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There Is Life After State Cable Legislation Passes

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There Is Life After State Cable Legislation Passes

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In the small, rural community of Paris, Illinois, citizens are no longer emphatically complaining to City Hall about their cable television service. Paris, with a population around 9,000, is the Edgar County seat and is 19 miles from Terre Haute, IN. This is a community focused primarily on manufacturing and farming for employment and providing a quality education for children. Many residents work in Indiana, but choose to live in Paris. Because of the proximity to the University of Illinois in Champaign-Urbana, residents are avid followers of Big 10 Conference sports and local news from both Illinois and Indiana.

Initial years

The first cable franchise for the City of Paris was granted over 35 years ago. It has since been renewed, extended, and transferred several times. The original cable provider, Cardinal Cable, introduced Paris to cable technology and provided service for over 20 years. The initial franchise agreement was a

simple document that worked well for all parties as the cable system was constructed and residents began to subscribe to cable service for the first time.

The first formal franchise renewal took place in the mid 1990's resulting in a voluminous document that required its own hand cart.

However, the arduous negotiations that took place over a long period of time resulted in substantial benefits and burdens for the community. Residents in the community obtained a new upgraded cable system with many more channels of programming, but also faced substantially higher cable rates to pay off the system.

After the initial franchise renewal was completed, the system was transferred multiple times before finally being acquired by Charter Communications. The city leaders felt that with each transfer of the cable system additional debt was added to the system and the quality of service was decreasing, along with the customer base.

Renewal with Charter

In 2005, Charter was the franchised cable operator in town and the franchise was once again up for renewal. As part of the franchise renewal process, the city retained a consulting firm in 2007 to conduct a community needs assessment to determine the city's future cable-related needs and interests and to conduct a technical review of the cable system. The needs assessment consisted of interviews, public input meetings, review of local programming needs and Charter's compliance with the terms of the existing franchise. In the technical review and assessment, the system was found to be in need of upgrades and residents and local businesses expressed a strong need for coverage of local area news and sports and inclusion of the Big 10 Network on the cable system to follow University of Illinois sports.

In April of 2007, the consulting firm and the city conducted numerous interviews with city departments, local schools and businesses, and the local medical community. In addition, two public input meetings were held to gather additional information on future cable-related needs and interests. A number of needs and interests were expressed in the

interviews and public meetings including:

- Having technical improvements made to the cable system to take care of reception issues, frequent outages, and channel quality issues.
- Having more "localism" in the cable television system and from the cable television operator.
- To see the local access channels continue to be available and to expand the capabilities to interact on the cable system.
- To see improved customer service.
- A need for greater connectivity and increased bandwidth capabilities in the operations of residents, schools, and businesses.
- Having capabilities for digital, HDTV, and enhanced services and specific types of programming on the cable system.

The consulting firm then conducted an inspection of the cable system in Paris during July of 2007. The technical review included inspection of the headend, electrical testing of the system, and inspection of a sampling of the physical plant. The primary focus of the review was to determine if the cable system operated by Charter met the terms of the technical requirements in the Cable Television Franchise Agreement, and to determine if the network performs at or above the minimum performance levels defined by the Federal Communications Commission (FCC).

While the system technically met or exceeded the FCC minimum performance criteria for cable systems for the signals, the examination of the picture quality of the individual cable channels at the Paris headend and at selected test points within the community did find conflicting results that needed to be repaired.

In addition to system testing, the consulting firm inspected the physical cable plant in the public and private rights-of-way. The existing cable plant was found to be generally in good condition in relationship to the power and telephone utilities in Paris;

however, it was determined that there are no two-way advanced services, such as video on demand (VOD), telephony, and high-speed data (cable modem) capability built into the system. Additional fiber capacity, headend improvements, and electronics would be necessary to include this capability in the system and make it comparable to other cable systems in the state. In addition, several locations were found where grounding of the system or a subscriber drop was an issue.

Once Paris identified its cable-related needs and interests, it was time to begin discussing these with Charter.

Negotiations

At this point in the process, an attorney was retained by the city to assist in negotiating a new franchise based upon the findings of the needs assessment and technical review. The city was also determined to complete a franchise fee audit of the system to verify the accuracy of franchise fee payments to the city.

To complicate matters further, as negotiations commenced Charter announced the proposed sale and transfer of the cable system to Buford Media Group, LLC - doing business as Avenue Broadband Company (ABC).

As it turned out, the timing to complete the transfer of the system from Charter to ABC motivated all of the parties to resolve any pending issues regarding franchise compliance, complete the review of qualifications of ABC and negotiate a new franchise which ABC would be governed by upon close of the transfer. While all of these tasks were underway, the state of Illinois was also putting the finishing touches on new state legislation to modify local franchising authority over cable operators. At times it seemed as though the city may be left with nothing to show for all of its efforts if the State were to adopt a simple "opt out" clause as was the case in many other states where legislation had been adopted.

Despite these hurdles the city and its team worked to resolve all of the pending issues and in one council meeting brought the city three documents for consideration: 1) a settlement agreement which resulted in the city being paid \$30,000 to resolve outstanding issues under the prior franchise; 2) a transfer report and resolution explaining the transfer of the system from Charter to ABC and approving the transfer subject to acceptance by ABC of a new franchise; and 3) a new cable franchise to govern the operations of ABC over the next 10 years. The city adopted all three documents and shortly thereafter the transfer was completed and ABC executed the new franchise.

New Franchise

The new franchise agreement requires ABC to immediately upgrade the system to provide high-definition capabilities, high-speed broadband cable modem service, as well as digital phone service. The franchise calls for news and information channels from both Illinois and Indiana, dedicated channels for local governmental and educational programming (a significant improvement from the prior franchise) as well as additional capital support of \$.50 per subscriber, per month to offset the capital costs associated with such local programming. The franchise required new two-way connections for local program origination and also incorporated several of the provisions from the new Illinois State law with respect to customer service obligations and related items. The franchise contains a one hundred thousand

dollar (\$100,000) letter of credit for the first two years of the franchise term which the city may draw on should ABC fail to comply with material terms and provisions of the franchise, particularly the system upgrade commitment.

At many points it seemed as though the city would never reach its goal of improving the cable system for the benefit of its residents. Through assessments, audits, renewal negotiations, transfer reviews and legislative changes, the city held firm on its core issues. In the end, Paris was rewarded with a franchise that meets its goals and also allows the new operator, ABC, to successfully compete in the marketplace. The city is hopeful that a successful cable system will continue to play an important role in providing community infrastructure.

As shown by the experiences of Paris, perhaps there is still a role for local regulators despite the wave of state franchising and reduced regulatory authority. ■

Paul Ruff is currently the City Administrator in Paris, Illinois and has served a total of 19 years as the Administrator in both Paris and Mt. Zion, Illinois. As Administrator he has worked with many issues including the cable franchise renewal. His personal philosophy is that cable communication is an important part of community infrastructure and economic development.

Brian T. Grogan is a shareholder with the Minneapolis law firm of Moss & Barnett practicing in the firm's communications and business law

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Cheryl Johnson has over 20 years of experience in working for or consulting to local governments, utilities, consortiums, and non-profits in the areas of telecommunications and technology. She has served as the communications director and communications technology coordinator for numerous cities and intergovernmental consortiums, and is a member of several local government organizations. Cheryl is the former Interim Executive Director of the National Association of Telecommunications Officers and Advisors (NATOA), a national trade association representing local governments and the elected officials and staff who oversee telecommunications. She was also a founder of IL NATOA and served as the President for nearly seven years. Cheryl was honored with a Life Membership at the annual conference in Portland in 2007. She consults nationwide to clients on broadband and other technology matters for Columbia Telecommunications Corporation (CTC), and manages the company's Minneapolis, MN office. Cheryl has a degree in Mass Communications from Western Illinois University.