

**DRAFT**  
**MINUTES OF THE**  
**BURNSVILLE/EAGAN TELECOMMUNICATIONS COMMISSION**

**April 10, 2002**

**BURNSVILLE CITY HALL, 7:00 p.m.**

**CALL MEETING TO ORDER**

**Members Present:** Bill Raker, Secretary/Treasurer, Burnsville  
Joel Alwine, Burnsville  
Bob Cooper, Eagan  
Alan Miller, Chairman, Eagan  
John Pierce, Burnsville  
Paul Ryan, Vice-Chair, Burnsville  
Maggie Jensen, Acting Chair, Eagan  
Jon Villella, Burnsville  
Kurt Hicok

**Members Absent:** Bruce Berrens

**OATH OF OFFICE**

Chairman Alan Miller, Commissioner's Bob Cooper and Kurt Hicok read and signed the Oath of Office, led by Tom Creighton.

**ADOPTION OF AGENDA**

Request by Tom Creighton for addition of Item C. Order to cease and Desist to be added under Item VIII. New Business.

**Motion 04.10.02.01 Adopted.** Motion by Commissioner Alwine to Adopt Agenda as amended.

## CONSENT AGENDA

Commissioner Cooper requested typographical error to be fixed in paragraph 1 of New Business.

**Motion 04.10.02.02 Adopted.** Motion by Commissioner Cooper to adopt the Consent Agenda as amended.

## VISITORS TO BE HEARD

There were no visitors to be heard.

## REPORTS

Administrator's Report: Tom Creighton said that his reports are all in the packet. He also informed and clarified for the Commission their budget for conferences for 2002. Both councils have agreed to a total budget of \$1500 to be used for conference attendance at the discretion of the Commission.

Chairman's Report: Chairman Miller referred to his written report included in the packet. He conveyed that the Duluth Tourism Bureau had confirmed a package of \$137 for meals and one nights lodging for the 7/22-23 MACTA Conference. This fee does not include the Conference Fee. He recommends attendance to hear the featured speaker, Tom Creighton. Chairman Miller also reminded the Commission about the May 3<sup>rd</sup> MACTA Luncheon, and requested that they make note of their desire to attend on the sheets provided by Teri Bowar, Staff. Chairman Miller encouraged Commissioners to attend the Access Appreciation Awards Ceremony to be held 4/12/02 at Burnsville/Eagan Community Television. He will not be attending due to previous commitments.

ATTB Report: Kathi Donnelly-Cohen referred to the Call Center reports included in the packet. She made special note of the fact that February and March saw an improved 95% - 96% in calls answered in under 30 seconds. She will have a more detailed report for the next meeting. She also explained the 30 day lead time letters that have been or will be sent to Burnsville residents informing them of the work being done in their neighborhoods to achieve the upgrade to one way digital. This will allow Burnsville and Eagan to have the same coverage. Subscribers to DSL will be notified by email when 2 way is available. She explained the "1 week to Broadband" letter that is sent to all residents and an automated phone call that they receive the night before.

Commissioner Vilella asked what the call volumes were caused by and Donnelly-Cohen explained that the main contributing factors were additional CS reps and weather. She answered Commissioner Pierce's questions by explaining the challenges with the domain change name. Commissioner Pierce also questioned when the rate increases would happen and Donnelly-Cohen stated that rate changes will be in July, that 1 way to 2 way

internet will be automatic, and that there will be no service call required and no difference in the rate increase.

Donnelly-Cohen also said that she does not have the info or flyer with her to discuss the telephone service, but that they are working on that with Qwest by August and are in the process with Frontier.

### **OLD BUSINESS**

Franchise Fee Audit Report. Tom Creighton explains that the Franchise Fee is still in the hands of the Washington/Ramsey Commission. Numbers are still being worked out and they will report back to the Commission when that report is complete, as well as after the “sample community” study is complete, probably at one of the upcoming meetings.

Adoption of Rate Order. Reminding the Commission that they had been one of the first out of the block on this issue, he explained that there was concern in a couple of areas. One being that ATT Broadband had raised concern about filing national information on converters and other equipment expenses, and another was about the MOU and PEG fees.

Explaining that the MOU was basically a guarantee that at the time of renewal we would receive funds for government and community programming and we were entitled to capital fees but not operating fees. Mr. Creighton stated that when the MOU and PEG fees were implemented, there wasn't a corresponding rate reduction. The accountant has reported that when PEG fees were received, they began passing these fees / expenses on, and he believes that the Basic Rates should be reduced since they no longer had to fund fees out of the Basic Rates. The issue became, “what was the deal that was struck in the Memorandum of Understanding (MOU)”.

The issue wasn't clear and a negotiation with ATTB was begun. Addressed in this negotiation was:

1. The equipment rates (reflected in packet on page 17). The question being that the company can record and charge for the actual charge for equipment. The got modified when the company requested that they be allowed to report nationally, where they take rates from across the country and divide by the number of users.

Once we got our new digital converters paid for, under this system, we would be required to continue paying for other equipment across the country, and this would result in cross-subsidization, a real concern for the accountant.

The question on this is the validity of the national filing mechanism being used and it's impact on us. The legal risks involved were:

- a. In order to challenge ATTB, we would have to take on the entire Federal Filing/ FCC system.
- b. Locally, if we lost, such a challenge would require that our entire MOU would be on the table and we could lose our agreement to fund community and government programming for fifteen years.

The results are that ATTB agreed to reduce their Basic Rates by 8 cents.

2. As to the converter issue - they agree not to charge these systems anymore than they charged on average across the country (+/- 5 cents). In real numbers, this meant that the old charges of greater than \$6.50 were reduced to \$4.70. This ended up saving our subscribers about \$2 per converter monthly. This is in the report on Page 18, Paragraph 5.

The MOU was left intact by agreement, though it was agreed that there was a dispute. ATTB explained that if they had a \$20 rate and in that rate there was a \$1 PEG fee and they were allowed to pass it through as a \$1, when they lowered their rate to \$19, they would not get anything out of the deal. Words would change, but ATTB would not gain anything. Considering that there was no dispute that the company would not have to pay PEG fees for the next 15 years, and realizing that claiming “No Dispute” would mean no involvement by the FCC, it was decided not to pursue in order to leave MOU intact and the benefits of the Operating Fee agreements.

Creighton stated that this same deal has been extended to all of the other ATTB systems before you and has been approved by all of them. He explained that the Commission needs to decide tonight if they accept or reject, but they need to understand that they would fight alone. He feels it's a good deal, hard fought, and he recommends adopting the Rate Order.

Chairman made a motion to adopt the Rate Order.

**Motion 04.10.02.03 Adopted.** Commissioner Jensen moved that the Rate Order be Adopted.

Chairman Miller commended all involved and signed the Amended Rate Orders.

### **NEW BUSINESS**

ATTB/Comcast Merger: Tom Creighton stated that this is a huge merger, that it has begun, and that forms have been received. He further explained that there is a disagreement as to what we can and cannot ask and they are working with Garth Ashpaugh, who is representing many in this state and the country.

Due to the difficulty in getting answers, being told that it's not relevant information without substantive data to support such a theory, Mr. Creighton feels that if cooperation doesn't improve, the Commission should meet again in May to address the issue of stopping the analysis and, subsequently, the transfer. He reiterated that it isn't ATTB or Comcast's decision to tell the Commission what they do and do not need to know. This has some serious implications for the Commission and the Cities.

The franchises require that the company will be responsible for all City/Commission expenses in analyzing these transfers, and they always have. However, because there was rumor that some companies may be reading the Santa Cruz decision, which is under appeal and does not apply, and refusing to reimburse Cities.

If that happens, we will shut down the analysis, and we will recommend that the Commission deny the Company's request for approval of the transfer of ownership

Miller asked if the 8<sup>th</sup> Circuit has ruled, and Creighton responded that the matter is still in the 9<sup>th</sup> Circuit Court.

Creighton also stated a decision has to be made by July, so if necessary, a June meeting will be the last opportunity to deal with this issue.

Commissioner Raker asked what is the worst case scenario if the transfer is denied. Creighton explained what he sees as the four possible outcomes:

1. The Commission will not be able to work this out.
2. If enough cities turn it down, they may just go ahead and close the deal, figuring out the rest later.
3. The Commission can be sued on the basis of Unreasonable Denial.
4. The Commission can be sued on the basis of No Rights for Reimbursement.

#### Discussion regarding the FCC Declaratory Ruling

Mr. Creighton summarized the ruling. Most significant to the Cities is the part of the ruling which purports to state that revenues for cable modem service would no longer be considered cable services and therefore not subject to the franchise fees. The Cities stand to lose significant monies in the future. A national debate is currently going on regarding what can be done. Mr. Creighton will keep the Commission and the Cities informed.

Chairman Miller asked if there was a plan to appeal in order to request appellate court demand escrow account. Creighton stated that he will be notifying the company that it may not implement the ruling until the appeal process has run its course.

Mr. Creighton also recommended that the Commission make a strong statement supportive of anything NATOA can do to fight it.

Dave Seykora of ATTB stated that they are wrestling with the rules. He stated that the FCC ruling is contrary to what they advocated. Chairman Miller asked if this was an administrative ruling. Mr. Seykora stated it was, but that the US Supreme Court recently deferred on this to the FCC. Seykora also stated that they had stopped collecting fees as of 3/15/02 due to the FCC Order with no specific response from subscribers.

**Motion:** To inform the Cities that an FCC Declaratory Ruling has terminated the collection of franchise fees in our area by determining fees are not due on Information and that an appeal and a response to the FCC's Notice of Proposed Rule Making was being coordinated by the National Association of Telecommunications Officers and Advisors.

Commissioner Raker moved and Commissioner Cooper seconded.

**Motion 04.10.02.04 Adopted**

Cease and Desist Order. Creighton explained about an item on an ATTB handout that informed subscribers (in very small print) that subscribers' disputes would be handled through binding arbitration, that subscribers do not have the right to court resolution, only to stop taking the service in matters of dispute, and that to continue service after the date of the handout was to indicate agreement to the terms by the subscriber.

Creighton stated that this changes the contractual relationship while notice was buried in a bill stuffer, denying judicial remedy for subscribers, leaving them in an unlawful "take it or leave it" situation. He also gave the example that ATT Telephone had taken similar action in California and a court deemed that unlawful.

Dave Seykora spoke to this issue, explaining ATTB's position that the arbitration clause would get subscribers faster and fairer remedies than the old way. Chairman Miller responded that that clause usually is utilized successfully in a business to business contractual relationship, not one between a business and an individual. Seykora offered to provide information on the validity of their policy and is requesting no cease and desist order.

Seykora and Kathi Donnelly-Cohen gave explanation as to font size and mailing type that had gone out to subscribers and entertained questions from the commissioners. Vice Chair Ryan stated that he remembered reading about this in his bill at home and not understanding it as it had just been explained. He believes this violates the Franchise, and possibly state law. Chairman Miller stated the Commission's responsibility to protect subscribers.

**Motion:** To instruct legal counsel to issue to ATTB a cease and desist order regarding the binding arbitration process issued to subscribers.

Motion by Ryan, seconded by Price.

**Motion 04.10.02.05 Adopted**

**INFORMATION ITEMS**

Chairman Miller spoke of his question as to the legality of obtaining sponsorship for access programming. This was addressed in the BECT Operational Use Policies, which was included as page 26 in the packet.

There was no Member Cities Report. Burnsville Communications Coordinator Jim Skelly was introduced and verified that there was nothing additionally to be reported by Burnsville.

The Commission was asked to review the Directory that was on page 29 of the packet and get any changes to Teri at the end of the meeting.

Commissioner Miller called attention to the invitation to the Awards Celebration occurring on April 12<sup>th</sup> at Burnsville Egan Community Television. He also encouraged all to attend.

Creighton asked that the commission pencil in the possibility of a June 26<sup>th</sup> Egan Meeting that would take place possibly instead of or in addition to the May meeting to deal with the issues currently on the table.

Commissioner Cooper made a motion to Adjourn. Seconded by Commissioner Hicok.  
**Motion 04.10.02.06 Adopted.**

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Date

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Bill Raker  
Secretary/ Treasurer