

**City of Bloomington  
Telecommunications Council**

Business Meeting Minutes  
From November 6<sup>th</sup>, 2008

Common Council Chambers  
City Hall at the Showers Building  
401 N. Morton St.

**I. Introductions:**

Carl Zager, Eric Ost, Suzann Owen

Even with only 3 members present, this does constitute a quorum, so agenda can be dealt with.

**II. Approval of Minutes for September and October**

Suzann motioned to accept the minutes from Sept. and Oct. with minor corrections.  
2<sup>nd</sup> by Eric Ost

Suzann did request that the minutes return to an executive summary, instead of transcribed word for word.

Motioned carried, all approved

**III. Public Comment and Reports**

Carl noted that he wanted to make a revision to the agenda, the revision being moving reports and discussion from the Oct. meeting to the first item under old business.

No public comment

**IV. Reports and Announcements**

**1. BTC Members**

Suzanne – Report on Industry and Governmental Matters

There has been considerable public recognition of cable companies moving analog channels on their systems to digital tiers that require an additional subscription or converter box. Some complaints have been received locally. We have noted the complaints, and given individuals the information of who to contact about the problems, since we have no power to do anything.

She read a small synopsis from the Wall Street Journal about the issue and noted that letters were sent to 11 cable companies and Verizon asking about pricing, and channels being moved. Some channels that have been moved are CSPAN, Channel with the soap operas, and Hallmark. The FCC is rattling the cage a little bit with cable companies on this matter.

Government level

With the election outcome there are ramifications for telecommunications.

1. The State House as a Democratic Majority, with house leader being our own Matt Pierce, Indiana State Representative. Hopefully he will be in a much better position then 2 years ago. He has many concerns, but can now better present those concerns and hopefully make a few changes.

2. At the Federal level, we also have a Democratic Majority in the House of Representative and Senate. There will be ramifications for the leadership of the Commerce Committee which is where the issues with telecommunications rest. Ted Stevens (Alaska) ran for election but race still hasn't be declared. He played a major role in telecom legislation in Congress. There is a lot of speculation as to what this will mean to the FCC with a democratic president, and who the presidential appointments will be.

#### Industry News

The broadcaster's side is very apprehensive. Certain members of the FCC might be moving into leadership positions that will not favor the broadcasters.

State and Federal groups need to focus on legislative level instead of the executive level because that is where all the grunt work is done in telecommunication reform.

#### Eric

We should be cautiously optimistic about the changes that have taken place as the majority/minority positions. It could lead to refocusing and possibly some tangible benefits. I would like to see if we could get facts and figures to back up the benefits that have supposedly accrued from the statewide franchise law because on the local level, the council as seen many negatives.

Carl – Thank you to Justin and Stephanie for the great minutes from October's meeting.

### **2. CATS – Micheal White**

Programming/ Production

(Note: DVD stop a few times during the list of programs and then started again)

- League of Women Voters, County Candidate Forum
- Lotus Music Festival
- Wildlife Habitat Award Ceremony
- Magnolia Electric Company
- Womens International League
- Peak Oil Taskforce
- Tuesday Tales for Children, Monroe County Public Library
- BTOP
- Building for a Green Community
- Several other Candidate Forums
- Cultural Lens Program (TV show) Showcases ethnic diversity
- Candidates of Demand

Big Thanks to Eric Ost for getting this program up and running.

City meetings now have the character generator at the bottom of the screen.

Questions:

Suzann: As CATZ had any further communication with video satellite providers, namely ATT, about carrying channels?

Micheal: No, but have received complaints from those who want the channels but don't understand why they aren't receiving them. We urged them to contact the IURC. I was also contacted by a woman who used to be the former chair for the Allegiance for Communication Media, Bonnie Ridell. She contacted the IURC, and is very involved in this matter. The IURC should be talking with ATT about local concerns and the PEG channels.

### **3. WTIU – No Report**

Suzann: I haven't seen what is on Ch. 17 to see what is being carried.

Carl: Programming has been similar to what is being carried on Ch. 30

Suzann: We need to monitor make sure that the content being carried is following the intent of a PEG channel, because it is available on the lower tier, with no extra cost to the consumer. It is also available without an antenna.

#### **4. City of Bloomington ITS Department – No Report**

#### **5. Comcast – No Representative, No Report**

Suzann: Report from subscriber, Annette Brown, is very concerned about the changes in channels and cost. I did direct her to the IURC, but told her I would mention it so we could note the consumer complaint.

Eric: CSPAN2 was moved. I also had a conversation with a subscriber who lamented about the move of WISH Weather channel. Due to the fact it is move superior, it got moved to an upper tier. Another subscriber was concerned about the cost of fees going from \$89.00 to \$110.00. It is not clear what prompted the increase. It may have to do with introductory specials rates expiring.

Suzann: I did note that there had been a decrease in available programming with the move of channels, and to date nothing has replaced those channels.

#### **6. AT & T – No Representative, No Report**

### **V. Old Business**

#### **1. Reports/ Discussion from October Meeting**

Carl: 3 critical issues to be addressed right up front.

1. Representative Matt Pierce drew our attention to the city and county needing to file a Request to continue institutional network for schools and government buildings.
2. We need to address in some manor the issue of PEG carriage and PEG compliance on the part of the cable providers. Both the channels that are and are not carried, and if and when those channels are carried their quality and location on the service.

Find out if we can approach the legislature with an idea that we need legislation to require The video service providers to provide local emergency overrides to the local government Agencies.

3. We also need to find out the role that local government plays in relations between Subscribers, providers and the IURC. There is no clear path for us to take. The path for a subscriber is torturous and none of it is coordinated in the legislation.

Carl: How do we proceed?

Suzann: Start with the first issue and make an action plan for the city, because we can't influence what the county telecom council does. The city needs to take action on filing for continuation of the institutional video service.

#### **Issue #1- Continuation of Video Service for public buildings**

Carl: The statute that Matt referred to was IC 8-1-34-29. The law says that video providers only need to supply basic service to government buildings and schools for a limited period of time. This term expires at the end of the year, unless requested to continue. A motion to have the city make that request would be in order.

Suzann: Matt would you like to speak to this, and what would you recommend?

Matt Pierce: I think it would be best for the city to request that because it has been going on for as long as I can remember. If service is lost to those buildings and schools then the hardship falls to them to have to buy the service.

Eric: Does the law allow an entity that is currently receiving service or wishes to receive that video service to apply for service from a new video provider?

Matt: The statute says if that service is to continue then the cost is shared between all the providers for that area. (Comcast and AT&T)

Suzann: Does this need to come thru the city council or city legal?

Matt: City legal or a letter from the mayor making the request would be enough.

Eric: If there was a new school, that school could request a different service?

Matt: That is not clear! It is not addressed directly.

Suzann: I move that as chair, you request the mayor's office to place a request for continued institutional video service in our community. Then the mayor can then assign that task to city legal.

Carl: I need clarification before a second. Who do we make the request of?

Matt: I think you make it to Comcast because they are providing the existing service. Then Comcast turns to AT&T and says we are already doing this but under the new law you have to help with the cost.

Carl: Motion on the floor

Eric: 2<sup>nd</sup> the motion

Carl: Comment: This covers the city but Eric's question about new schools brings about an interesting question. The schools in the city are part of a larger school corporation which is not necessarily inside the city limits, which is Monroe County. The school district is partially in the city of Ellettsville. We have the City of Bloomington Telecom council, Monroe County who has a franchise, and the City of Ellettsville that also has a franchise. We need to make sure that this message gets passed on to those franchises, by help of the county commissioners (Iris Kiesling)

Any discussions, motioned passed

## **Issue #2 – PEG Carriage and Compliance**

Carl: Discussion last month was little murky on whether or not the IURC actually has any authority to compel compliance from AT&T on the PEG issue. The only having for dealing with this issue is thru the courts.

Eric: As Matt outlined perhaps there is a process of revoking their video certificate. The IURC is the one who accepted the application. They are responsible for reviewing, and ascertaining whether all terms are being met. Under that responsibility the IURC has the standing to revoke the video certificate. They put the video service provider on notice, and then take action if points are not met. The case could be made that it is an unreasonable burden to expect individual subscribers to initiate a court case. When the state government vacated the rights and responsibilities held by the franchise authority then they assumed the responsibility to see that the law was carried out. The IURC is the group invested with that mission.

Carl: The thing I remember Matt saying was that the city needed to take steps to get the IURC to say whether or not they will take authority or we have too.

Eric: The law that gives IURC its mission says a government unit does have standing to initiate a complaint.

Matt: If you want to address it most directly you will have to go thru the courts, because it says the exclusive jurisdiction for dealing with the PEG issues is thru the courts. For whatever reason the legislature wants PEG issues handle in court. A reasonable reading of the statute is that a video service provider that has this certificate of authority, signed that it will follow all state, federal, and local laws that lead to the cable service. I think you can go to the IURC and say this particular provider is not providing PEG, which is required by state law, therefore they are not in compliance with their authority, and you need to do something about that. They might say, we don't have the authority to order them to offer PEG, because legislature said to go to court but we could tell them because they are not offering PEG, they are not in compliance and their video certificate could be revoked. Someone has to formally ask or request to get the complaint filed.

Eric: It is a catch 22. If you consider the context which the IURC is granted existence by the state law, they have the rights and responsibilities in verifying that regulations are being followed. Then look at section 26, that the courts have exclusive jurisdiction, it is written in more detail. If you aren't complying with the law to begin with, how can you say that you have to go to court to decide on whether a fine detail is not being met? The whole point is whether they are living up to the video certificate.

Matt: You have to do the legal thing. The legislature says to order a franchise to offer PEG or that PEG isn't being used in the right way you have to go to court, but a reasonable person can read the statute to say that the IURC has the job, making sure the franchise holder is following all the laws. What we have to find out is how the IURC interprets the statute.

Carl: Is it clear what entity needs to go to court? If we follow the process you are trying to lie out, this particular provider is not supplying the called for PEG service. We believe the IURC should review the AT & T issue and if found not be in compliance they should take action. Whether the action, being revoking the video certificate or the IURC bringing the lawsuit against them.

Eric: I think if we ask the IURC to determine whether they are in compliance or not; is leading to what you are saying. What is required under the law and are they willing to represent the citizens of the State of Indiana.

Matt: If the IURC were willing to say that they are not in compliance with the law, because you are not offering PEG and therefore we will revoke your certificate of authority because you have not followed the law to keep that. AT & T will likely go to court and sue the IURC, and say to the court of appeals the IURC has not properly interpreted the law, they don't have jurisdiction over this, this is a matter exclusively for the courts. I think the legislature viewed it being a franchise authority.

Eric: This also includes emergency alerts. We still aren't sure if AT&T, after their time limited waiver to not offer alerts, are now actually offering these alerts.

Matt: That is another federal law that must be followed. So that would also be grounds for the IURC to look into compliance.

Eric: What I don't understand is the federal law set up a system whereby entities like the city would enter into a franchise process. Any video service provider would have to go to the franchise authority and negotiate a franchise agreement. The state law with its passage vacated that opportunity. If the state is not going to protect the rights of the franchise authority then what's happening. Things are in complete disarray. There has to be a definitive process. There certainly is a definitive process for gaining rights to offer video services, but what are the repercussions.

Matt: The legislature would there doesn't have to be anything. It's what ever the legislature lays out.

Eric: Can the state take away a right from the City of Bloomington, and say we are just going to forget about all of this?

Matt: Yes, the franchise right is actually vested in the state. The City of Bloomington only exists because the state legislature said you could, and we tell you very precisely what you can and cannot do. The FCC just basically says if someone other than the federal government is going to do franchise agreements here are some perimeters we want you to follow, this is basically the 1984 law. Then it was up to the state whether they wanted to do it for everyone, or just have the local people deal with it.

Eric: I motion we recommend to the city of Bloomington to ask the IURC to state the facts that AT&T is not offering PEG Channels and that there I no evidence that they are fulfilling requirements for emergency alerts.

Carl: In making the request to the IURC to determine whether AT& T is in compliance or not with the PEG channels and overrides to we state the facts that we know of.

Matt: The lawyers who draft the complaint would say we believe they are not in compliance with the law, and they might include an affidavitate from the communication center that there is no EAS.

Eric: Is the question whether they are fulfilling requirements different from whether the IURC has jurisdiction to enforce the requirements if found that they are not in compliance.

Matt: It's a two step process, because first the IURC must decide whether it is has jurisdiction or the power to make a judgment, and that could be litigated. Once the IURC decides it has jurisdiction, then they decide the facts of the case.

Carl: The point of this exercise is to get a record that Matt can take to the legislature.

Suzann: It looks like we will be requesting action from the mayor's office to support both our PEG inquiry and EAS notification. How do we make certain this becomes a priority in the mayor's office? We have had things not move thru to completion.

Carl: We do what we can do.

Eric: Does the telecommunications council have standing to go too directly to the IURC and ask these questions?

Matt: Probably not!

Eric: (to Iris Kiesling) Has the county received any franchise fees from AT&T?

Iris: When you send this request out to the mayor's office, I suggest you copy the request to the County Commissioners and Ellettsville Town Council as well. This way we can collectively make the request together. In answer to Eric question, I know we have received some from Vontage but I am not aware of any from AT&T.

Micheal White: AT&T is sending some revenue to the county it is small, \$750.00.

Carl: The recommendation is to request of the office of the mayor that a compliant be filed to the IURC, stating the video provider AT&T is not in compliance with the state law in regards to PEG channels and not in compliance with federal law in regards to EAS. We request that the IURC investigate that compliant and take the appropriate action, possible action being the revoking of their video certificate. The letter then be copied to the County Commissioners, and the Ellettsville Town Council

Chair will entertain a motion:

Eric: I motion that we file a request with the language just stated by Carl.

Suzann: 2<sup>nd</sup> the motion

Motioned passed

Suzann: Next month we should have our most recent quarterly franchise fee payment. We need to make sure we get that with our packet.

**Continuation of Issue #2. - Emergency System Override (EAS)**

Carl – Jeff would you share with us your thoughts, and feeling about the feature we have with Comcast ( the old Insight program) giving you the ability at Central Dispatch to notify the community of local emergencies is one you find valuable.

Jeff Schemmer – Communication Manager for Central Emergency Dispatch City of Bloomington  
Is it a benefit to the county to allow us to activate the cable override? It is important! Sometimes it can be faster then waiting for the state activation. There is a delay every time the state activation it's a step. We have a nightax (sp?) terminal where alerts are sent directly from the national weather service, plus a weather radio that we take cue's from as well. By having an override, we can get alerts out faster, before even being issued by the state. Sometimes when the signal hits from the state we are already in the process of issuing an alert.

Suzann: Does AT &T only have to issue national alerts?

Eric: No state too

Jeff: Local activation is beneficial enough to where we have been in talks with WCGL because they are the local distribution point. We are sitting it up so central dispatch can override the radio system was well as video. Comcast has worked well with us in the past, but they are restricted with some of the demands we want from them. One big concern is the cable override that says, "Emergency Alert" when it is only a test. They have no way of changing the header. At the state level they need to do an audio. The cable override is supervised by the Indiana Association of Broadcasters. Among the rules is a test has to be conducted in both audio and visual.

Matt: as more and more people begin to watch digital channels, I'm wondering how the alerts are going to get to them.

Jeff: With digital there are things that haven't been looked at. We continue to look for bugs and what the variables are. At the state level, they do not realize that there is a problem with EAS.

Matt: The broadcasters say the current system of relaying the state/federal EAS from station to station is very slow. It can take up to 40 to 50 minutes for it start and get thru the primary stations. They want to put together a system that triggers everything at once, either thru satellite delivery or over the internet, but that requires money and investment into a satellite system. The broadcasters want the state to pay for it, instead of their association. So it has turned into a study committee.

Carl: How can we (the city and county) influence the legislature to do something about the override issue?

Matt: I think you have to get the Indiana association of Counties, and the Association of Cities and Towns to make this apart of the legislative agenda. The city council could pass a resolution and send it to IACT and follow up with phone calls to people who serve on this committee. They decide what the legislative agenda is going to be, or the mayor could just call up and say this is a big issue, and lobby the committee. The county

commissioners could do the same with the county association. The goal is to get this committee to designate the override as a key issue that needs to be addressed for the session. Then in turn lobbyist go to the committee hearings, and say on behalf of the cities, towns, and counties in Indiana this is a problem and needs to be addressed.

Suzann: With the creation of the state franchise, the cities, and towns association go into bed with AT&T. We were hoping they would be raising some of the same questions that we are. It was part of AT&T lobbying that they had gotten them to go along with them.

Matt: You have to request that the mayor and city council urge the association of cities and towns to make the establishment of local emergency overrides law one of their priorities for the next legislative session. Then communicate to the county commissioners that they do the same.

Suzann: Jeff, do you know how widespread are cable overrides in the state of Indiana?

Jeff: No, I don't. There is a concern though.

Suzann: What I'm concerned about is there enough concern out there to support this?

Jeff: I can send an email to the Indiana members of NEMA ( National Emergency Members Assoc.) and ask how many of them have a cable override.

Carl: What is the timeline?

Matt: The timeline to have legislation drafted is the middle of December. The legislature will go into session the January 1<sup>st</sup>. Deadline to introduce a bill is probably around January 18<sup>th</sup>. The earlier you can have a bill introduced the more likely you are to get a hearing. Another possibility, if someone is bringing forth the bill for the broadcasters EAS system that could be a vehicle in which the bill could be amended to include the ability of local government to have an emergency override system.

Eric: Would this result in a modification of the video franchise law?

Matt: Yes, that's where they would have to put it. Broadcasters are only concerned with broadcast radio and television. They are just trying to comply with federal EAS laws. As far as overrides are concerned, the legislature would see we could just add it in, put the amendment in the logical place within the code book, and that would be in the video franchise law area.

Eric: Does that then lead itself to discussion of these other areas?

Matt: Yes, it's possible. If the bill just stays emergency overrides it has a better possibility of getting passed, by adding more you create more opposition.

Carl: Give some technical issues brought up and referred to, I can see opponents focusing on those technical issues as reasons we don't want to do this.

Matt: They absolutely will! There are provisions in the broadcasters bill about overrides, but AT & T response was that they did not have the technical ability to do overrides in certain cities or communities because they have one giant digital head somewhere else in a different universe. They would have to completely change their network architecture to allow these localized interruptions of service to warn people. You're asking something that is not technically feasible.

Eric: Do they do local ad inserts? If they have that technology they can do it.

Carl: Can the argument be made? Where does this leave us in terms of our approach?

Matt: If the legislature hears from the cities and counties that this is a concern, they will somewhat discount the technical arguments of AT&T.

Carl: As chair, I will entertain a motion.

Eric: Who do we make a recommendation to?

Suzann: It's a matter, do we take the initiative with a set organization, cities and towns, counties, Jeff organization. We put together a consortium of people who all have a common interest in this. I think to do that we need to get county telecom council involved. We need to form a task force. I think you need to appoint a task force to develop an action plan, and to start the action. It needs to include people from the county, city, telecommunication council, and perhaps we need to have someone from city government.

Carl: Matt and Jeff, do you want to work with this group?  
Both answered yes.

Carl: Task Force to include:  
Jeff Schemmer, Matt Pierce, Margaret Joseph, Keith Cline, Fred Risinger,  
and a representative from the telecom council

Eric: Goal is to draft a plan or a bill?

Carl: What I heard Matt say we need to request action on part of the city and the county toward their state associations.

Matt: Don't worry about specifics. If you just figure out the basics, core issues, *the ability or right of each local community to have an emergency override system*. Then the task force job would be to decide who is going to talk to what county and city officials to get them to agitate the associations to put that one sentence as their priority. If you can get those two things done before session in January, then everyone having emergency override would be on the official list.

Carl: I motion we appoint a task force to develop an action plan. The task force to include people from the city, county, government representative, city representative, and telecommunications council, the purpose to get something started with the mayor and county and get their discussions started with state associations to approach legislature with the need to have local overrides available to local government.

Eric: 2<sup>nd</sup>, all in favor motioned passed

Carl: All remaining items under Old Business have already been somewhat touched upon. Do to time move on to New Business

**VI. New Business**-None introduced

**VII. Adjournment:** Motion made by Suzann to adjourn.

Next Regular Meeting  
Tuesday, December 2<sup>nd</sup> 2008 7:30pm in the  
Common Council Chambers in City Hall at the Showers Building  
401 N. Morton St.

Submitted By:  
Stephanie Jachim  
11-24-08

