

Citizens Cable Advisory Committee  
Minutes of Meeting  
WRAC Studio  
Willmar, Minnesota

March 30, 2017

The Willmar Citizens Cable Advisory Committee was called to order by Councilmember Fernando Alvarado. Members present were Fernando Alvarado, Julie Asmus, Larry Fujan, Susan Mattson. Members excused were Jodi Wambeke and Linda Mathiasen. Others in attendance were Local Access Coordinator Rudy Vigil, Information Systems Coordinator Ross Smeby, and Cable Attorney Brian Grogan, with Moss and Barnett who participated via teleconference.

The new Council Liaisons to the Committee, Fernando Alvarado and Julie Asmus were introduced to the Committee. The Committee reviewed the franchise draft from Moss and Barnett. A conference call was made to Cable Attorney Brian Grogan with Moss and Barnett. Mr. Grogan explained the past history of the franchise with Windstream and Charter and explained the current status of the franchise renewal to the committee.

During the conversation he said that Windstream will not renew the franchise with the City and would not be paying the City franchise fees any more. The existing Windstream facilities in the City right of way should be removed by Windstream. He said that the City should try to take an effort to ensure that the utilities are removed. Councilmember Fernando asked what the final payment from Windstream would be and Mr. Vigil said that the payment would be 250 dollars. Councilmember Asmus asked who ensures that Windstream has removed all utilities and Mr. Grogan said that it is the City's obligation to check on this. He also said that there would be minimal equipment to remove since most utilities are still using voice and internet. The equipment to remove would mainly pertain to overhead wires and pedestals. He recommended having a letter sent out that asks Windstream what their plan is to remove their equipment. Mr. Vigil notified Mr. Grogan Windstream would be removing the fiber from the studio to their head end and from the high school and school board to their head end units. Also the City has a bond from Windstream that can be retained for 30 months if they have not fulfilled their obligation to remove the equipment.

Mr. Grogan notified the Committee that Charter Communications was seeking franchise renewal with the City and that there are a fair number of issues with Charter at this time. The first issue was a franchise fee review which is typically done in the event of a franchise renewal. The fee review was done by Moss and Barnett. The review was sent to Charter and Charter disputed most of the findings in the review which concluded that they had underpaid franchise fees to the City. The City has exchanged letters with Charter and neither the City nor Charter has changed their position. The question at this point was how much the City will spend to recover the unpaid fees. The unpaid fees came to an amount of 8,000 dollars and the over collected dues from subscribers was in the amount of 10,000 dollars. The audit was for the years 2013 and 2014. Charter would not provide proof that they had paid back the subscribers. The hope is that this can be settled as part of the franchise renewal since it may cost the City more than the unpaid fees are worth.

Mr. Grogan notified the Committee that the City has the right to a six year look back at the contract and that there are potentially more unpaid fees. Mr. Smeby notified the Committee that the audit itself cost over 5,000 dollars and getting the information from Charter was a challenge also. Mr. Grogan also said that he was leery of spending too much time and effort on this matter due to the cost involved. Councilmember Alvarado asked if there was a possibility of a dispute resolution. Mr.

Grogan let him know that the process was for the Council to hold them in violation of the franchise. At that point Charter can either pay the penalty or contest the violation. If Charter contested the matter they can go to the Council and if the matter was still not resolved it would go to court or be resolved through settlement. Councilmember Asmus asked where the discrepancy occurred. Mr. Grogan notified her that it was from the various areas of revenue from the subscribers. Councilmember Asmus asked if this can be cleared up in the next contract and Mr. Grogan said that this is addressed in the contract and the issue is with what areas of revenue Charter includes in its definition of gross revenue. Councilmember Alvarado asked if there is a main point of contact at Charter and Mr. Grogan notified him that Charter had many recent changes in their personnel and the newest person we are working with, Patrick Haggerty, has been with Charter for about six weeks. Mr. Grogan notified the Committee that the draft has been to Charter for six months but we have not received a response back and will not until Mr. Haggerty is updated on the multiple franchises that are being renewed throughout the state.

Mr. Grogan notified the Committee that Charter also owes the City a 4<sup>th</sup> channel and a high definition channel and Mr. Vigil has been also working with Charter on accomplishing this. Charter has agreed to a plan to implement both of these and the issues should be resolved.

For the franchise fee review the City has two options. They can first resolve it with the franchise renewal or hold Charter in violation. Councilmember Alvarado suggested having Mr. Grogan work with Mr. Haggerty to resolve the audit findings. Councilmember Alvarado asked if there was any chance of Charter leaving Willmar and Mr. Grogan responded that he believed that Charter would not leave Willmar due to the amount of revenue that Willmar provides. Councilmember Asmus asked if Charter was in a position to simply not send any representatives to the Council and Mr. Grogan responded that Charter is bound by the franchise and if Charter is in disagreement with the City's findings they can have it disputed in court. Mr. Grogan reaffirmed that the amount of the discrepancy in the Audit Fee payment may not be worth the fees incurred to recuperate the cost. Councilmember Asmus asked if there could be other years that Charter has underpaid and the Committee agreed that the audit fees could easily outweigh the cost of any underpayment. Councilmember Alvarado asked if there were other companies that could provide video services in Willmar and Mr. Grogan responded that there are other companies that provide other video services and have been successful in other parts of the state competing against larger cable companies.

The committee agreed to let Mr. Grogan try to resolve the audit fee issue with Mr. Haggerty from Charter. Councilmember Asmus asked about the length of the franchise. Mr. Smeby notified her that the length would be ten years and that another six month extension of the current franchise, beyond June 30<sup>th</sup> maybe required. The Committee agreed to the extension. Mr. Vigil updated the committee that the 4<sup>th</sup> channel would be a high definition channel on channel 189 and channel 188 would be in an SD format. Mr. Vigil also notified the committee that another item they would like to negotiate for is to have Charter perform the channel conversions at their head end unit rather than at the WRAC studio.

Mr. Vigil notified the committee that the equipment in the council chambers would need to be updated next year for around 50,000 to 75,000 dollars and the equipment that was replaced would be sent to the school board. He also notified the committee that eventually all of the channels would be high definition channels. Mr. Smeby asked if there was an estimated time frame for a response from Charter and Mr. Grogan responded that there was not an estimated time frame but that he would be contacting Mr. Haggerty.

Councilmember Asmus asked what it would take to change the WRAC policy for policy violations and Mr. Vigil notified her that any changes would need to go through the Cable Advisory Committee then to the Council for approval. Councilmember Asmus also asked if any violations under the new policy would count as first time violations and Mr. Grogan noted that violations under the WRAC policy are compounded regardless of policy revisions.

Mr. Vigil noted that Mr. Haggerty has recently helped resolve some issues that had been occurring with Charter and that the bundling of services by Charter has led to some confusion on the fee payment. The Committee agreed that Mr. Grogan should still try to resolve the issue directly with Mr. Haggerty from Charter. Mr. Vigil also responded that he and Mr. Fujan would still need to discuss more on the franchise draft later once negotiations are underway. Councilmember Alvarado asked who generated the franchise draft and Mr. Vigil responded that it was drafted by Mr. Grogan.

Councilmember Asmus asked if WRAC had money in a surplus fund for capital improvement and Mr. Vigil responded that there is no longer a reserve fund. Mr. Vigil also noted that the reserve was intended for the high definition equipment conversion and new equipment at the Council Chambers but that the account was removed and funds now go into the general fund. Mr. Vigil also noted that the WRAC and Information Systems budgets are separated again starting in 2017.

Councilmember Asmus asked how much funding would be required to add additional storage to retain programs. Mr. Vigil responded that programs that are not produced by staff or are public meetings are not retained because they are not the property of the City and it would be time and cost prohibitive to transfer all programs to storage. Mr. Vigil also noted that access centers typically do not retain programs and it would also require a change in the policy to retain programming.

Councilmember Asmus asked about the process of the franchise approval. Mr. Vigil responded that the franchise would go to the Cable Advisory Committee for approval then onto the full Council for approval. Mr. Smeby also responded that another franchise extension would only need to go to the Council for approval. Mr. Fujan responded that the franchise negotiations could proceed independently of the fee audit problem but that the problem could be addressed during negotiations. Councilmember Asmus responded that the new franchise would need clear language defining how the fees are calculated.

Councilmember Alvarado requested that a time for public open forum be allotted at the cable meetings. Mr. Smeby responded that he would place a time for public open forum on the agenda for the next meeting. Councilmember Asmus recommended also having a change to the WRAC policy for suspensions and video retention brought up at the next meeting.

There being no further business to come before the committee the meeting was adjourned at 7:00 p.m.

Respectfully Submitted,

Ross Smeby  
Information Systems Coordinator