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Public access TV fee spurs free-speech fight

Woman claims Akron, Time Warner wanted nude programs off air
By Phil Trexler
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It was Time Warner's idea to start charging \$25 to broadcast a program on its public access channel.

But Akron Mayor Don Plusquellic quickly agreed to the change, with little or no input from citizens, only the word of Time Warner that the fee is needed.

And, the cable company and city agree, the changes had nothing to do with pornography.

For local producer Rose Wilcher, who was responsible for producing programming on topics ranging from women's issues to religion, the fee is like pulling the plug on her work. Once responsible for supplying 20 hours of programming a week, the number has dwindled to two since the fee was imposed April 1.

In response, Wilcher is suing the city and cable provider in U.S. District Court in Akron, arguing the fee violates her First Amendment right to free speech.

The city and Time Warner argue, however, that free speech is not always free and the \$25 fee is legal.

The two sides met in court Monday where Wilcher and her attorneys were seeking a preliminary injunction to stop the fee. A temporary restraining order has already been denied.

Magistrate James Gallas heard testimony and arguments for most of the day on the injunction. He did not indicate when he would rule.

For more than 20 years, Akron residents have had free access to produce and play shows on Time Warner's Channel 15 between the hours of 10 p.m. and 6 a.m. What viewers got ran the gamut of community programming, from religious to government issues to adult entertainment.

The latter has for years spurred complaints to City Hall and Time Warner. Because it was an access channel, no one could stop the skin flicks from appearing.

But Wilcher and her attorney, Warner Mendenhall, believe the city and cable company's idea to charge producers \$25 for each show was aimed at cloaking the adult programming -- even at the expense of closing access to other programmers.

In arguing for the injunction, Mendenhall called Channel 15 "a precious, fragile public space... that needs to be maintained." He said the fees only work to silence "the ones who can't afford the costs."

Time Warner attorney Jonathan Fellows of Syracuse, N.Y., argued there is no guarantee of free access for anyone. City attorneys argued the change was not content based, but came after the "reasonable" request from Time Warner to collect fees to offset administrative costs in running the access shows.

"We simply didn't (charge for access) for 20 years, and now we are," Fellows said.
"No one has a right under the First Amendment to have a free TV show, much less 20 free shows a week," as Wilcher had.

Time Warner's vice president of public affairs, Bill Jasso, who formerly worked for the city administration and helped craft the city's franchise contract with Time Warner in 1983, testified he went to the city with the idea for a fee.

He said the manpower and equipment costs mandated that a fee be charged. He said Plusquellic agreed to the change and Council President Marco Sommerville concurred.

As for the nudity claim in relation to the fee, "One was not connected with the other, per se," he said.

Wilcher contends the opposite. During her testimony, she said she recorded a phone call with Sommerville in which he told her the fee was aimed at stopping the nudity.

"He told me it was to eliminate the pornography," Wilcher testified.

Gallas did not permit the tape to be played and Sommerville is out of the country.

Jasso said some cable access shows around the country are still free, such as in Youngstown, while others, such as in Canton, charge a fee.

He said the cable company's cost per tape was determined to be about \$26.20. He admitted under cross examination by Mendenhall that the cost estimate was only devised after Wilcher filed the lawsuit and the numbers were not produced to the city before the fee assessment.

City Councilman Joe Finley, who represents Ward 2 and sits on the council's public utilities committee, testified that there was no City Council discussion about the fee before its implementation.

The city's contract with Time Warner does not require council action. Nor does it block the company from charging fees for users of its public access channel.

Gallas will rule later.

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