

MINUTES OF THE CITY COUNCIL
CITY OF AUSTIN, TEXAS
Special Called Council Meeting

March 31, 1981
6:00 P.M.

Council Chambers
301 West Second Street

The meeting was called to order with Mayor McClellan presiding.

Roll Call:

Present: Mayor McClellan, Councilmembers Cooke, Goodman, Himmelblau,
Mullen, Mayor Pro Tem Trevino

Absent: None

Mayor McClellan stated that this was a Special Called Meeting for the purpose of conducting a public hearing on cable television. A previous work session had covered various aspects of the proposal from American Television and Communications, Inc. (ATC)

Assistant City Manager Daron Butler stated that the most important thing that the City Council had requested either of the City staff or the Company was to examine the rate structures and the tiering concepts within those structures and come back with an additional proposal. Such a proposal had been distributed to the Council this morning. Mr. Butler also had a list of additional questions to be answered which had come from several sources.

Mr. Butler then reviewed the approach used by the staff with regard to the negotiations with ATC. Under terms of the agreement the Council could:

1. Begin an investigation of the Company's technological sophistication;
2. Impact the system continuously through performance evaluation sessions which are provided for annually as the system builds out and periodically toward the end of the franchise;
3. Regulate rates;
4. Create a management authority to help make decisions over the life of the franchise.

The agreement also contained a 5% gross receipts tax which would provide substantial revenue over the life of the franchise and a \$3.50 per month pole rental fee with provisions to adjust that fee if needed.

In response to Councilmember Goodman's question, Mr. Butler stated that he did not know whether Mr. Rifkin or Mr. Collins had scheduled meetings with AISD.

Mr. Monroe Rifkin reviewed some of the history of his company, American Television and Communications Corporation. The Company was the largest in size in the country and also the fastest growing company in the cable TV industry. The proposal being made to Austin by ATC was the most advanced ever made by ATC. That proposal included an option for either 54 channels or a dual 84-channel system with a non-profit educational network and an express loop. After reviewing its proposed timetable, Mr. Rifkin stated that the Company would have to stick with that schedule. Part of the agreement included penalty charges if the timetable was not met.

Mr. Rifkin stated that no formal interviews had been conducted with local institutional users, but that there had been informal meetings. Also, after the meeting last week, the Company had enlarged its offerings.

Mr. Joe Collins, Senior Executive Vice-President of ATC, said that the company had looked at both the 54-channel and the 84-channel options to see how the service offerings could be restructured such that they would be technologically feasible and economical. Regarding the 54-channel option, the company offered all customers 23 channels in the first year of rebuild with a \$70 converter which tuned all the way up to 54 channels. Substituting a 42-channel converter in the early years would save \$20 to \$25 per converter. After reaching 42-channel capacity, an additional converter could be purchased to bring the system up to 54 channels. The \$25 savings could be passed on in the form of lower rates.

On the 84-channel tier the primary problems seemed to be in the later stages creating a much more intermediate rate. In the early stages the customer would get 24 channels of service through two cables (A cable and B cable). No converter would be needed for the two cables. For the full tier, a converter would be added to the configuration. Under the revised proposal, there would be four major alternatives.

Mayor McClellan then opened discussion from the floor.

Jim McGrew stated that Capital Cable had not raised its rates since it had been in business in Austin. He also questioned the need for 84 channels.

L.L. Brown expressed concern over the amount of time allocated to the ascertainment study. He favored an 84-channel system.

Doug Hamilton spoke in support of a 54-channel system instead of an 84-channel system.

Dr. Gross distributed a letter signed by three members of the Higher Education Council of Austin outlining basic needs related to the cable TV proposal. The group strongly endorsed an 84-channel system, requested four channels dedicated to higher education, have access in the interim period to more than one dedicated channel and that the allocation process of access be determined by the Higher Education Council of Austin.

Councilmember Himmelblau asked Dr. Gross if it was fair to ask the average subscriber to pay for the 84-channels that would be asked for by the institutional needs.

Dr. Gross responded that he could not address the question directly except to say that on behalf of the institutions and projected usage it was felt that to ask for less than what was felt to be appropriate for Austin over the life of the franchise, given the nature of education and technological level in the community, would not be appropriate.

Discussion followed between Dr. Gross and Councilmember Cooke as to what would be offered by the participating educational institutions. Dr. Gross indicated that his group would like to meet with ATC and the Council for further discussion.

Councilmember Goodman expressed his appreciation for the Higher Education Council's work and felt that problems could be worked out regarding payment for the channels.

Councilmember Mullen asked Dr. Gross if he was aware of the proposed interactive tier and the possibility that 54 channels was enough to serve all the needs of Austin while keeping down costs. Dr. Gross indicated that he was aware of the tier and that the impact was interesting. However, he had not discussed with his colleagues the possibility of having 54 channels instead of 84 channels.

Royce King, representing Region 13 Education Service Center, which was another segment of public education in the Austin area, made the following recommendations:

1. Adopt a system which will meet and serve community needs through 1996. The system described in recommendation #1 by Smolen & Associates was endorsed.
2. Recommended upstream capability from ESC #13 to the head-in for distribution of instructional films, staff development and data processing services.
3. Recommended a provision for interconnection with other cable companies in language developed and recommended by the National Federation of Local Cable Programmers.
4. Recommended that the Austin Access Authority membership consist of one representative from each public institution utilizing access channels and that their responsibilities include maximizing the use of the access channels, scheduling use of the channels, and serving as the access advocate to the City Council.
5. Recommended that the Council consider those recommendations presented previously by the Austin Public Schools.

Mr. King stated that his organization could provide access to 10,000 films for use in the local system.

Lloyd Purvis spoke in support of an 84-channel system. He felt that independent access programming should be retained as opposed to community programming controlled by a cable operator. He proposed that the City create a Cable Authority instead of an Access Authority which would be appointed by the City Council. That Authority could designate a separate Access Authority in both the public and educational access areas. He also suggested that the City establish a Cable TV Officer. He asked that such matters not be treated separately but as an integral part of the award of a franchise.

Councilmember Mullen questioned the costs of an 84-channel system versus a 54-channel system.

Mr. Purvis stated that he wanted the City to avoid being locked in for a long term with a system which would become inferior.

Councilmember Goodman stated that he concurred with Mr. Purvis' recommendations.

Councilmember Cooke asked Mr. Hamilton to comment on the use of 450 MHz to 500 MHz amplifiers versus the 400 MHz amplifiers being proposed for the 54 channels.

Mr. Hamilton responded that the larger the amplifiers the more channels that could be added. However, there were ways to get more from the 400 MHz amplifiers.

Lynn Cooksey, president, Austin Community Television, stated that they were generally pleased with the cable ordinance, but commented on the following areas:

1. *N + 1 Rule* - Language of the ordinance describing the trigger mechanism in the *N + 1 Rule* whereby access channels are added to the system after one channel is filled should be amended. Time should be reduced from 6 months to 2 months.

2. *Funding of access* - Urged approval of \$2.6 million to support capital expenditures of access equipment and \$6.2 million allocated over the life of the franchise to defray access operating expenses.

Agreed with Paul Smolen & Associates' recommendation of a 6,000 square foot building to house officers, editing rooms, equipment storage areas and viewing rooms needed for access production.

3. *Composition of Access Authority* - Should be based on access use. Suggested that Austin Community Television be used during a one-year interim process of working out the details of the Authority's structure.

4. *Austin Cable Authority* - Recommended creation of that body to monitor and advise the Council on all cable operations other than access. Such areas included overseeing cable compliance, service, rate structures and new technology. The group would act as an interface between the Council, City staff, citizens, the cable operator and the Access Authority.

Joan Penzenstadler, a freelance photographer and writer, compared public access television to letters to the editor columns and stated that such access was an asset, not a liability to cable systems. She recommended ACTV as the main nucleus and resource for forming an access authority.

Bryan Owens, who had 9 year's experience in cable TV and was on the faculty at Huston-Tillotson College, favored a medium tier at \$6.95 per month beginning in the 6th year. Many of the pay TV services would be available only to people buying the highest tier of service. He questioned the lack of a pro forma and the capital expenditure estimate, as well as the cost of Austin's cable system versus Dallas' lower cost. He stated that Austin's ordinance needed to protect citizens against deregulation at the local level of the cable TV industry. He felt that ATC's proposal offered too little for Austin compared with other communities. Regarding public access, he thought that operating costs were way too low. No channels or equipment had been reserved for cable access radio and no remote keyboards and character generators for putting on automated information. He saw very little in ATC's proposal regarding minorities.

Concerning the 54-channel versus 84-channel systems, Mr. Owens stated that there was a waiting list for the use of video channels in the country. Adding another 54 channels to Austin's system would provide text channels and not video channels.

There was discussion between Councilmember Cooke and Mr. Owens regarding the number of channels offered in Tucson versus ATC's proposal for Austin. Councilmember Cooke asked ATC to review Mr. Owens' comments and respond later in the meeting.

Joe Collins, ATC, stated that Mr. Owens' comments were taken out of context. He cited a reference to the Dallas franchise and services not provided in ATC's proposal and said the FCC restrictions prevented importing more than one independent station. Referring to a senior citizens' channel, Mr. Collins stated that no programming was currently available. A number of channels had been reserved for future services and would be implemented as they became available. Regarding the economics of establishing systems in different cities, Mr. Collins stated that all factors should be looked at and not just one isolated point taken against some other isolated point. As an example, he cited the differences in densities in New Orleans and Austin.

Responding to Councilmember Himmelblau's question, Mr. Collins stated that the difference in cost between pole and underground installation could be as high as \$10,000 per mile.

Assistant City Manager Daron Butler commented that he recommended that the cost burden stay with the rate base and not be shifted to the cost of the mortgage or development of the land.

There was discussion among Councilmember Mullen, Mr. Collins, Mr. Rifkin and Mr. Owens. Mr. Rifkin pointed out that there were many more channels of total capacity in Austin than in Tucson. Mr. Owens stated that he would like to have the Tucson proposal in Austin.

Brenda Trainer, representing Women in Communications, Inc., supported ATC's proposal in principle, but expressed some reservations about the package offered. She asked that the channels reserved for access on the universal tier be used only for access purposes.

Bill Arthos, representing KLRU-TV, asked that no action be taken on the significant portions of the cable ordinance until further discussions were held with KLRU-TV, The University of Texas, the City and the potential cable TV franchisee.

Ed Hanslik, chairman-elect of the board of directors, KLRU-TV, stated that as far as he could tell, the KLRU and University of Texas had been summarily dismissed. He asked for due consideration one more time, and that wording be included in the cable TV ordinance which would encourage the franchisee to work with KLRU.

Sylvia Calloway, representing several local human service needs agencies, asked that at the lowest tier of service at least one channel be designated for social service programming to be coordinated by Human Services Association and/or Human Services Advisory Committee, preferably at no cost to the users.

Tom Gevick, speaking as an access user, expressed his views on the need for access programming.

In response to Councilmember Goodman's question, Mr. Gevick stated that Capital Cable had paid \$15,000 of a promised \$25,000 to ACTV and that the rest would be forthcoming.

Gary Edward Johnson raised the following objections to the proposed cable TV ordinance:

1. Franchise tax should not be raised to 5%.
2. Monthly bill could not be itemized to show franchise tax.
3. "Free" services would have to be paid for by paying customers.
4. Objected to clause in ordinance allowing the City to buy the cable system if it chose to.

Mark Bryant spoke in defense of an 84-channel system. He was concerned that only 59 channels of a potential 84-channel would be for video. In the 54-channel system, 50 channels would be video. Regarding an Austin Access Authority, he felt that the duties and details of its organization should be outlined before the franchise was granted.

Stuart De Luca thought that it was a waste of time to try to pin down Capital Cable on what services and rates were to be provided with a fully rebuilt system. He recommended a citizen oversight organization for cable TV. He also endorsed the Smolen & Associates' recommendations for capital investment for access but felt that continuing funding for capital could be higher.

Art Schure with media development services at Seton Medical Center, read a letter from Sister Mary Rose of Seton endorsing the role of cable television in improving the health standards of Austin through health education programming.

Ron Wilcox, president, Diversified Communications Engineering, asked if the Council intended to treat the cable company like any other utility. His concern was over the pricing and handling of lease channels. He asked Mr. Rifkin to address the matter.

Mr. Rifkin responded that lease channels were provided for in the allocation of the facility. ATC could only charge those rates approved by the City Council in a rate ordinance. Presently no tariffs had been submitted to the City for lease channels. However, the City had the authority to set such rates, not ATC.

Mr. Tawil requested a formula relating to the method of implementation for lease channels.

City Attorney Jerry Harris stated that the City Council retained the authority to set rates, but that a formula could be devised if desired by the Council.

Jean Nipper, representing Austin Independent School District, asked that access to the proposed cable system be guaranteed by ordinance for AISD.

Councilmember Mullen requested that City staff incorporate the request into the proposed cable TV ordinance.

Mayor McClellan also suggested that staff work with Ms. Nipper and report back to Council.

City Manager Davidson pointed out that the original proposal which was approved by the City Council indicated that institutional programming and allocation of channels would come after the franchise had been finalized. The staff understood that consideration as well as the companies and AISD.

An unidentified woman, speaking for Austin Community Television, stated that in terms of access, the public should be included in the use of cable TV facilities. She also felt that access authority should be defined.

Tommy Wyatt, editor, the Villager Newspaper and member of the board of Austin Area Television, spoke in support of minority programming. He asked what was ATC's commitment to funding the minority access channel.

City Attorney Harris explained that as the ordinance proposed all the access money commitments would be turned over to the access authority. The authority would decide on the basis of need and ability to use the channel who would get the share of the money. Use of the money would be subject to the City Council's approving the access authority budget.

Councilmember Mullen was not sure that he agreed with the current proposal. He felt that the people holding the cable TV franchise should be responsible for training people to use the access channel.

City Attorney Harris stated that the Council had 120 days (in the proposed ordinance) to obtain community input to decide the role of the access authority, how it would be appointed, and so on.

Councilmember Goodman asked ATC how much of a financial commitment was in the ATC proposal for the Dallas Independent School District.

Mayor McClellan asked that the information be provided to the Council before the next public hearing.

ADJOURNMENT

The Council adjourned at 12:11 a.m.

APPROVED

Charles Tolson McAllen

Mayor

ATTEST:

Grace Monroe

City Clerk