



June 21, 2004

Santa Cruz Back in Court

By Linda Haugsted

A Santa Cruz County, Calif., Superior Court judge is expected to decide this week whether to stay the county's Board of Supervisors decision to fine Charter Communications Inc. \$3.7 million for breach of its franchise.

That total could rise if the county is successful in seeking additional compensation for local subscribers. A decision is slated for June 23.

Both the county and the cable company have sued each other, a continuation of the dispute over local transfer authority that has gone all the way to the U.S. Supreme Court, which opted not to review the case earlier this year, and is now back to local jurisdiction.

The dispute began in 1998 after county regulators spurned the transfer of the local system, then owned by Sonic Communications, to new owner Charter Communications Properties LLC. During the transfer proceedings, local authorities, fearful that rates would rise because of the amount Charter paid to acquire the system, demanded a broad range of financial information.

Charter officials felt the demands were excessive and did not provide all the data. As a result, the supervisors voted to reject the transfer. Charter's lawsuit claimed the county's action violated the MSO's First Amendment rights.

Charter won the first round, but that was reversed by the 9th U.S. Circuit Court of Appeals, which affirmed the power of cities to seek a broad array of information in order to protect the interests of local citizens. Charter took the case to the U.S. Supreme Court late last year.

The transfer dispute returned for the board's review earlier this year. Rutan & Tucker's Bill Marticorena, representing the county, said the supervisors earlier this year found that Charter has been in breach of its franchise for more than four years because the MSO took control of the system without county approval. Also, the franchise Charter inherited from Sonic demands that the MSO construct a "return path" from the local public access studio to the operator's office, so that all county residents can view PEG programming.

Marticorena said Charter certified to the county that the path had been constructed, and took rate increases based on the local improvements, but county regulators allege the infrastructure is not in place.

The county filed suit late in May to collect the fines. Within hours, Charter filed a countersuit seeking return of a \$1 million performance bond and a \$500,000 letter of credit. Charter has asked the court to stay the county's action, the subject of this week's hearing.

Charter spokesman Dave Andersen said he couldn't discuss the dispute in detail due to the pending litigation.

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