

## MINUTES

### LOUDOUN COUNTY CABLE AND OPEN VIDEO SYTEM COMMISSION

Wednesday, March 9, 2011

The Loudoun County Cable and OVS Commission met on Wednesday, **March 9, 2011** at 7 p.m. in the Lovettsville Room, Loudoun County Government Center. The recording constitutes the official minutes of the meeting.

**Members present:**

Tony Barney, *Chairman, Catoctin District*  
Oliver Peters, *Leesburg District*  
Dan Moldover, *Vice Chairman, Potomac District*  
Erika Cotti, *Dulles District*  
Denver Peschaken, *Public Schools Representative*  
Karen Guthrie, *Broad Run District*  
Charles Douglas, *Blue Ridge District*  
Rich Biby, *At Large*  
Gene Gaines, *Sugarland Run District*

**Members Absent:**

Rob Cook, *Sterling District*

**Staff:**

Lorie Flading, *Staff Liaison*  
Mark Adams, *Acting PIO*  
John Carlton, *County Attorney*

**Franchise Representatives:**

Marie Schuler, *Comcast*  
Sharon Hawkins, *Open Band*  
Josh Dillon, *Verizon*

**Guests:**

Matt Ames, *Costlow & Hubacher*, outside counsel representing the County

**Call to Order:** 7:01 p.m. Chairman Tony Barney.

**Minutes:** The minutes of the January 12, 2011 meeting were approved.

Chairman Tony Barney asked the County's outside Counsel, Matt Ames to speak about the OpenBand agreement. Mr. Ames said that he strongly recommends that the Commission approve the draft franchise agreement. He gave some background in which he said the County had been working on an agreement with OpenBand now for more than a year. After hearing the public concerns and complaints it was clear that the application had to be treated like a new one. To address concerns about the technical capabilities of the firm, the County brought in a technical engineering firm, CTC. They conducted a review of the system and went beyond normal testing comparing OpenBand's system to state-of-the-art cable systems. He went on to say that the technical report was overall very positive. CTC went to 5 homes to check the picture quality; only two customers allowed the testing in the homes. CTC concluded that there was good picture quality. The complaints from homeowners was of tiling which can be an intermittent problem. CTC suggested installing probes that monitor picture quality.

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Mr. Ames read some conclusions from the report that said the system is not as good as Verizon's but better than Comcast.

In an attempt to improve service and address specific customer complaints several commission members came up with a list improvements that they thought would address those complaints.

Mr. Ames noted that this agreement is more favorable to the county than either Verizon or Comcast's. He also emphasized that this is a non-exclusive agreement; anyone who has access to the rights-of-way can apply for a county franchise. However, there are a number of private easement that prevent other companies from going in. The county has no authority over the private easements. He mentioned some discussion about the FCC rule against any agreement that grants a cable operator the exclusive rights but that does not apply to this agreement.

Mr. Ames went on to describe the background on Open Video Systems and explain the limitations the county has including no authority over programming or rates and only limited authority over technical issues. He read from the Cable Act 47 USC 544, section e.

The county has been pushing the limits in their authority. Mr. Ames pointed out that OpenBand has agreed to many provisions of improvement including stricter customer service standards additional HD and VOD requirements the use of probes and the phasing out of older cable boxes. If the county denied the franchise OpenBand could continue to operate and the county would have to litigate. He mentioned that the 10-year term was longer than the county wanted but he believed that OpenBand had made many concessions and was not willing to take a shorter term.

**Public Input** – The following members of the public made comment:

Nancy Abramson - What she took from the attorney's comments is that the citizens do not count. Just because the county might be sued is not enough reason to not protect the rights of the citizens. She objected to the ten-year term.

Tom Javis - He thanked the commission for their hard work. He hoped that the commission would take a broad look. He said one third of the customers are willing to spend tens of thousands of dollars to sue this company. How can the county endorse this company?

Charles Salas He is tired of dealing with OpenBand's lack of technology. Is there a reason why the HOAs were not including in the negotiations? A ten-year term is outrageous.

John Hines – When OpenBand started they may have been on the leading edge of technology and now they are not. They have no incentive to improve or invest in new technology since they have a captive audience.

Tim McCoy – He talked about prices and their lack of choices in HD. He complained about the new digital boxes. He has had no software updates

Robin Crabtree – She said that the people do not like the quality and they are not happy with OpenBand. We do not owe them a franchise.

Kevin Donovan - Brought in his DTA (digital box) they were supposed to have the boxes before the conversion but they did have them.

Dinesh Jadhav – He does not like OpenBand. He is unemployed and would like to suspend service but he cannot.

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Raj Bakhale– Opposed to OpenBand

Gagan Goel - Comes from India, the contract reminds him a similar arrangements in India. He believes they were tricked when they signed their contract.

Oscar Croon He said that he has about 10 TVs, now that he has the digital signal only about 2 of them work.

Samgram Deshmuhh He doesn't understand why the franchise should be approved. Please help the homeowners.

Jim Ward -- He disagrees with the backdating of the franchise and does not like a 10-year agreement.

David Thornton – OpenBand video quality is poor. The wiring in homes is poor, and it was provided by OpenBand.

Sean Landry – Very disappointed and shocked that OpenBand let their franchise lapse, this shows that they don't care.

Pyashart Bhaip -- Why has OpenBand be allowed to let the agreement lapse without penalty.

Albert Hayes – Unhappy with service and equipment. We are falling further and further behind in technology.

Beverly Bradford – Thanked commissioners. Asked if any were OpenBand customers. This issue totally dominated the HOA elections. She agrees with others.

Ed Burrell -- He asked who would enforce the provisions of franchise agreement.

Pete Leroy -- Cedar Crest does not receive service. He would like to know when his community would get service. They have 197 homes in their community; he thinks they should meet the density agreement.

**8:25 pm- Chairman Barney called for a 10 minute recess.**

**8:34p.m.- Meeting reconvenes**

Chairman Tony Barney made a motion that the Commission accept the OpenBand agreement as presented by staff and recommend it to the Board of Supervisors for approval.

Commissioner Erika Cotti asked if the franchise could stipulate specific added technology. She talked about 3DTV, whole house DVR, Internet access and additional advanced services. She wanted to know if OpenBand's new set top box would have this capability. Ms. Flading noted that these items were not included on the Commissioner's "wish list" approved by the commission at the January Cable meeting. Ms. Cotti said that she thought these additional items had been given to one of the members of the negotiation team.

She outlined her concerns with the franchise "the Termination section." She asked why any mention of an HOA contract is in the agreement. Mr. Ames said that we trying to be clear that such an agreement exists. Commissioner Karen Guthrie said that she was the one who suggested the language.

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Ms. Cotti asked what prevents OpenBand from getting many additional channels, is it cost? Commissioner Guthrie said there are many reasons. Programming costs OpenBand more because they are so small, that goes for equipment as well

Commissioner Dan Moldover said keeping pace with new technology will only happen through competition. A ten-year agreement is not the place to put a lot of specific technology service because we don't know where things are going. This group cannot regulate competition. Commissioner Moldover mentioned that the financial penalties have been increased.

Commissioner Douglas said the problem is picture reception. The technical study looked at the backbone of the network, not looking at the throughput.

Commissioner Guthrie explained why she was willing to approve this agreement. Competition is what keeps cable companies offering new services and technology. We can't help these people with the problem they have; lack of competition. She paraphrased the Cable Act by saying we listened to the community needs and interests on one side, but they have to be paid for so there has to be a balance. We've gotten this tiny little cable company to agree to some pretty big and costly concessions. We recognize that you have gotten into an unfavorable deal through your HOAs. Hopefully you will be able to resolve the issue of private easements. Unfortunately this body cannot help with that situation but we tried to get the best agreement we could, including stiffer penalties.

Each commissioner had a chance to speak.

Dan Moldover said that he agreed with Karen Guthrie, Rich Biby agreed, and Denver Peschaken agreed.

Commissioner Oliver Peters said that if we do not approve the OpenBand franchise they would have the right to know what their deficiencies are and have to be given a chance to correct. This process could drag on for a year or more. All the while residents would have no additional HD, no improved VOD, and no new cable boxes. Then OpenBand could sue the county that could drag out for a few more years. Until the HOAs can work out the private easement problem with OpenBand they will continue to operate with or without a franchise. With this franchise residents will get more HD channels, VOD, new cable boxes and we would have teeth to enforce the agreement.

Karen Guthrie. OpenBand agreed to the use of a probe. She suggested a change in section 5.1.3 that use of a probe not be at the sole discretion of the operator but allow the county to order a probe. If we say no to this franchise agreement then residents are stuck with the old one. To make the best of this murky situation let's move forward.

Charles Douglas. He agreed that there is a compelling story from the residents. He said the technical inspection was done well but they tested a boat and they wanted to test a car. They tested the network but did not test the throughput. He also thinks because of changing technology he would have trouble with more than 3 years. Don't let litigation scare you it is made to resolve problems.

Erika Cotti asked if the county or its administrator would agree to sit down and meet with the HOA Boards before the cable commission votes.

Gene Gaines. Mr. Gaines said that he has only been looking at this for two days. He thinks any action taken here could open Loudoun County to a \$30 million law suit. He rejects the technical inspection. OpenBand enjoys an exclusive territory. The agreement has substantial problems. He thinks we need to listen to the users. OpenBand performance has been unacceptable. Request the motion be amended by proposing an interim six-month contract. Mr. Gaines made a motion to delay the OpenBand vote for

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several reasons 1. Serious customer problems. 2. Open Legal issues and lack of adequate testing. Vote to delay the motion 3 yes, 6 no.

**Chairman Tony Barney commented.** He thanked people who worked on the negotiations. He asked for a vote on the original motion, with modifications, as discussed in section 5.5.1, 5.11, and 5.1.3.

Charles Douglas asked for a roll call vote. Results of the vote were 6 -3-1. **Voting Yes:** Oliver Peters, Dan Moldover, Denver Peschaken, Karen Guthrie, Rich Biby, and Tony Barney. **Voting No:** Erika Cotti, Charles Douglas, Gene Gaines, absent for the vote Rob Cook.

**Meeting adjourned 10:06 p.m.**