

MINUTES FOR THE ad hoc AFN GOVERNANCE STRUCTURE COMMITTEE
Friday, October 30, 2015
Siskiyou Room, 51 Winburn Way

1. Call to Order

Chair Pam Marsh called the meeting to order at 3:15 p.m. in the Siskiyou Room.

Committee members Bryan Almquist, and Mathew Beers, were present. Committee member Dennis Slattery arrived late. Staff members Dave Kanner, Mark Holden, and David Lohman were present. Committee members Rich Rosenthal, Vicki Griesinger and Susan Alderson were absent.

2. Public Input

None.

3. Governance model: legal issues

Marsh reminded the group that lacking a quorum, those present could have a discussion but make no decisions. She also reminded the group that at the last meeting the group narrowed down the options to three basic recommendations. The City Attorney is attending this meeting to help sort any questions or issues with those recommendations.

Almquist asked if the questions regarding whether or not the current ISP contracts have expiration dates had been sorted. Lohman stated that yes, there is an expiration on those contracts. The date is slightly different for each ISP, but they all expire, roughly, in the middle of 2017. There is also a clause in each contract which makes it possible for either party to terminate for cause, so long as 30 days of notice are given.

Group discussed contract details, including concerns that current ISPs would either require AFN/the new ISP to “buy back” customers or would transfer those customers to other providers they work with. Group asked if they could allow current ISPs to continue to service customers they already have without allowing them to take on new customers. Lohman stated yes, that would be allowed. Group determined that AFN will, ultimately, have to terminate all contracts with ISPs in order to move to a two-ISP model. Getting caught up in how the current ISPs may or may not handle their current customer base isn’t entirely relevant at the moment. Additionally, transferring service isn’t easy – new equipment would need to be installed in each customer’s home.

Lohman gave example of three possible ISP relationship structures; 1) allowing multiple providers without AFN also being a provider, 2) allowing multiple providers with AFN as a provider (our current model), or 3) allow only one provider. We’re currently proposing the third option. He wanted the group to consider whether or not they want to create this sort of monopoly. Group discussed their desire to have only one provider because the City elected official’s knowledge is too limited to make informed leadership decisions.

Dennis Slattery arrived 3:29 p.m.

Group discussed the ways in which a single ISP would required greater control and oversight by the City than the current system. Agreed that with current multiple providers the City has little connection. An improved connection is part of what the group is interested in.

Group discussed whether they could do a direct negotiation with an ISP, without going out for an RFP. Lohman stated this was not possible. Group discussed whether it would be best to hire an outside vendor to create the RFP. Lohman and Holden agreed that this was a good idea, as someone with telecommunications knowledge would know all the pitfalls.

Group discussed how to structure a contract in order to cover the existing debt service. Agreed covering the debt was the goal, but they also want an opportunity to share in any increase in profits along the way. Group also discussed the need to have minimum benchmarks for customer totals and ISP success to determine when it might be necessary for AFN to take over.

Group discussed previous companies taking over or buying out other businesses and how the customers were treated. Discussed ways to keep AFN customers from multiple ISPs with the “same (or better) service, but a different bill.”

Group asked if there is a limit to what types of businesses can be franchised. Kanner stated that you cannot franchise data or telecommunications businesses. Group discussed whether or not a single ISP would cause FTC concerns of limiting competition. They felt this wouldn't be considered limiting as there is still Charter, and CenturyLink as optional internet provider in the city of Ashland.

Group discussed whether or not they needed to continue to work through details of a potential contract, or if that is best handled by the proposed commission. They agreed that the commission should do most of that work but that this group needs a telecommunications expert to look over the recommendations thus-far to make sure it's a viable option before presenting this option to Council. Lohman agreed this should be done and Kanner stated that there were funds budgeted for this purpose.

Group asked Lohman if, as part of a rate-setting discussions, we could require ISPs to share their financial records (particularly if the ISP is requesting a lowering in the amounts they pay to the City) and if so, could that financial information be kept confidential. Lohman stated that we could request this information, but didn't think it could stay confidential because of public records laws. He would recommend asking the Oregon Attorney General's office for their opinion on the matter. Group expressed concerns with both the awkward nature of exposing a company's financial records to the public and with showing competitors any rate information. This is the essential question of AFN viability – does needing to abide by public records laws in regard to our rate setting automatically preclude success?

Group discussed potential ethical conflicts of people involved with the commission setting rates, who may derive benefits by being on the commission. Lohman stated that, like any other commission, broad topics would not cause conflicts but topics directly related to a commissioner's home, business, etc. would require that they recuses themselves from the decision making. I may also be wise to have all people connected with ISPs as ex-officio, non-voting members to avoid potential conflicts or ethical questions.

Group discussed the general structure of an AFN commission. The goal is to have a commission to oversee AFN operations, maximizing independence. The group acknowledged that there is no way to avoid public scrutiny, but hope a commission can provide expertise for guidance at a higher rate with fewer politics involved than Council can on its own. Beers stated that a good deal of the competitively important discussions will take place within the walls of the ISP, which will keep some of the product improvements out of the view of the public, and out of the view of competitors. The group would like to make sure the commission is filled with people who are experts in things like technology and contracts but also have members with end user experience to draw from. The group would like the commission to work on, and plan for, on the long-term needs, health, and improvements to the infrastructure of the system.

Lohman wondered whether a commission is necessary, or if hiring expertise for those things current staff can't handle is enough. Group expressed concerns with the lack of expertise on Council, which ultimately has to make decisions. A commission as decision maker can help avoid fluctuations in knowledge from both staff and Council. Additionally, the world of internet and technology changes so rapidly a group of people can better keep track of those changes.

Group agreed that a telecommunications specialist legal opinion on the broad strokes of a commission and a potential RFP for a solo ISP (one for residential, one for business) should be obtained. Lohman stated that he will pursue this.

Marsh wondered if there was a need for financial review at this time. Kanner stated that should be set aside for the moment until the legal review is completed.

4. Next Steps

Group discussed the need to roll this out in a well-planned way to Council and agreed that how to accomplish this should be a topic for the next meeting.

Group discussed whether or not they need to meet with current ISPs before bringing any recommendations to Council. They agreed to wait until just prior to going to Council to prevent unnecessary consternation.

7. Next Meeting

The next meeting is tentatively scheduled for December 14, from 3:00 – 5:00 p.m. in the Siskiyou Room, dependent upon the outside legal review being completed.

8. Adjournment

Meeting adjourned at 5:01 p.m.

Respectfully submitted,
Diana Shiplet
Executive Assistant