

MINUTES OF THE CITY COUNCIL

CITY OF AUSTIN, TEXAS

Special Meeting

February 4, 1963
3:00 P.M.

Council Chamber, City Hall

The meeting was called to order with Mayor Palmer presiding.

Roll call:

Present: Councilmen Armstrong, Perry, Shanks, White, Mayor Palmer
Absent: None

Present also: W. T. Williams, Jr., City Manager; Doren R. Eskew, City Attorney

The Mayor stated this meeting would be opened, since the items under discussion primarily was to be the matter of telephone poles, and MR. TOM BROWN, Southwestern Bell Telephone Company, has a statement he would like to make.

MR. BROWN read a statement that "Southwestern Bell Telephone Company has reconsidered. It will permit one or more community antenna T.V. attachments providing all clearance requirements are met and safeguards for workmen are adequate."

MR. JOHN CAMPBELL, Mineral Wells, Texas, stated he understood the T.V. Cable proposition had been opened for all comers, and he, an experienced person in the business, would like to submit this application. He distributed copies of his application to the Council. Following is the application:

"February 4, 1963

"Honorable Mayor and Members of the City Council
City of Austin
Municipal Building
Austin, Texas

"Gentlemen:

"John G. Campbell, a resident of Mineral Wells, Texas, and for the purposes of this application doing business as TV Cable of Austin, a proprietorship, makes this his application for franchise to install and operate a community antenna system in the City of Austin, Texas, upon the following conditions:

- "1. Applicant hereby adopts and agrees to conform to the policy established by the City Council of Austin with respect to the community antenna distribution system heretofore promulgated by resolution of the City Council.

- "2. In connection with paragraph 5 of said Council policy, the applicant proposes as his method for protecting local merchants from dilution of advertising the following procedures: Studio and origination facilities would be constructed at the tower site, maintaining continuous monitoring of the incoming signals. Out-of-town commercials, with the exception of network commercials, would be blanked out.

QUALIFICATIONS OF APPLICANT

"Applicant has twelve years experience, beginning with engineering, design, construction, and operation of cable systems, having built, owned, and operated one of the early systems in Mineral Wells, and is now a manufacturer of cable equipment and present owner of CAS Mfg. Co. at Mineral Wells.

OWNERSHIP AND FINANCING

"Applicant estimates the initial construction cost at \$1,000,000. He proposes to finance and retain 25% ownership, the balance of ownership to be offered to the citizenry of Austin.

"Respectfully submitted
s/ John G. Campbell
John G. Campbell
d/b/a TV Cable of Austin"

The Mayor stated he was extremely pleased; that it was never the intention of the Council in adopting the requirements that a monopoly would be afforded to anyone. It was the Council's hope that competition would assure better public television viewing for the people of Austin, and it is delighted to have this application. The Council referred this application to the City Manager as far as the filing of a contract was concerned; and when all of the requirements of the contract were met, the Council would be more than happy to vote the Contract. Mayor Pro-tem PERRY read the application as filed.

The Mayor stated the purpose of this meeting that he asked the Council to come together was to discuss primarily the possibility of installing poles wherever there might be a conflict in light of what the policy of the Telephone Company which was announced Friday afternoon. In the light of this policy stated here today by the Telephone Company and the application that has been filed, there is not a great deal of other business to be transacted.

COUNCILMAN SHANKS stated the Council should extend to those that have applications or are thinking about making applications, a welcome and to say the Council surely would like to have them file their application. The Mayor stated they had been encouraged and urged to file their applications. It was always the desire of the Council that there would be competition in this field. If there are any other applicants ready to sign, the Council would be delighted to accept them.

MR. DENIUS, representing Capital Cable Company, stated he has a contract for the installation of a cable TV system pursuant to the 21 points adopted by

the Council on January 24, 1963. He wanted to make a statement on behalf of his client. First when they signed the contract with the City pursuant to the 21 points, they did so well knowing that they did not have a monopoly, as they recognized under the laws of the State of Texas, there would not be a monopoly. Article 1, Section 26 forbids a monopoly in Texas, and they entered into their contract in good faith recognizing this. He stated they would not say they liked all 21 points, but they were prepared to live with them. There was a statement made by Mr. Valentine of Dallas that he had seen more cable contracts and franchises than any other lawyer in the room at that time, and that he had never seen a contract like the City of Austin proposed. MR. DENIUS said Mr. Valentine had never seen a Council protect the people of Austin or any other City as much as was done in the promulgation of those 21 points. MR. DENIUS said they would like to charge the rates they thought best, but they understood why the City wanted to protect the people of Austin. In regard to their contract with the Telephone Company, he stated this contract was negotiated over a period of time by people with whom he was associated--not anyone in Austin nor anyone in his firm. This contract which was negotiated with Southwestern Bell Telephone Company, provides two things.

- (1) It is not an exclusive contract; it cannot be and it is not.
- (2) That in the event the Telephone Company poles will not accomodate their cable or if there are other facilities on there that make it necessary for changes to be made before their line goes on there, it would be at Capital Cable's expense. They entered into and accepted the contract on that basis, and they were ready to move forward.

He stated they would like to get started, as they are in the process of building what they consider the finest system of any where in the country, and they were ready to go. They were in the process of installing that system. There are a lot of arrangements that have to be made, and they were in the process of doing that. They never thought they had a monopoly; they did not ask for a monopoly, even with the City or the Telephone Company. They thought this Council protected the people of Austin better than any other contract they had seen, and they recognized their obligation under that contract.

MR. DONALD THOMAS stated they had assumed this would be a competitive enterprise and they welcomed competition. He said they had not discussed with Mr. Tom Brown the statement he had made. They had seen the statements made by the City; in which it said if difficulty in negotiating a contract with the Telephone Company prevented any applicant from going forward; and if the City considered this was a sound investment in public service in allowing people to not only have a choice of television but a choice of the companies that were to provide television, he said he wanted the Council to know insofar as its announced action in providing those poles was concerned, whether or not it be legal or whether or not it be within its power, the Capital Cable Company supports the decision to provide those poles if they cannot get on the Telephone Company's poles. To the extent that Mr. Brown, speaking for the Telephone Company, added the conditions with respect to safety or to the adequacy of the facilities, if in the pursuit of this competitive enterprise it develops that any of those conditions that were stated by Mr. Brown prevents any other applicant from contracting with the Telephone Company, and it is necessary for the City to provide the poles, that his applicant would not protest the Council action in so doing, but will support its action. This Council has made it difficult to build systems here

because of the unusual requirements which were originally adopted and announced. The Council has served the public interest. It has refused to grant an exclusive right to any applicant. It has reserved to itself the right to review the rates; and on these two things, the refusal to grant a monopoly and the reservation of the right to protect the people of Austin against unfair profits, there has been some criticism. But let the focus be exactly on that, but this Council has refused to grant a monopoly. Those two conditions make it difficult to finance the building of such a system. MR. THOMAS said they recognized the Council's rights to lay down the rules and his applicant is proceeding to comply with the measures the Council had taken to protect the public's interest.

MR. DENIUS stated he was authorized on behalf of Capital Cable Company to here and now proclaim publicly to the Council and to the World that they would neither challenge the wisdom of the decision of the Council to construct the facilities in the event the Telephone Company was not in a position to do it; nor would they challenge the Council legally. That is stated for the record. He said they had the highest and utmost respect for everyone; so far as other applicants were concerned, Mr. Thomas and he and their partners and associates had the utmost confidence in every applicant and their attorney.

The Mayor stated they were going to invite all applicants and he would still urge the other to file their applications. He asked the City Manager to state briefly the plan, in the event there is a conflict, just how the City proposed to cope with the pole situation. So that it would be a matter of record, he would like for the City Manager to state his proposal.

The City Manager stated from the inventory of their poles and his understanding of the number owned by the Telephone Company, the City has about 43,000 and the Telephone Company has about 14,000 in the city limits. The City has slightly more than 3/4ths of the poles. In many instances the telephone poles and city poles are parallel down the same street. In those cases, if the cable company could go on the City poles, there would be no need for telephone pole usage, or vice versa. About one out of every seven or eight poles might necessarily be a telephone pole; but if it is assumed that one out of every four must be a telephone pole, and if there are not adequate spaces on the telephone poles for cable contact points, then the maximum number of poles which the city might have to set to provide substitute for telephone poles would be one out of four. One out of four poles might conceivably have to be set; however it probably would be one out of eight, to provide the additional contacts. By providing those additional poles the City would get the revenue from the additional company. The additional companies' pole revenue would be for all the poles owned by the City. If the City did have to set one out of four, the effect of that is for every one pole it sets, the city collects rental on four poles, at \$3.00 rental per annum. That means for every pole set, in order to enable a second cable company to hang its cables on its poles, the City would receive \$12.00 a year for every pole that it had to set. It costs about \$12.00 to set a pole. No new poles would have to be purchased. There are many poles in good condition which have had to be changed out in the electric system--they are not completely new, but are relatively new poles which possibly have been broken one way or another, and from which could be obtained 25' lengths which is all that is necessary to provide adequate clearance for cable television. The total cost of the City would be about \$12.00 to set them; and one year's rent paid in advance by the second television company would pay for the television poles. The revenue produced from two television companies--\$24.00 for each pole set--would more than take care of the pole setting requirements. That revenue is not now money available to the City but rental

which would be solely in advance by the two television companies for the first year, and it would more than pay for the number of poles that would have to be set to substitute for telephone poles.

The Mayor stated he had conversations Friday and Saturday with Mr. Dick Brown and Mr. Sonny Davis, and had invited them up. He asked if Mr. Brown had any comments. Mr. Brown stated Mr. O'Quinn was their spokesman, and Mr. O'Quinn stated he had no comment. Mr. Gaynor Kendall had no comments.

No others had any matters to bring before the Council

There being no further business, Councilman Perry moved that the Council adjourn. The motion, seconded by Councilman Armstrong, carried by the following vote:

Ayes: Councilmen Armstrong, Perry, Shanks, White, Mayor Palmer
Noes: None

The Council adjourned at 3:30 P.M., subject to the call of the Mayor.

APPROVED

Lester E. Palmer
Mayor

ATTEST:

Elis Woadley
City Clerk