

SPECIAL SESSION
of the Daviess County Fiscal Court
held at the Courthouse in the City of Owensboro,
County of Daviess, Commonwealth of Kentucky
on this 29th day of October 2015
Present were Judge/Executive Al Mattingly and
County Commissioners Mike Koger,
George Wathen and Charlie Castlen

DOCUMENTS RELATED TO TODAY'S DISCUSSION
ARE FILED IN OCTOBER 29, 2015 FISCAL COURT FILE

Judge/Executive Al Mattingly opened the meeting in prayer and led the court in the Pledge of Allegiance to the Flag.

By a motion of Commissioner Castlen, seconded by Commissioner Koger, the court considered for approval to Bring the Oct. 22, 2015 Tabled agenda item back for consideration regarding the Joint City/County Resolution (***DCFC Resolution No. 22-2015***) Consenting to the Transfer of Control of Time Warner Cable Midwest LLC, from Time Warner Cable Inc. to Charter Communications, Inc.

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

By a motion of Commissioner Wathen, seconded by Commissioner Koger, the court considered for approval the Joint City/County Resolution (***DCFC Resolution No. 22-2015***) Consenting to the Transfer of Control of Time Warner Cable Midwest LLC, from Time Warner Cable Inc. to Charter Communications, Inc.

Judge Mattingly stated, "As you recall, from a discussion a week ago Thursday, Time Warner is in the midst of a merger with Charter Communications. In order to proceed with the merger, they need to have local authorities approve a Franchise Agreement Transfer. The current 20-year franchise agreement was signed in November of 2011. For a cable franchise to deliver cable services to Daviess County, we granted them certain rights and privileges. In return, at no charge, they agreed to, for local government purposes, grant local governments and other taxing agencies, including local education systems, libraries, fire department, etc... certain cable accesses and programming. In addition, a donation letter, provided by Time Warner, was sent where they agreed to an annual contribution of \$30,000 to be used to upgrade various origination points."

Judge Mattingly added, "Also, the franchisee agreed to maintain the capability for direct origination of public educational access programming from the following locations: OCTC, Owensboro Public Schools, Daviess County Board of Education, and City Hall. County government was not included because we simply do not have the capability of originating public, education and government ("PEG") programming from here, the courthouse."

David Smith stated, "That is correct. Our fiber optic line went directly to City Hall and was sent out from that origination point."

Judge Mattingly stated, "What happened in May of this year, is that we found out that our county programs were not going out to the citizens live. They still were aired on those public access channels, but it was not shown live. This brought a considerable amount of concern to

this court as one thing we have tried to do since being elected is to be as open and transparent as possible to citizens. Part of that effort included the ability for citizens to be able to view court meetings as they happen. As I read through the franchise agreement and our ordinance, I reviewed a section that read, the franchisee shall supply, without charge, a number of PEG access channels. Without our feed to the City Hall origination point, we were locked out. My assumption in reading that was that we would continue as we were in the past. That was not the case."

Mr. Smith stated, "When this became an issue, through the Cable Advisory Committee, we investigated this issue. They contacted Time Warner and were told that the splice would not be reinstalled as it was not a part of the franchise agreement. Personally, I contacted a representative of Time Warner in late September and by that point, we had already determined what had happened. At that time, Time Warner seemed agreeable to finding a solution so we could return to live broadcasting and they said they would speak to their boss and get back with me. I first heard back from Time Warner last week, when they said a letter could be drafted to Charter Communications, but Time Warner would not guarantee their compliance. I asked that the letter include language, which said that our live connection was an implied part of the franchise agreement. Our splice had been removed one other time, about ten years ago. When an inquiry was made back then, they indicated that our live connection was indeed implied and it followed the spirit of the franchise agreement and the splice was reinstalled. However, they refused to include language that stated such an implication in a letter. The County Attorney and I drafted an e-mail yesterday, that said we would like to see one of three things. Option one was that Time Warner would reestablish the live connection and that Charter would agree to keep it. Option two was a letter from Time Warner stating that they agree to reestablish the connection, and the live connection was implied within the franchise agreement, which would commit Charter to keeping it. And the third option was that a letter from Time Warner, similar to their letter agreeing to an annual donation, be submitted, where Time Warner agrees to reestablish the connection and that connection be retained for all future franchisees."

Just prior to today's meeting, a letter from Time Warner was received and Judge Mattingly read it into the record. He stated, "*Dear Mr. Smith, I am happy to let you know that Time Warner Cable will voluntarily restore, without charge, the live feed service we previously provided over our existing facilities, which will enable the transmission of programming from the Daviess County Fiscal Court Courtroom to the City Hall origination point for government access programming so that the programming originating from the Courtroom, including all Fiscal Court meetings, can be carried on the government access channel on our cable system. We will also strongly recommend that the feed remain available for carriage of government access programming upon transfer of control to Charter Communications.*" The letter was signed, Ed Kozelek, Regional VP of Government Relations, Time Warner Cable."

Judge Mattingly noted that an invitation was extended to Time Warner to attend today's meeting, but no one showed. He stated, "I am astounded that we are at a point such as this. I don't know understand their opposition to our recommendations."

Judge Mattingly noted the County Attorney's response to the Time Warner letter was that it looks about as good as we could expect.

Judge Mattingly stated, "That is the history."

"If we turn this down, will we have an opportunity, at a later date, to again consider to accept it, asked Commissioner Wathen.

Judge Mattingly stated, "On Oct. 31, if we have not taken action, it will be assumed that the court approves the joint resolution and the merger can continue. Our failure to act, would give the impression that we approve and support this transfer." Judge Mattingly noted an e-mail sent by our co-counsel Linda Ain. She wrote, "*If the county denies the transfer, it is likely that Charter and Time Warner will try to settle with the county prior to filing a complaint in federal court. Please note, that a municipality's disapproval of a transfer is often challenged under a "tortious interference with contractual relations" theory. The issues under this theory are whether:*

(i) a municipality acted within its powers in the actions it took to protect its rights under the franchise; and (ii) a municipality followed a process reasonably related to the protection its interests. A cable operator could also sue a municipality and seek injunctive relief (preventing the local government from stopping the transfer) or equitable relief (requiring the local government to approve the transfer). Finally, a cable operator could seek monetary damages. However, it should be noted that federal law immunizes municipalities from damage suits prompted by the disapproval of a transfer request. This immunity does not apply to injunctive or declaratory relief." He stated, "We need to act today. One way or the other."

Commissioner Wathen stated, "Is this as simple as them putting a splitter on the end of a wire and reconnecting a wire?"

Mr. Smith said, "It is exactly that simple, and would cost about \$5." He also stated, "Time Warner has a fiber optic line (an unlit glass tube) that runs from the Courthouse to Time Warner and a fiber optic line that runs from City Hall to Time Warner. Time Warner refers to this as unmanaged fiber, meaning it is completely operated by us. The line does not have light in it until we send video through it. I suspect that Time Warner's problem with this is that they have two very high-capacity lines running through downtown Owensboro and they would like to sell that capacity. If you recall, they said they would sell us that service for \$10,000 per year. The lines were initially in there as data lines. When we converted it to video, Adelphia did not have a problem with that. Now they see it as a huge asset and want to light it and sell it to other customers."

Commissioner Koger stated, "It looks like Time Warner is going to be willing to work with us until the merger is complete. I don't like their letter's language where they will convey to Charter Communications that they "strongly recommend" etc. To the new franchisee, this language holds no true meaning. Once the deal is done, they do not have to comply with retaining the splice. I cannot vote to pass this because of the wording in the letter."

Commissioner Castlen said he could not vote in favor of this motion. He stated, "If Time Warner had created a letter stating that the live connection was part of the original agreement and the splice was mistakenly removed and would be reattached, I then would feel comfortable with voting in favor. With what we currently have, I am prepared to vote no."

Judge Mattingly stated, "Let me understand. Our connection was cut in May of this year, and you believe that Time Warner and Charter entered into negotiations prior to that action. And while they were negotiating, we were still receiving a live feed. In your opinion, Commissioner Castlen, it is implied or implicit the fact that we have had this connection for years and years and years."

Commissioner Castlen agreed.

Judge Mattingly continues, "If they cut it prior to them signing this new agreement, we would have certainly negotiated that to be included."

Commissioner Wathen stated, "What they are really doing is cutting the public off from us. I think it is important that people have that access. They are negligent and I will vote no."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in opposition; motion denied.

By a motion of Commissioner Castlen, seconded by Commissioner Wathen, the court considered for approval **Resolution No. 26-2015** - Denying Approval to the Transfer of Control of Time Warner Cable Midwest LLC, from Time Warner Cable Inc. to Charter Communications, Inc.

Judge Mattingly stated, "My hope is that by tonight, we would have a meeting with Time Warner in an attempt to resolve this issue without it going to court."

Without further discussion, Judge/Executive Mattingly called for a vote on the motion. All members of the court voted in favor; motion passed.

**Without objection, Judge/Executive Mattingly adjourned the meeting.
SO ORDERED THAT COURT STAND ADJOURNED.**

Al Mattingly
Daviness County Judge/Executive