

The Near-Death and Rescue of ABQ's Public Access

By Marvin H. Gladstone



(Editor's Note: This article addresses problems which have confronted Quote. . . Unquote, Inc., a nonprofit corporate fiscal sponsor of FOAT, the nonprofit corporate publisher of TheTrial Balloon. The author is a board member of both of these nonprofits. The opinions expressed below are the author's alone and do not necessarily reflect those of either entity or its other directors or officers.) .

Such phrases as “cooked and baked” and “tailoring the specs” are familiar to those engaged in the fine art of evading legal standards governing procurement. They are less familiar to the victims of such evasions, typically both the honest bidder and the taxpayer, the former having been cheated by reason of his honesty, the latter receiving less quality for more of his money. The beneficiaries of dishonest procurement practices are those contractors who have successfully rigged the bids, and the equally-crooked politicians who have favored them as quids pro quo for campaign contributions or worse.

Examples of “cooking and baking,” “tailoring specs” and other forms of bid-rigging abound, but a particularly egregious episode occurred here recently. Had the scheme succeeded, it would have adversely impacted not only the “honest bidder”, but cable subscribers numbering in the six digits, an unsuspecting public and the First Amendment guarantees of speech and press freedoms. This article summarizes the relevant events giving rise to the jeopardy and the salvation of our Public Access channels.

Prior to 1996 it was a given that the airwaves were publicly-owned property; and that those seeking to exploit their use for profit-making were licensees only. A radio or television licensee was

Mega-Media Era Begins as Comcast/NBC Merger Nears

By Josh Silver

December 1st, 2009

On Monday night, French media giant Vivendi and NBC parent company General Electric agreed to terms that will clear the way for US cable giant Comcast to take a controlling stake in NBC Universal. An announcement from Comcast is expected within days. The proposed merger would create a media behemoth, and clear the way for an unprecedented era of media consolidation across cable, the Internet and broadcast television.

Be afraid. Comcast is both the largest

obliged to demonstrate a public benefit as a condition to its profit-making exploitation of such publicly-owned property. With the advent of cable TV, that benefit took the form of a statutorily-mandated channel-capacity reservation to the public for so-called “PEG” (Public, Educational, Governmental) use. The rights granted to cable companies to exploit the publicly-owned airwaves, as well as to lay their cables in publicly-owned rights-of-way were governed by federal law and by statutorily-conforming “franchise agreements” between, commonly, municipalities (as “franchisors”) and cable companies (as “franchisees”). Among other statutory proscriptions were limitations upon franchise fees chargeable by franchisors, and (with respect particularly to the “Public Access” element of the PEG triumvirate), non-interference with the First Amendment rights of Public Access producers and programmers.

As cable TV experienced exponential growth through the 80’s and 90’s, so too grew its lobbying budgets. Particularly irksome to some, if not most cable companies was the federal statutory requirement for allocating otherwise-profitmaking slots to the nonprofit PEG channels. The very notion that the airwaves were public, not private property was deemed by them archaic, as was the obligation to grant the public access to them. And the inability to dictate content to Public Access channels was equally repugnant to many of the politician-recipients of cable company lobbying largesse.

Thus had it regrettably come to pass that the historic federal statutory requirement for PEG access and funding was written out of the 1996 Telecommunications Act (largely dictated by the telecom companies and, shamefully, signed into law by then-President Bill Clinton that year).

statutory requirement for the provision of PEG channels, it did not prohibit the inclusion of such requirements in contracts negotiated between franchisors and franchisees; and, where such provisions were negotiated as part of franchise agreements, federal law continued the First Amendment freedom of speech protections. With the federal PEG mandate gone, it would become the responsibility of local governments, as franchisors (and as the entities whose authorizations would be required to lay cable in publicly-owned rights-of-way) to negotiate on behalf of its citizens fair and equitable provisions for granting access by the public to its own airwaves. For local politicians to bargain on behalf of constituents and against cable corporate campaign contributors would require significant public pressure. In many municipalities such public pressure proved insufficient, and the public thus lost its access to its own airwaves.

Such had not been the case in Albuquerque. Public Access (the “P” in “PEG”), traces its origins here to 1979, the year Quote. . .Unquote, Inc. (“QUQ”) was chartered as a New Mexico not-for-profit corporation. Its sole function was to initiate and operate a Public Access Cable TV facility pursuant to the then-effective federal requirement. QUQ commenced operations in 1981 and has, over more than 28 years of continuous service, trained more than 8,000 amateur videographers, producers and editors who have broadcast hundreds of thousands of hours of their own programs on Channel 27. It has won three awards as the nation’s best Public Access Channel, runs an authorized state-of-the-art Apple Training Center, founded a media arts charter high school (the first state-chartered school in New Mexico) and, with no increase in funding since 1991 (its funding being the lowest per capita of any comparable operation in the country) initiated and operates, in addition to Channel 27, its new “Local Origination” Channel 26. Its programs are videostreamed

Now, while the 1996 Act eliminated the

and viewed worldwide, enjoying “hits” typically exceeding 120,000 per month.

As a consequence of these and other extraordinary achievements, public support has thus far saved Albuquerque’s Public Access from the fate of many access centers across the country.

A scheme, however, (which, had it succeeded, would have doomed Public Access here) appears to have germinated in or shortly prior to the early Spring of last year. The City had negotiated a franchise agreement with Comcast Cable back in 2002. Among its provisions were (a) a five percent franchise fee payable by Comcast subscribers to the City (estimated to yield, currently, an average of \$3.5 to \$4.0 million per year); (b) a \$0.44 charge per subscriber per month to fund equipment and other capital needs of the PEG channels (estimated to yield an average of some \$600,000 per year), (it is noted that both parties to the franchise agreement function only as conduits for these funds, the subscribers being the contributors); (c) an obligation assumed by Comcast to provide PEG analog and digital channels, including a “Local Origination Channel” to be operated by the Public Access contractor (QUQ being the named designee); and (d) an obligation assumed by the City to house the PEG channels and to fund their operating expenses.

With respect to Public Access, the City had undertaken to perform this latter function by underwriting the operational expenses of QUQ to the extent of leasing and building-out space to accommodate its needs (albeit minimally and grudgingly), paying moving and utility costs, and funding day-to-day operations to the extent of \$270,000 per year (the amount having been virtually unchanged since 1991).

Rio Grande Tribune for Public Access was a lease of some 17,000 square feet of ground floor space in the abandoned old Bernalillo County Courthouse. The lease (providing, inter alia, for a dollar-a-year nominal rent), required the City to pay the utilities. As of April, 2009, QUQ had operated Public Access Channel 27 for some five years under such arrangement.

Now, it is important to note the persistence of two (among many) conflicts over the years, both of which bear upon the events giving rise to the death-defying events of-late 2009. The first of these conflicts is that which has been ongoing between the City and the County for many years. (One of the many irritants is the County’s ill-conceived assumption of liability for one-half the costs of operating the Government Center - One Civic Plaza - while occupying only 28% of the building!) The second of these relevant conflicts is between the City administration and QUQ arising, in part, from the latter’s refusal to engage in prior censorship of those programmers or guests who may wish to air



“There are no unacceptable questions, only unacceptable answers.”
--Helen Thomas

opinions critical of the former.

As what many believe to have been a manifestation of the City Administration's (but not that of its governing body – the City Council) consequent hostility to QUQ's adherence to First Amendment principles, the City, in late 2008 published a Request for Proposals (RFP), soliciting bidders, effectively other than QUQ, as a replacement for the continued operation of Public Access Channel 27. For many reasons (not the least of which were 27 years of successful prior continuous operation, its cumulative expertise and its ownership of much essential equipment – all being unique to QUQ) the procurement process which ought to have been followed was "single source negotiation," rather than illusory "competitive bidding." The administration's election to utilize the latter, rather than the former, should have suggested a malign rather than a benign motivation, a suspicion to gain support from later events. Whether or not there was at that time an already-hatched scheme to switch to a less scrupulous (with respect to First Amendment principles) operator, any such expectation was disappointed when QUQ appeared as the only "bidder." Its "Proposal" in response to the RFP was, perforce, approved, albeit reluctantly, by the Administration in early 2009. QUQ's Proposal, submitted in accordance with the requirements of the RFP, and its approval by the Administration effected a contract which would bind both parties for the ensuing four years.

QUQ's approved Proposal included its initiation and implementation of the "Local Origination Channel" for which the 2002 Franchise Agreement provided. The "seed money" sought by the Proposal was a nominal \$35,000. Relying upon the

Administration's approval, QUQ proceeded with the organization of its new, second channel which, when effected, would permit solicitation of revenue-producing "sponsorships," anticipating a potentially-significant funding source for its continued operation. Such a funding potential for a non-profit entity would surely be most irksome to any profit-oriented ideologue. That the nonprofit here should be supported by cable subscribers through the public treasury, might well have suggested opportunities for self-aggrandizement which no ethically-challenged businessman could easily ignore.

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With the inauguration of Local Origination Channel 26 at a Cinco de Mayo ceremony on the Civic Plaza, QUQ now became the proud operator of two back-to-back ABQ TV channels, the new one enjoying a revenue-producing potential, and both capable of corruption for partisan political ends. These exploitive possibilities appear to have proved irresistible to those rarely troubled by temptation. (They invariably yield to it!) Added to the inducements for mischief was the accrual, as of the spring of '09, of a reported \$1.8 million in unexpended "\$.044 funds," potentially usable by a secretly-favored Administration supporter to fund such "capital" requirements as might enable a switch of Public Access operators. But, the Administration having just contracted with QUQ for the provision of the two-channel services, how might it renege on that agreement?

The answer to the Administration's self-propounded question was to create an apparently-justifiable basis for disavowing its contractual obligations. To achieve that malign objective the Administration, without notice to QUQ, in April simply discontinued paying the old Courthouse utility bills,

following which the County served the City with a 30-day Notice to Quit. Upon receipt of a delayed report from the City of its impending eviction QUQ successfully implored the County to defer, temporarily, its dispossession-by-force, while aggressively initiating a search for a minimally-acceptable relocation site. Having itself generated QUQ's impending homelessness, the Administration now utilized that disability – the soon-to-be absence of a facility – to disclaim its four-year contractual obligations; and it ordered the promulgation of a new RFP!

Before the order could be implemented, however, the Administration achieved a well-earned lame-duck status by unexpectedly losing the Mayoral election. But, as its swan-song payoff to the supporter waiting in the wings (enhanced, no doubt, by vindictiveness against QUQ), the loaded RFP replacement effort proceeded apace, looking to its effectuation prior to the December 1 swearing in of the newly-elected Mayor.

Using the new RFP as the tool to implement the “cooked and baked” scheme required a reversal of the weights accorded to the qualifying factors, experience and space. The switch of a 70% weight from experience (of which QUQ had 28 years of successful operation) to space (of which QUQ now had none) virtually insured the award to the only prospective bidder (a reported supporter of the now-lame duck Administration) known to have a vacant facility available to house the twin-channel operations. Thus were the specs “tailored” to fit “a predetermined award.”

Rio Grande Tribune contractual rights, and before the outgoing Administration could perfect its misbegotten illegal scheme, the newly-elected administration took office and ordered the new RFP withdrawn. Had the scheme been suffered to proceed to its ignominious conclusion, both channels would have “gone dark,” as no new operator (even, unlike in this instance, one dealing in good faith) could have continued seamlessly running two television channels without a lengthy interruption, regardless of the material resources which might have been made available to it.

The decisions to withdraw the illegal new RFP (thereby honoring the City's contractual commitment and preventing a fraud upon the cable subscribers and the public) will stand to the everlasting credit of ABQ's new Administration.

The significance of this rescue must be measured against the extraordinary number of access closures in 2009, and continuing into this new year. Cable companies and their compliant politicians have regrettably succeeded in depriving the public of access to its own airwaves across the country, from Florida (virtually all shut down) to California (more than 50 killed including at least 12 in L.A.).

As of this writing Channels 26 and 27 continue their search, now with the welcomed assistance of the new Administration added to that of the City Council. And, with the County's much-appreciated indulgence, these important public access facilities hope shortly to find a new home.



Mega-Media Era Begins as Comcast/NBC Merger Nears **comt.**

cable
company
and the
largest

residential broadband provider in the United States: a \$34-billion business with 24 million subscribers, reaching nearly one out of every four homes in the country. NBCU owns NBC, MSNBC, CNBC, Universal Studios, 27 television stations, and a host of other properties.

President Obama has promised that his administration would finally begin enforcing antitrust laws to prevent unreasonable consolidation of market power. If ever a media deal posed such a threat, this is it. The merged Comcast would be to media what Goldman Sachs is to Wall Street: "a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money," as Rolling Stone's Matt Taibbi once described the latter.

It should come as no surprise that Wall Street and Washington are saying this is already a done deal: The media and telecommunications industry is second only to drug companies in how much it spends lobbying Washington. Its army of PR firms, lobbyists and sock-puppet think tanks is already blitzing the press corps and Capitol Hill. It's readying Comcast CEO Brian Roberts for his close-up as a new media mogul and neglecting to mention the impact of this deal on everyday people.

Comcast has raised cable rates for years while raking in record profits nearly every quarter. It is anti-union. It cares nothing for independent, alternative programming. And if you're a startup television channel, you can forget about getting a spot in Comcast's lineup. Comcast will charge you far more for space on its lineup than you could possibly pay. Just ask Al Gore about his failed effort to get his Current TV a reasonable position in

Merger Facts

Serving Size: 1 Mega-Merger

Amount Per Serving*

Saturated Media Ownership: 2 giant companies

Comcast reaches 1 out of every 4 cable subscribers.

NBC owns 27 local TV stations, and the NBC network reaches 99% of U.S. homes with TVs.

Fat Profits: Over \$50 Billion in Revenue

Comcast 2008 revenues: \$34.3 billion

NBC/Universal 2008 revenues: \$16.9 billion

Total Control: 1 out of every 5 viewing hours in the U.S.

Comcast 22 cable channels including E!, Style, G4, Comcast Sports Net, the Golf Channel, PBS Kids

NBC 30 cable channels including NBC, Telemundo, MSNBC, Bravo, USA, CNBC & part of Hulu

Level of Healthy Competition: Nearing 0%

Comcast would charge competitors more for NBC shows. Comcast would control even more of the ad market.

Cost to Consumers: Big Bucks

Comcast already hikes its rates 8% every year. With less competition, they'll jack up prices even more.

Cable rates for customers nationwide will increase when Comcast starts charging its competitors more for NBC programs.

Diversity of Viewpoints Even Fewer

One company will control more news & information.

Comcast will prioritize NBC programs instead of local & independent voices.

**Based on a healthy media diet, enriched by diverse & independent viewpoints & quality journalism.*

WARNING: This merger could be hazardous to the health of our democracy.

freepress.net/comcast

the cable lineup.

Let's not forget that Comcast is the company that was caught illegally blocking peer-to-peer Internet downloads and then lying about it—earning a smack-down from the FCC for breaking Net Neutrality rules. And the company is known for blocking TV ads it didn't like. The company's track record of protecting the public's interest isn't exactly stellar.

And now, Comcast is set to control media across all distribution platforms. The company is threatened by the increasing amount of free content on the Net, and a public who is both watching entertainment on the Internet, and creating their own. NBC owns a major stake in Hulu, and Comcast likely wants to put the video service and all NBC content behind a paywall. Comcast and other cable companies are already putting the final touches on "TV Everywhere," a paywall that requires a traditional cable subscription to watch online content owned by these companies. Comcast's very survival depends on remaining the gatekeeper between you and the programs you want to watch, and it wants as little competition as possible.

Worse still, if the Comcast-NBC merger is allowed to go through, it will be the start of a catastrophic storm: a tidal wave of mega-deals by other content giants like News Corp. and Disney merging with distribution behemoths like Time Warner Cable and AT&T. In a nation where 98 percent of Internet users have only one or two choices of Internet service providers, we could witness a future in which a handful of phone and cable companies, merged with a handful of content companies, will put all premium content behind a paywall and make all other content hard or impossible to find.

ISPs' content and applications—and those of their partner companies—will move at light-speed, while the rest of the Internet

will seem like it's still on dial-up. The result: homogenized corporate content, higher prices and fewer real alternatives so that distributors can prevent the "market fragmentation" that advertisers loathe. Sound familiar? The Internet will become the cable service of the 21st century—instead of the free and open arena for economic innovation, democratic participation and free speech that it's been.

Some say that companies like Comcast are simply doing what they must to prosper. But we need to ask whether boosting Comcast's bottom line is worth the cost to the rest of us. Such market power could destroy the promise of an open Internet and its unprecedented ability to amplify independent voices, reinvent journalism, and inspire new forms of entertainment.

The deal is expected to take at least six months to finalize, and it will possibly be more than a year for federal regulators to approve or reject the deal. The warped Washington conventional wisdom says that the deal is inevitable, but Free Press and our allies are rallying public opposition. The Obama administration has sharply criticized the previous administration's weak antitrust record and promised vigorous oversight of anti-competitive deals—particularly those involving vertical mergers (like joining content and distribution companies) and innovation-focused industries like the Internet.

This merger is another major test of whether President Obama plans to deliver on his promises.

This blog post was first published by The Huffington Post.

From the FOAT Board

This publication by the Friends of the Albuquerque Tribune (FOAT) happens bi-monthly because many volunteers invest their time, energy, and funds. We are a non-profit, and a community owned opportunity to bring citizen journalism to Albuquerque.

Many writers have supported this effort and contributed outstanding work to create this publication. Volunteers help at all the stages of production. Janet Bridgers brought her expertise to launch our advertising. Astrid Webster does copy editing and proof reading, as well as guiding content. Deborah Kolberg contributes proofreading skills. Francis Rausch actually distributes thousands of copies of each issue to sites she monitors. She does this as she walks! Alex and Andrew Kolberg add computer skills to assist the editor, Rosamund Evans.

Christine Carter, owner of Envision Graphics, patiently works out our layout and design. We are fortunate that Vanguard Printing brings the 8000 copies to life with soy based ink on 75% recycled paper. Compostable!

The Board shares the organizational tasks of the non-profit, but the treasurer Marvin Gladstone, carries a heavy load.

We will very soon make a name change and do the necessary restructuring to reach more readers efficiently. Your ideas are welcome. Contact us at: 505 903-7778; or at ABQ TRIal Balloon, P O Box 35058, Albuquerque, NM 87176-5058.

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