REQUESTED COUNTY COUNSEL TO PROVIDE INFORMATION REGARDING THE BOARDS JURISDICTION OF LIQUOR LICENSE APPLICATION'S.

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *RESOLUTION in the Matter of Declaring Opposition to Ballot Measure No. 13 and Support for Basic Civil Rights for All Citizens*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-1. MELINDA PETERSON PRESENTED AND READ RESOLUTION. PUBLIC TESTIMONY OPPOSING RESOLUTION RECEIVED FROM GWEN MAXWELL, PATRICE KILMARTIN AND KARIN HOUSTON. TESTIMONY SUPPORTING RESOLUTION RECEIVED FROM KATHY GILLETTE, MARIA ROJO AND KATHY MILARD. RESOLUTION 94-212 WAS UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

- R-2 *Ratification of an Intergovernmental Agreement, Contract #800495, between Multnomah County and Regional Organized Crime Narcotics Task Force ("ROCN"), Allowing ROCN the Use of County's Law Enforcement Aircraft and Personnel for Aerial Surveillance Services at an Established Hourly Rate*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-2. CHIEF DEPUTY RANDY AMUNDSON AND CAPT.

BUD JOHNSON PRESENTED EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT WAS UNANIMOUSLY APPROVED.

- R-3 Ratification of an Intergovernmental Agreement, Contract #800505, between Multnomah County and Washington County, Allowing Washington County the Use of County's Law Enforcement Aircraft and Personnel for Aerial Surveillance Services at an Established Hourly Rate**

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. AGREEMENT WAS UNANIMOUSLY APPROVED.

JUVENILE JUSTICE DIVISION

- R-4 Budget Modification JJD #2 Requesting Authorization to Add \$49,425 in Portland Public Schools Grant Revenue to its Federal State Program to Fund an Alcohol/Drug Counselor On-Site at the District's Counteract Alternative Program Campus**

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-4. MARIE EIGHMEY PRESENTED EXPLANATION AND BILL FOGERTY RESPONDED TO BOARD QUESTIONS. BUDGET MODIFICATION WAS UNANIMOUSLY APPROVED.

- R-5 Budget Modification JJD #3 Requesting Authorization to Reprogram \$41,457 in County Funds for the Save Our Youth Violence Prevention Program**

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-5. MARIE EIGHMEY PRESENTED EXPLANATION AND JOHN MILLER RESPONDED TO BOARD QUESTIONS. BUDGET MODIFICATION WAS UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-6 First Reading and Possible Adoption of an ORDINANCE Amending Fees for Action Proceedings (Public Works Services) and Administrative Actions Under MCC 5.10 and Declaring an Emergency**

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE FIRST READING AND POSSIBLE

ADOPTION. BOB PEARSON AND MIKE OSWALD PRESENTED EXPLANATION AND RESPONSE TO BOARD QUESTIONS. NO ONE WISHED TO TESTIFY.

COUNTY COUNSEL LARRY KRESSEL WAS DIRECTED TO PROVIDE FURTHER INFORMATION TO THE BOARD REGARDING THE EFFECT OF CURRENT COUNTY FEES IF BALLOT MEASURE 5 PASSES.

FOLLOWING BOARD DISCUSSION, COMMISSIONER'S SALTZMAN AND KELLEY AGREED TO WITHDRAW MAIN MOTION.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED TO POSTPONE PROPOSED ORDINANCE INDEFINITELY.

- R-7** *In the Matter of Consideration and Ratification of a Memorandum of Understanding between Multnomah County, the City of Portland, Tri-Met, U.S. Department of Energy, Oregon Department of Energy, Oregon Department of Environmental Quality, Oregon Department of Administrative Services, Northwest Natural Gas Company, Portland General Electric Company, Pacific Power and Light Company, United States Bakery (Franz), U.S. Environmental Protection Agency, U.S. General Services Administration, U.S. Department of Veterans Affairs, NW Renewable Fuels Council, and Oregon Roads Leasing to Establish and Gain a "Clean Cities" Designation from the U.S. Department of Energy for the Portland Area*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-7. TOM GUINEY PRESENTED EXPLANATION AND RESPONSE TO BOARD QUESTIONS. MEMORANDUM OF UNDERSTANDING WAS UNANIMOUSLY APPROVED.

- R-8** **C 11-94** *Fourth Reading and Possible Adoption of a Proposed ORDINANCE Amending Comprehensive Framework Text Plan Policy 16 - B and MCC 11.15 Regarding the Regulation of Surface Mining and Nearby Surrounding Land Uses in Partial Fulfillment of Periodic Review Work Program Tasks Required to Bring Multnomah County's Land Use Program into Compliance with Statewide Planning Goal 5*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF THE FOURTH READING AND

**ADOPTION. NO ONE WISHED TO TESTIFY.
ORDINANCE NO. 804 WAS UNANIMOUSLY
APPROVED.**

PUBLIC COMMENT

**R-9 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to
Three Minutes Per Person.**

NONE.

There being no further business, the meeting was adjourned at 10:35 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Carrie A. Parkerson



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

OCTOBER 31, 1994 - NOVEMBER 4, 1994

Tuesday, November 1, 1994 - 9:30 AM - Board Briefing Page 2

Thursday, November 3, 1994 - 9:30 AM - Regular Meeting Page 2

FUTURE MEETING CHANGES/CANCELLATIONS

Tuesday, 11/15/94 - Cancelled/AOC Conference

Thursday, 11/17/94 - Cancelled/AOC Conference

Tuesday, 11/22/94 - 9:30 AM Regular Meeting Scheduled

Thursday, 11/24/94 - Cancelled/Holiday

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

Thursday, 6:00 PM, Channel 30

Friday, 10:00 PM, Channel 30

Saturday, 12:30 PM, Channel 30

Sunday, 1:00 PM, Channel 30

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, November 1, 1994 - 9:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFING

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-

Thursday, November 3, 1994 - 9:30 AM

*Multnomah County Courthouse, Room 602
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DEPARTMENT OF ENVIRONMENTAL SERVICES

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PUBLIC COMMENT

- R-9 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*



DAN SALTZMAN, Multnomah County Commissioner, District One

1120 S.W. Fifth Avenue, Suite 1500 • Portland, Oregon 97204 • (503) 248-5220 • FAX (503) 248-5440

M E M O R A N D U M

TO: Clerk of the Board
Board of County Commissioners

FROM: Phyllis Phillips for Dan Saltzman

RE: Absence from BCC Briefing

DATE: November 1, 1994

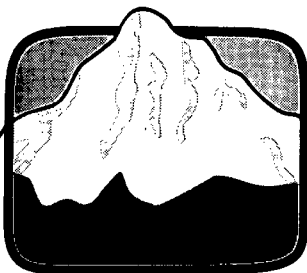
Commissioner Saltzman will be absent from the Board Briefing this morning because of illness.

BOARD OF
COUNTY COMMISSIONERS
1994 NOV - 1 AM 11:41
MULTNOMAH COUNTY
OREGON

DRS:pjp

Agenda No.: B-1

AGENDA PLACEMENT FORM



MT. HOOD CABLE REGULATORY COMMISSION

1120 SW Fifth Avenue, Room 1021 • Portland, OR 97204

Phone: (503) 823-5385 • Fax: (503) 823-5370

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

DE RECEIVED

AUG 29 1994

BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

August 24, 1994

Delma Farrell
1120 SW Fifth Ave. #1410
Portland, OR 97204

Dear Delma:

I am writing to request placement on the Multnomah County Commission work session agenda for November 1, 1994. The Mt. Hood Cable Regulatory Commission (MHCRC) and its staff would request about 30-45 minutes, depending on Commissioners questions, in order to present information about the upcoming Paragon franchise renewal process.

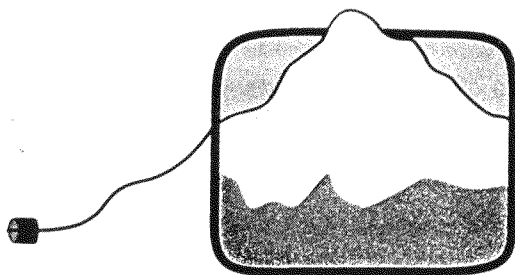
The purpose of our presentation is twofold: 1) to inform Commission members about the overall franchise renewal process, including the various stages, the general timeline and legal requirements, and 2) to engage the Commission in the community needs ascertainment which will provide a basis for the MHCRC to determine public benefits which are important to Multnomah County and its citizens. We believe our informational presentation will take about 20 minutes which would allow about 20-25 minutes for Commissioners' questions and discussion.

Thank you for your consideration of this request. Please let me know, at your earliest convenience, if the above requested date is available or if we could arrange for a presentation on an alternative date.

Sincerely,

Julie S. Omelchuck
Program Manager

c. Jack Adams, MHCRC Representative



MT. HOOD CABLE REGULATORY COMMISSION

1120 SW Fifth Avenue, Room 1021 • Portland, OR 97204

Phone: (503) 823-5385 • Fax: (503) 823-5370

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

M E M O R A N D U M

TO: Commission Chair Stein
Multnomah County Commissioners

FROM: Jack Adams, MHCRC Representative
David C. Olson, Director

RE: CABLE FRANCHISE RENEWAL BRIEFING

DATE: October 21, 1994

We look forward to meeting with you on November 1 to discuss the renewal process for Multnomah County's franchise agreement with Paragon Cable. As you can see from the enclosed information, we are at the beginning of the process. In order to maximize involvement by your community and by you as elected officials, this initial meeting will provide us an opportunity to listen and discuss your questions and comments up front, to ensure the process moves forward in a manner which meets your needs.

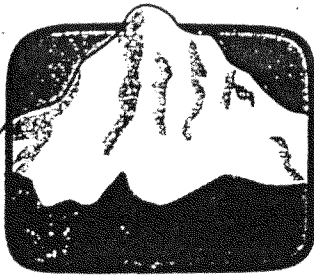
The renewal of a cable television franchise agreement is critical for many reasons. First, the franchise will help define community communication resources over the next decade. It has been nearly 15 years since the original franchise was signed. At a time of rapid change in telecommunications law and technology, we expect that an updated franchise will not only continue the current public benefits, but also provide additional benefits for your community in the future.

Secondly, the renewal process will consume extensive time and resources of the Mt. Hood Cable Regulatory Commission (MHCRC) over the next two years. The Paragon franchise for the City of Portland expires in 1996 and the East Multnomah franchise expires in 1998. The MHCRC is conducting a joint process based on an agreement with Paragon which will provide funds to assist in the renewal process. As you may recall, Multnomah County, along with the other MHCRC's jurisdictions, reviewed the joint renewal agreement in July 1994 (see attached information).

Lastly, and maybe most importantly, the franchise agreement for East Multnomah County will require your approval.

Enclosed are materials that we hope will provide you more detailed information. Again, we look forward to our upcoming meeting, and, as always, feel free to contact us if you need further information prior to the meeting.

Attachments: Memo to Elected Officials regarding Joint Process for Paragon Renewal
Paragon Franchise Renewal Request: Summary of Formal and Informal Process
Memo to MHCRC regarding Renewal Requirements of 1984 Cable Act



MT. HOOD CABLE REGULATORY COMMISSION


1120 SW Fifth Avenue, Room 1021 • Portland, OR 97204

Phone: (503) 823-5385 • Fax: (503) 823-5370

Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

July 12, 1994

TO: Elected Officials
Interested Parties

FROM: David Olson, Cable Commission Director 

SUBJ: Joint Process for Paragon Renewal

As you may know, the Paragon/east Portland cable franchise expires in 1996, and the Paragon east Multnomah County cable franchise expires in 1998. Under federal law, a three-year renewal process (including community ascertainment and a performance review) is required.

After negotiations, the Cable Commission has reached agreement with Paragon on an arrangement which should enable the Commission to defray a major portion (75%) of anticipated franchise renewal expenses, and finance a joint process, *without binding the jurisdictions to any particular outcome of the renewal process*. This will enable the Commission to economize in its renewal-related expenses (such as engineering, financial reports, and community surveys) by conducting the process simultaneously instead of separately for Portland and east County jurisdictions.

In exchange for the advance of funds to pay for renewal expenses, the Commission has agreed to allow Paragon to utilize an otherwise-unused East County channel (Channel 59), and to economize in its Portland local programming operation without affecting major, ongoing programming commitments.

The purpose of this memorandum is to summarize this agreement between the Commission and Paragon, solicit your comments or questions (if any), and to review the expected timeline and tasks for conducting the overall renewal process.

Summary of Commission/Paragon agreement

- Paragon pays the Commission \$75,000 (of our projected budget of \$100,000) to defray the joint aspects of a Portland/East Multnomah franchise renewal process;
- The Commission authorizes Paragon to utilize Channel 59 in East Multnomah County for a three year period to conclude in May, 1998 for additional

programming of Paragon's choice (the channel presently shows only a clock); and the Commission authorizes Paragon to slightly reduce operating expenses in producing Portland local origination programming, so long as overall programming hours, qualities, and categories (i.e. Black Public Programming and Portland City Council coverage) are preserved at present levels;

- Neither the Commission, nor the jurisdictions, nor Paragon is bound to any particular outcome of this process (such outcomes could include, for example, non-renewal, solicitation of competing bids, separate franchise documents, or a joint document to which all jurisdictions have agreed);
- The arrangement ensures that the costs of the renewal process are paid for *without* being passed along to subscribers or increasing subscriber rates; *without* having to be paid directly by participating jurisdictions; and *without* significantly affecting existing franchise commitments.

Comments/questions solicited

The Commission authorized the agreement with Paragon on June 20th, but the Commission is particularly interested in responding to any comments or questions the jurisdictions may have. Please contact Commission staff if you would like further information.

Expected timeline/tasks for renewal process

Commission staff at this time is actively engaged in developing the workplan for a joint renewal process. We envision conducting a briefing for all jurisdictions at one of your regularly scheduled meetings later this year, as well as a survey of officials and community groups, and a number of further public information opportunities (including hearings). In addition, we will be commencing an engineering study of the Paragon cable system, together with a complete financial and technical analysis. With this base of information, and with extensive community involvement from each jurisdiction, we hope to begin negotiations with Paragon at some point in 1995, and attempt to conclude the negotiation in 1995 or 1996. The Cable Commission's final recommendations regarding franchise renewal are subject to review by each participating jurisdiction. Final action on renewing Paragon's cable franchise, and the conditions of such renewal, is specifically reserved to each jurisdiction under the Intergovernmental Agreement creating the Cable Commission.

Please contact us if you have questions. We expect to visit with elected officials in each jurisdiction in the next several months as this process moves forward.

/DCO

cc: Cable Commission, Ben Walters, Tom Sponsler

PARREN.SUM

PARAGON FRANCHISE RENEWAL REQUEST

SUMMARY OF FORMAL AND INFORMAL PROCESS

PART A - Formal Process

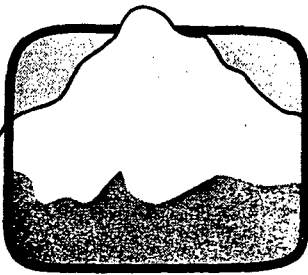
- | | | |
|------|---|----------------------|
| A.1 | <u>Paragon notifies the MHCRC of its request to commence renewal proceedings</u> | May '93 |
| A.2 | <u>MHCRC authorizes commencement of Portland renewal proceedings</u> | Oct. '93 |
| A.3 | <u>Identification of future cable-related community needs and interests</u> | |
| 3.1 | Develop and conduct ascertainment survey of government agencies, educational institutions, libraries, community groups, businesses, and other relevant groups and individuals to develop information and an inventory of future cable-based communications needs and interests. | Aug. '94 - March '95 |
| 3.2 | Analyze results of ascertainment survey; issue preliminary staff report on future needs and interests. | March - April '95 |
| 3.3 | Conduct MHCRC work session on ascertainment; staff receives direction on draft franchise components. | April '95 |
| A.4 | <u>Review of Paragon's performance under franchises during current franchise term</u> | |
| 4.1 | Analyze and review compliance materials, including technical audit of system. | Nov. - Jan. '94 |
| 4.2 | Issue preliminary staff report on compliance review. MHCRC for review and comment. | March - April '95 |
| 4.3 | Conduct MHCRC work session on compliance review; staff receives direction on draft franchise components. | April '95 |
| A.5. | <u>Completion of ascertainment and performance review; Action on renewal request</u> | |
| 5.1 | Develop report/materials on draft franchise components. | April '95 |
| 5.2 | Conduct public hearings on draft franchise summary and performance review issues. | May '95 |
| 5.3 | Issue final draft staff report containing recommendations resulting from ascertainment and performance review. | June '95 |
| 5.4 | Issue MHCRC report containing recommendations on future needs and interests, and performance review. | July '95 |
| 5.5 | Issue MHCRC Request for Renewal Proposal (RRP). | Sept.'95 |
| 5.6 | Review proposed franchise renewal agreement or Paragon submits proposal in response to RRP. | Nov. '95 |

PART B - Informal Process

- | | | |
|------|---|----------------|
| B.1 | <u>Commission authorizes commencement of informal joint renewal process</u> | June' 94 |
| B.2. | <u>Negotiation of draft renewal agreement with Paragon</u> | Jan.- Oct. '95 |

PART C - Negotiate Renewal Agreement (Formal and/or Informal Process)

- | | | |
|-----|--|-------------------|
| C.1 | <u>Issue franchise agreement for public comment</u>
(In conjunction with or at conclusion of Task A.) | Nov. '95 |
| C.2 | <u>Conduct hearings on proposed franchise agreement</u> | Dec.'95 - Jan.'96 |
| C.3 | <u>Finalize franchise agreement; forward franchise to Jurisdictions</u> | Feb. - April '96 |
| C.4 | <u>City of Portland, possibly other Jurisdictions, takes action on franchise agreement</u> | May '96 |



MT. HOOD CABLE REGULATORY COMMISSION

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Serving Multnomah County and the Cities of Fairview, Gresham, Portland, Troutdale and Wood Village

October 5, 1994

TO: Mt. Hood Cable Regulatory Commission

FROM: David C. Olson, Director
Office of Cable Communications
and Franchise Management

SUBJ: Renewal requirements of 1984 Cable Act

Here is a summary of the franchise renewal requirements of the Cable Communications Policy Act of 1984 ("Cable Act"). These requirements are contained in Section 626 of the Cable Act, 47 U.S.C.A. §546. The 1992 Cable Act made only minor technical changes in the federally-mandated renewal process, so the process described in this summary is still accurate.

Introduction

An express purpose of the 1984 Cable Act was to:

"establish an orderly process for franchise renewal which protects cable operators against unfair denials of renewal where the operator's past performance and proposal for future performance meet the standards established by [the Act]." 47 U.S.C.A. §521(5).

The legislative history of the Act reveals the intent of Congress to balance the interests of cable operators with those of franchising authorities:

"Although this new provision is intended to emphasize the legislation's purpose of protecting cable operators, it is not the intent of this new provision to create an automatic renewal or a presumption in favor of renewal where the operator's past performance and proposal for future performance meet the standards established by the bill. Nor should this provision be construed to mean that a denial of renewal would always be unfair in any case where the operator's past performance and proposal for future performance meet these standards." Cong. Rec. H12241, 10/11/84

Formal Process

The Cable Act allows for franchise renewal either by a formal or an informal process. The formal renewal process is not mandatory, but can be triggered by either the franchising authority or the operator. 47 U.S.C.A. §546(a). Even

when the formal renewal process is triggered, the parties may agree to proceed informally and renew the franchise at any time. 47 U.S.C.A. §546(h). The formal renewal process mirrors the three typical phases of a negotiation: preparation, presentation, and possible confrontation.

Step 1 - "Public Proceeding"

This proceeding must be commenced by the Commission (on behalf of its participating jurisdictions) if requested at any time by the cable operator during the six month period beginning with the 36th month prior to franchise expiration. In the case of the Paragon east Portland franchise (which expires in May, 1996), the six month period ran from May to October, 1993 and Paragon duly requested the formal process in a letter of May 26, 1993, as recognized by the Commission in Commission Resolution No. 93-14, passed October 18, 1993.

The proceeding is designed to:

- (a) identify future cable-related community needs and interests; and
- (b) review the past performance of the cable operator.

The public must be given "appropriate notice" and an opportunity to participate in this proceeding. 47 U.S.C.A. §546. The information collected during this proceeding will help establish requirements to be expected of the cable operator during the next franchise term. Public participation may be through the use of opinion surveys and oral or written testimony. The Cable Act only specifies the time within which the public proceeding may be initiated. The Cable Act does not identify any time period during which this step must be completed. This timing flexibility has been helpful in enabling the Commission to consider expanding the Paragon renewal process to include consideration of renewal of the east County Paragon franchise (as authorized by Commission Resolution No. 94-16, passed June 20, 1994).

Step 2 - Renewal Proposal

When the "public proceeding" process has been completed, the Commission on behalf of its jurisdictions can request a renewal proposal, and specify the date for its submission, or the operator may submit a proposal on its own initiative. 47 U.S.C.A. §546(b)(1). The Commission in consultation with its jurisdictions may establish specific requirements, such as PEG access channel capacity, system upgrade, customer service, construction. 47 U.S.C.A. §546(b)(2). The Commission should give "prompt public notice" upon receipt of the renewal proposal. 47 U.S.C.A. §546(c)(1). Within four months after the end of the "public proceeding", either the renewal proposal must be granted or a preliminary assessment must be issued that the franchise should not be renewed. 47 U.S.C.A. §546(c). This latter step, if necessary, would need to be taken by the governing body of each jurisdiction following the Commission's recommendation.

Step 3 - Administrative Proceeding in event of 'Non-Renewal' assessment

In the event the Commission and its jurisdictions issue a preliminary assessment that the franchise should not be renewed, the Commission may on its own initiative or, at the request of the operator, must commence an administrative adjudicative proceeding. Under this proceeding (a) the public must be given

"prompt public notice," and (b) both the cable operator and the Commission must be given a "fair opportunity for full participation." Both the Commission and the operator may introduce evidence, question witnesses, and require the production of evidence, directed to four renewal criteria. 47 U.S.C.A. §546(c)(2). The criteria are:

- A. Whether the cable operator has substantially complied with the material terms of the franchise and with applicable law;
- B. Whether the quality of the cable operator's service, including signal quality, response to consumer complaints, and billing practices has been reasonable in light of community needs (but without regard to the level or quality of any particular programming service);
- C. Whether the operator has the financial, legal and technical ability to provide the services, facilities, and equipment proposed; and
- D. Whether the cable operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. 47 U.S.C.A. §546(c)(1).

A transcript must be made of this proceeding. At the completion of the proceeding, the Commission must issue a written decision, based upon the record in the proceeding, making a recommendation regarding the granting or denying the franchisee's renewal proposal. 47 U.S.C.A. §546(c)(3). Such a recommendation must then be adopted by the governing body of each Commission jurisdiction.

Court Appeals

Cable operators may seek judicial relief from final Commission/jurisdiction action taken under the formal process. Operators may challenge any Commission/jurisdiction failure to act in accordance with the procedural requirements of the formal process, or challenge the final decision of the Commission or its jurisdictions if renewal has been denied. 47 U.S.C.A. §546(e)(1). In any such action, the operator bears the burden of demonstrating that the Commission/jurisdiction's decision is not supported by a preponderance of evidence developed in the "administrative proceeding." 47 U.S.C.A. §546(e)(B)(2). The parties are limited to the record developed during the proceeding; a court cannot undertake a de novo review. If the operator meets the burden, a court is empowered to grant "appropriate relief," including renewal.

Informal Process

As mentioned earlier, 47 U.S.C.A. §546(h) allows both the Commission on behalf of its jurisdictions, and the cable operator, to informally renew the franchise at any time, after affording the public adequate notice and an opportunity to comment. Such 'informal renewal' can occur, at any time regardless of whether the formal process has commenced.

/DCO

cc: Ben Walters

Local Government Roles and Choices on the Information Superhighway: Tenants or Architects of the Telecommunications Future?

by Shaden Tageldin

Writer/Editor, Public Technology, Inc.



Last Mile...

The last mile of the National Information Infrastructure (NII)—the much-touted Clinton-Gore initiative to “wire” individuals and institutions across America through a “superhighway” of telecommunications links—is raw, uncharted frontier.

It’s a mile of missing or incomplete connections on the “side streets” and “driveways” of the information interstate, connections to homes and small businesses that, if made, could transform today’s NII from a predominantly big-business, academic, and government network of computer and

communications systems into a true person-to-person link.

And like all frontiers, it has ignited intense territorial disputes—or, at least, uncertainties. While local governments, in most cases, continue to control the last mile of the information superhighway, growing numbers of telecommunications giants are staking bold claims to that murky frontier. Some cooperate with cities and counties, forging dynamic partnerships that serve both public and private interests. Others, however, vigorously challenge cities’ and counties’ ownership of and authority over public rights-of-way and commitment to community interests.

...or First?

But the last mile of the information superhighway is also its first, because the NII does not just link computers or databases or cables. It ultimately links people, circulating information among them, bringing economic and social benefits to them. It builds communities.

The U.S. Department of Commerce Information Infrastructure Task Force recognizes the primacy of people in its *NII Agenda for Action*, describing the NII as “a seamless web of communications networks, computers, databases, and consumer electronics that will put vast amounts of information at *users’ fingertips*” (emphasis added). Those words underscore the notion that the NII exists not as an end in itself, but as a means to serve the user.

Whether their interests are complementary or competing, public officials and industry leaders alike know that this national network of computer and communications systems begins and ends with the people who use it. Forget the so-called “last mile,” the stretch of road that reaches the average citizen, and the seamless information chain both government and industry envision—an unbroken connection linking homes; businesses; academic, non-profit, and cultural institutions; and local, state, and federal governments—will falter, then fail. The first mile—the all-important *local* information infrastructure—is missing.

What’s at Stake for Cities and Counties?

That is precisely why local governments must participate in the development, demonstration, and implementation of the nation’s information infrastructure.

As direct representatives of the people, charged with protection of the public interest, city and county officials are often in closest touch with the needs and interests of the citizen/consumer.

Those interests, and the ways an enhanced information infrastructure can help meet them, are significant. Cities and counties can tap increased connectivity to enhance public access to government information, increase civic participation, and better provide health, education, and economic benefits to citizens. They can promote an infrastructure that guarantees universal access to quality service at affordable rates, so that citizens who live in remote locations, cope with disabilities, do not speak English, cannot afford the

necessary technology, or are uncomfortable using technology are not excluded. They can use valuable telecommunications assets to support business expansion, creating jobs, spurring economic growth, and improving the overall quality of life in their jurisdictions. And they can protect and return taxpayers' investment in public rights-of-way by regulating and franchising private use.

What, then, is at stake for cities and counties in the emerging information superhighway? In short, four key imperatives:

- Protection of public investments;
- Service and outreach to communities;
- Regulatory and franchising authority over public rights-of-way; and
- Protection of social equity.

Protection of Public Investments

As major purchasers of private telecommunications services; as facilitators, regulators, developers, owners, or users of local information infrastructures; and as providers of extensive, expensive, and often information-based public services, cities and counties are key investors in the information superhighway.

In "Local Government: The Silent Investor in Wireline Telecommunications Networks," Nicholas P. Miller urges jurisdictions to recognize the extent of their investment—social and economic—in information infrastructure and to protect the "hundreds of billions of dollars at issue for local government budgets." Taken together, says Miller, cities and counties are second only to the federal government in consumption of telecommunications services. Local governments collectively constitute the "largest single investor in telecommunications businesses that use wires in the public rights-of-way."

What's more, many public services—as Mitchell L. Moss, director of the Urban Research Center at New York University, notes in "Telecommunications and Urban Economic Development"—are information-intensive. That makes local governments especially dependent on advanced information technologies—and especially interested in a strong information infrastructure.

Service and Outreach to Communities

Take government operations and community outreach, for example. An information superhighway would eliminate current distances between people and information. Employees could communicate or learn efficiently through two-way teleconferencing and interactive video training. They could access and manage records—even those stashed in faraway files—at the mere touch of a keyboard. Citizens, in turn, could contact city or county offices from their homes or workplaces, participating in two-way town meetings or interactive polls and surveys and gleaning public information from electronic bulletin boards.

And think of what a strong NII would do for health care. Through telemedicine, doctors and other care providers could reach a patient with no immediate access to professional help, "examining" that patient

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Asking the Right Questions:

Seattle's Rules for the Information Road

Seattle, Wash., is the largest U.S. city to own and operate its own electric utility, including power poles and conduits. Seeking an investor/developer to build and run its information highway, Seattle solicited "information from parties interested in constructing, managing and owning such a network" and sought "to understand how the City might assist in this effort." Having evaluated responses to this request for information (RFI), Seattle now hopes to issue a formal request for proposals (RFP) from potential private-sector partners. A draft RFP awaits City Council approval. In its RFI, Seattle asks a question all cities and counties should ask as they ponder their role in a shifting telecommunications landscape: "What are the City's telecommunications goals, and what does the City want from an Information Highway?" Here is Seattle's answer: "The City believes that early and expedient development of an Information Highway (general-purpose, open-platform broadband network) that covers the entire City is in the public interest. The City believes that an Information Highway could significantly enhance economic development opportunities in the area, thereby enhancing the quality of life for Seattle residents. The City strongly desires that this network be accessible to all residents, businesses and institutions. The City also strongly desires that competing service providers have common carrier access to the network. Additionally, the City is interested in being compensated for the use of its facilities. Finally, the City would like to have a portion of the network available to support City information service delivery needs."



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electronically and quickly diagnosing his or her condition. Specialists could offer critical medical advice to a shorthanded colleague thousands of miles away.

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Exploring Local Information Frontiers:

Palo Alto's Internet Adventure

In February 1994, Palo Alto, Calif., became the first U.S. city to develop full Internet capabilities, joining the international "network of networks" that attracts one million new users each month and currently links an estimated 22 million individuals worldwide.

Palo Alto's initial foray into the Internet was the fruit of a partnership with Digital Equipment Corporation that began the previous summer, when the City leased publicly owned conduit to the corporation for installation of a high-speed, fiber-optic telecommunications network. In exchange for access to Palo Alto's rights-of-way, Digital agreed to pay an annual license fee to the City and to run a second fiber cable—at no additional cost—for the City's exclusive use. That fiber became the core of Palo Alto's high-speed connection to the Internet, linking Palo Alto's City Hall to Digital's Network Systems Laboratory, an Internet hub for the company's worldwide operations.

Now electronic travelers who wander into the City of Palo Alto Demonstration World-Wide Web (WWW) Server, as the City's connection is called, will find everything from a primer on Palo Alto government (with a photo directory of City Council members and top administrators) to a map of downtown Palo Alto and its eateries. For those who have always ached to learn more about the City's streets or libraries, on-line sketches tell their history. Full-text electrical codes and permitting and architectural review procedures are on the City server, as are train schedules for all cities on the CalTrain system.

such as public markets, maritime facilities, railroads, industrial parks, airports, and roads and highways." But, Moss adds, "with the rise of information-intensive activities in both the service and manufacturing sectors,...[b]uilding an infrastructure for the movement of people and goods is not enough to assure urban economic development; it is also necessary to have a modern telecommunications infrastructure that can allow information flow in, through, and out of cities and regions."

Thus, the new information imperative ties existing local infrastructures—especially utility, water, and sewer networks within public rights-of-way—to the demands of an emerging one: the NII.

"Public rights-of-way," says Nicholas Miller, "are the most valuable property rights now in the hands of any level of government." Ownership and responsibility for managing public rights-of-way empower cities and counties to control the use of such valuable infrastructure assets as underground conduit space (for example, existing and abandoned pipelines) and space atop utility poles—the very pathways telephone, cable television, and long-distance companies use to transmit their signals. Moreover, a variety of laws and regulatory powers grant local governments the right to franchise, permit, and license this private use of public property. Vested with such broad franchising and regulatory powers, cities and counties influence where, when, and how telecommunications lines—whether coaxial cables, copper wires, or optical fibers—are placed in the public rights-of-way.

That's not all. Linked to a solid information infrastructure, a single computer could house a universe of criminal justice proceedings. Electronic connections would make remote access to fingerprint databases and video arraignments, hearings, visitations, and client/attorney meetings possible.

Finally, the information superhighway would unfold broader educational vistas for millions of people. Eager students, particularly those far from academic or research institutions, could tap distance-learning opportunities and the collective research resources of thousands of on-line libraries.

Recognizing that high-speed computing and communications provide platforms for more efficient delivery of these information-intensive services, many local governments are researching, developing, and implementing community-wide information networks. As jurisdictions integrate their networks with those of other cities and counties, a seamless national information superhighway—standards-based, interoperable, and universally accessible—will emerge.

Regulatory and Franchising Authority over Public Rights-of-Way

Having long designed, built, and maintained major infrastructures in their communities, cities and counties are experienced facilitators of such large-scale integration. "Urban growth," Mitchell Moss points out, "historically has been closely linked to the development of critical public infrastructure

Shaden Tageldin

Miller supports those far-reaching powers, noting that "public rights-of-way are acquired through eminent domain—the most intrusive form of governmental action in citizens' lives outside of the criminal code." "Local officials," he says, "have absolute obligations to act as trustees of the public's interest in shaping the use of rights-of-way to best benefit the community."

Not all in the telecommunications industry share his view. Today's telecommunications industry, according to a *New York Times* survey cited in John Kenny's "Impact of Telecommunications Upheaval on Local Government," has experienced some of the most rapid and most aggressive mergers, acquisitions, and consolidations in the history of America. As telecommunications service providers cross traditional technological and service boundaries, they seek "simpler" regulatory environments that allow telephone companies to offer cable television service and cable television companies to provide alternatives to local telephone exchange service—all under existing franchise agreements, with no additional payment for each new, non-traditional use of public rights-of-way, and no government control to ensure that such use serves the public good.

In recent years especially, industry leaders have urged the federal government to preclude localities from requiring explicit franchise grants for each new use of public property. But Clarence A. West, in "Telecommunications and the Law," argues that legal precedent entitles local governments—state law permitting—to demand adequate compensation for use of public rights-of-way by private telecommunications service providers. Without such compensation, says West, "the federal government cannot preempt or appropriate state and local public property for use by third parties."

In the face of mounting pressures from the telecommunications industry, local governments must strive to protect both their right to regulate private use of valuable public infrastructure and their right to exact franchise fees for that use.

If they fail to do so, they risk, Kenny says, "loss of cable [and telephone] franchise fees, loss of cable public-access channels, loss of regulatory authority over... cable services, obsolescence of [their] telecommunications plant, failure to obtain new technology and services for [their]...communities, and inability to sustain economic growth due to outmoded telecommunications technologies."

MILESTONE

Developing an Information Game Plan: Clark County's Calculated Gamble

Clark County, Nev., is formulating a bold plan for its information future. Home to Las Vegas, gaming headquarters for the world, the County—a North American Free Trade Agreement (NAFTA) corridor and a potential world teleport—recognizes the economic value of a well-planned telecommunications infrastructure. A \$1.6 billion local transportation improvement program will allow the County to plan and install telecommunications lines along with road improvements, and 13 public agencies in the area will cooperate in the development of a new 800-MHz trunked radio network. Through a "County of the Future" task force, the County hopes to glean ideas from local government officials, business and community leaders, academics, and telecommunications industry representatives to develop a unified vision for its information infrastructure. Here are some proposed elements:

- Aggressive management of public rights-of-way, including cable, power, and telephone franchises;
- Franchise fee increase and dedication to fulfilling franchise plan;
- Cable Act compliance (rate review, technical review, hearings);
- Evaluation of regulatory structure, including telecommunications franchise ordinance;
- Adoption of personal communications services regulations;
- Dialogue with the telecommunications industry (through RFI, direct meetings, RFP);
- Government/educational channels (studio, production equipment, technical assistance);
- Institutional network (merged governmental and intergovernmental communications);
- Capacity on the commercial system (bandwidth, channels, wireless airtime); and
- Open platform for easier universal access; more vendor competition; consumer protection (rates and ease-of-use); and better access to medical, educational, financial, and government information.



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On the latter point, Moss is emphatic. "Regulations," he warns, "that restrict communications innovations and that create pricing schemes that reduce the use of telecommunications will inevitably endanger a community's economic development." Viewing the potential relationship between local governments and the telecommunications industry somewhat more optimistically than Miller or Kenny, Moss suggests that cities and counties can (and should) work with, rather than against, the grain of industrial and technological change to harness the power of converging communications technologies.

Some cities and counties have begun to do so, forging strong partnerships with telecommunications companies that safeguard public and private interests and bring social and economic rewards to both. Many more are ready to work with industry and the federal government to develop strong local information infrastructures and a cohesive NII.

MILESTONE

Taking the NII to the Neighborhood: New York City's Public Commitment

New York City has embarked on a model initiative to ensure universal access to the information highway, according to the federal government's *NII Agenda for Action*. "As part of a recent cable franchise negotiation, fiber optic cable was deployed in [the New York neighborhood of] Harlem, where 40 percent of the residents live below the poverty line," the report says. "New York City is exploring the use of interactive video conferencing between community rooms in housing projects and government offices, schools, and New York corporations. These facilities could be used to teach parenting to teenage mothers, and promote mentoring programs between inner-city youth and employees of New York corporations."

considerable technical literacy—scarce in a nation where 90 million adults still lack basic functional literacy. If so many children in America—particularly inner-city and rural America—are languishing in underfunded, ill-equipped schools, hungry for intellectual stimulation, will they receive the education they need to obtain and use information through a high-tech medium? We have said that the NII will eliminate the distance between people and information. But for the millions who lack the skills and opportunities to navigate the information superhighway, technology will only widen that gulf.

Cities and counties can do much to ensure universal access to the riches of the information superhighway. Some use their market power to make sure that NII architecture and standards serve the public good, promoting systems that are easy-to-use, compatible, and open. Others use their regulatory powers to insist that cable television companies whose telecommunications lines occupy public rights-of-way devote channels to public programming. Many have begun to offer free basic communications and computing services to citizens at public-access terminals in local libraries, community centers, and shopping malls. But access without education is useless. To forge truly responsive community information infrastructures, government and industry must invest in education and training that enable all citizens to harness the power of technology, and that prepare America's children—tomorrow's adults—to meet the challenges of the information age.

After all, the NII is about people.

Protection of Social Equity

If information is, in the words of Thomas Jefferson, the currency of democracy, dissemination of information across all sectors of American society—regardless of race, socioeconomic status, or physical ability—is vital to each citizen's political empowerment. As bastions of direct participatory democracy, local governments are especially committed to an equitable NII. They promise an infrastructure that grants every citizen equal access to information and the civic, economic, educational, social, and cultural opportunities information affords.

Local governments must realize, however, that lingering inequalities in other facets of our society may hinder fulfillment of that vision. Using the information superhighway, after all, demands