

**CITY-COUNTY COUNCIL
INDIANAPOLIS, MARION COUNTY, INDIANA
SPECIAL MEETING
Monday, November 17, 1980**

A Special Meeting of the City-County Council of Indianapolis, Marion County, Indiana, convened in the Council Chambers of the City-County Building, at 5:15 p.m., Monday, November 17, 1980. President SerVaas in the Chair. Mr. Bill Dowden opened the meeting with a prayer, followed by the Pledge of Allegiance.

ROLL CALL

President SerVaas instructed the Clerk to take the roll. President SerVaas announced that Councillors Gilmer and Vollmer had contacted the Chair and would be arriving later in the meeting. ~~Twenty-seven~~ members being present, he announced a quorum.

PRESENT: Mr. Boyd, Dr. Borst, Mrs. Brinkman, Mr. Campbell, Mr. Clark, Mr. Cottingham, Mrs. Coughenour, Mr. Dowden, Mr. Durnil, Mr. Hawkins, Mr. Holmes, Mr. Howard, Mr. Jones, Mrs. Journey, Mr. McGrath, Mr. Miller, Mrs. Nickell, Mr. Page, Mrs. Parker, Mr. Rader, Mr. Rhodes, Mr. Schneider, Mr. SerVaas, Mrs. Stewart, Mr. Strader, Mr. Tintera, Mr. West

ABSENT: Mr. Gilmer, Mr. Vollmer

CORRECTION OF JOURNAL

The Chair called for additions or corrections to the Journals of September 8, September 22, and October 6, 1980 meetings of the Council. There being no additions or corrections to the Journals of these meetings, the minutes were approved, as distributed.

OFFICIAL COMMUNICATIONS

The Chair called for the reading of the Official Communications. The Clerk read the following:

**TO THE HONORABLE PRESIDENT AND MEMBERS OF THE
CITY-COUNTY COUNCIL OF INDIANAPOLIS AND MARION
COUNTY, INDIANA:**

Ladies and Gentlemen:

Pursuant to the laws of the State of Indiana, I caused to be published in The Indianapolis NEWS and The Indianapolis COMMERCIAL on Friday, November 7, 1980, and Friday,

November 14, 1980 the following NOTICE OF PUBLIC HEARING ON CABLE TELEVISION:

Notice is hereby given that a special meeting of the City-County Council in its regular chambers in the City-County Building in Indianapolis, Indiana, on Monday, November 17, 1980, at 5:00 p.m., said Council shall hold a PUBLIC HEARING to review the rejections of the Board of Public Works, of the cable television franchise bids of: Indianapolis Cablevision Company, Ltd.; Indy Cable Television, Inc.; and United Cable Television Corporation. The Council shall also hold a further PUBLIC HEARING to consider Proposal No. 544, 1980, approving and confirming the CATV franchise contract by and between the City of Indianapolis, Indiana, through the Board of Public Works of its Department of Public Works, and American Cablevision of Indianapolis.

**s/Beverly S. Rippy
Clerk of the City-County Council**

Mrs. Rippy also advised the Council that the Clerk's Office had received proper notice of the publication of the contract between the Board of Public Works of the City and American Cablevision of Indianapolis, as required by state law.

INTRODUCTION OF PROPOSALS

PROPOSAL NO. 579, 1980. Introduced by Councillor Coughenour. The Clerk read the proposal entitled: "A Proposal for a General Ordinance providing for the establishment of rates and charges for the use of the sewerage system; the methods of ascertaining such charges and defining the powers and duties of the Department of Public Works"; and the President referred it to the Public Works Committee.

CONFIRMATION OF RULES AND ADOPTION OF SPECIAL ORDER OF BUSINESS

President SerVaas announced that the Council would be moving into a Committee of the Whole for a public hearing to review the decisions of the Board of Public Works which rejected cable television franchise applications at 5:20 p.m. Assistant Counsel, Mr. P. Frederick Pfenninger, Jr., outlined the procedure to be followed for the hearing of the appeals. Mr. Pfenninger stated that pursuant to the "Code of Indianapolis and Marion County, Indiana," Sec. 8 1/2 - 27, three petitions were timely filed and received by the Clerk. (Those petitions being Indianapolis Cablevision Company, Ltd., Indy Cable Television, Inc., and United Cable Television Corporation.) After a brief report from the Board of Public Works, each appellant in alphabetical order will be given up to twenty-five (25) minutes to make a presentation relevant to the subject matter under discussion. Any remaining time not utilized by each company in their respective presentations, will be granted for rebuttal. American Cablevision will then be allowed up to twenty-five (25) minutes to answer issues and questions developed in the presentations.

Following American Cablevision of Indianapolis' response, each Councillor shall be given a reasonable amount of time to question any of the parties or to make statements. President SerVaas concluded by stating that after deliberations were completed, the Petitions for Review would be properly before the Council for action. If a resolution is duly moved and seconded, the resolution shall be acted upon in accordance with the Rules of the Council. If no such resolution becomes properly before the Council and adopted with respect to each of the petitions, such Petition or Petitions for Review shall be deemed denied.

After requests made by Minority Leader Boyd and Majority Leader Clark, that all members be required to vote, President SerVaas called for members who felt possible conflict of interest wishing to abstain from voting during this Special Meeting. No Councillors answered the call, and upon confirmation of the rules as outlined above and the adoption of the special order of business, the Council moved into a Committee of the Whole and the public hearing commenced with the report of the Board of Public Works, represented by Mr. Doug Hiland, attorney.

Mr. Hiland opened his discussion by reiterating to the full Council the decision making process that was followed by the Board of Public Works. In addition to a "rating form" and "grid sheet", the Board basically used twelve criteria which incorporated the seven general criteria for analysis as set out in Chapter 8 1/2-42 of the Code. Mr. Hiland emphasized that the Board acted properly by sending the recommendation back to the full council within the prescribed 45-day time limit, took into consideration the seven criteria, and had presented the franchising contract for Council action. Mr. Hiland then reserved his remaining eighteen minutes, fifteen seconds for rebuttal.

Indianapolis Cablevision Company, Ltd., being first in alphabetical order, was represented by Mr. Marvin Hackman, attorney for the company. Mr. Hackman introduced Mr. Joe Dawson, President of Indianapolis Cablevision Company, Ltd., and general partners of the management team which were present: Mr. Eldon Campbell, Mr. Tom Binford, Mr. Jim Ackerman, Mr. Arthur Angotti, and Mr. Robert W. Robbins. Also present as technical consultant from Washington D. C. was Mr. Archer Taylor. Amid his presentation which included a point by point analysis of statements countering the Board's reasons of rejection, Mr. Hackman sited three areas of consideration of "special factors" for the council to ponder: 1) the council cable committee's recommendation in favor of awarding the franchise to Indianapolis unless American could be found to be "clearly superior"; 2) the effects of a single franchise or multi-franchise holder; 3) the effects of having a local bidder with local components. Mr. Hackman reserved ten minutes for rebuttal.

Mr. Karl J. Stipher, attorney representing Indy Cable Television, Inc., addressed the Council on behalf of Mr. Jim Nishimura. Mr. Stipher challenged the position of the Public Works Board with respect to analysis of the board's consideration of the proposed financing, construction scheduling, track record of nine years, and the use of local participation by Indy Cable Television, Inc. Mr. Stipher accounted for the higher costs of the Tier 2 service by explaining the quality of service which would be associated with the highly technological 400 MHz system, and added that the institutional access of the system's complete and specific uses are speculative because it is so modernistic. Mr. Stipher reserved thirteen minutes, twenty seconds for rebuttal.

Mr. Dennis Grubb, franchise project director of United Cable Television Corporation of Denver, Colorado, United's parent firm, Mr. Mark Van Louck, Vice President, and Mr. Bill Kingery, financial specialist, all representing United Cable Television Corporation of Indiana, defined their proposal as a unique joint venture with a cable cooperative which will own 25% of the system. This cooperative is open to citizens and non-profit organizations which can join and share in the decision of how the dividends are to be used to benefit the local community, thus benefitting a wide spectrum of citizens of Indianapolis, if granted the franchise. Mr. Van Louck stressed the merits of United's proposed 400 MHz system with two-way interactive communication, which will enable the subscriber to link up to a dual-cable, 91 channel system. Mr. Van Louck reserved twelve minutes for his rebuttal.

Dr. Gene Sease, Chairman of the Board of twenty-five local investors in American Cablevision of Indianapolis, Inc., and Mr. Bill Brown, President of the firm, explained the specifics of a buy-sell agreement option which the local investors in American may plan to exercise, enabling them to purchase a major share of the cable company after seven years. Dr. Sease compared the long-range rates of the four bidders, and was supportive of promotion of competition between the cable service to the central and suburban portions of the city. Mr. Brown relayed American's track record and commented on the proposed budgeted miles of cable to be linked for the upcoming year, adding the assurance that American, through its proposed 330 MHz, 80 channel system had the capability to serve Indianapolis' data transmission needs through a competitive construction schedule and solid financial commitments. Mr. Brown reserved eight minutes for rebuttal.

Individual rebuttals followed, each company rebutted a total of two times each utilizing their total allotted time period, with the exception of Indy Cable Television, Inc., which waived its remaining time. Mr. Marvin Hackman,

representing Indianapolis Cablevision Company, Ltd., was the first to rebut, responding to comments on the following subjects: buy-sell agreement vs. pro-rata basis, competitive disadvantages of the granting of two different franchises, and the lead time in constructing facilities his company might acquire by virtue of its franchise outside the old city limits. Mr. Van Louck, representing United Cable Television Corporation, in his rebuttal immediately following Mr. Hackman. charged the Councillors to consider the subjects of maximum number of channels available for each customer compared to the cost per customer, the benefits of the latest technology, and the guarantee of the funds of local investors by the parent company. In its rebuttal, American Cablevision of Indianapolis, Inc. called on Mr. Frank E. McKinney, Jr., local investor, to outline the proposed merits of financing the franchise project as a locally owned, publically held company, not a privately held company.

President SerVaas asked for public comment at 7:15 p.m. There were no persons from the general public present wishing to comment.

[Clerk's Note: At 7:17 p.m., the Council recessed and reconvened to continue business at 8:10 p.m.]

Each Councillor was then given a reasonable amount of time to either ask a question of the bidders, or to make statements. Major topics of questioning included: 1) Form P of the franchising application, 2) the feasibility of up-dating any or all of the systems with new components before the beginning of construction (400 MHz vs. 330 MHz), if the technology allowed, 3) liability of municipalities and remedies for non-performance pertaining to the operation of the cable system, and the proposed administrative structure to handle citizens' complaints, 4) the time schedule each company has promised for completion of the cable plant and the use of easements with respect to the dependance of the franchisee in attachment to utility poles, etc., 5) the importance of Senate Bill 2827 and the control of the FCC with respect to the local regulation of CATV, and 6) the management philosophy of the bidders with regard to controversial subject matter in programming.

Councillor Durnil then moved, seconded by Councillor Gilmer, for adoption of a proposal finding the rejection of the application of Indianapolis Cablevision Company, Ltd. improper, and sending the application back to the Board of Public Works for further reconsideration pursuant to Sec. 8 1/2-26. Mr. Durnil read the proposal, which all Councillors received prior to the Council meeting. Brief Council discussion followed, after which Councillor Miller moved the previous question, seconded by Councillor Clark. A voice vote was then taken on the call for the question. Councillor Gilmer called for a Division of the House which was as follows:

14 AYES: Mr. Boyd, Mrs. Brinkman, Mr. Clark, Mr. Dowden, Mr. Durnil, Mr. Gilmer, Mr. Hawkins, Mr. Holmes, Mr. McGrath, Mr. Miller, Mr. Rader, Mr. Schneider, Mrs. Stewart, Mr. Tintera

15 NOES: Dr. Borst, Mr. Campbell, Mr. Cottingham, Mrs. Coughenour, Mr. Howard, Mr. Jones, Mrs. Journey, Mrs. Nickell, Mr. Page, Mrs. Parker, Mr. Rhodes, Mr. SerVaas, Mr. Strader, Mr. Vollmer, Mr. West

The motion for the call for the question limiting debate having failed, the Council continued discussion of the main motion to resolve to send the application of Indianapolis Cablevision, Company, Ltd. back to the Board of Public Works. Councillor Borst moved to amend the main motion, seconded by Councillor Dowden, resolving that the rejections of the CATV franchise applications of Indy Cable Television, Inc., United Cable Television Corporation, and Indianapolis Cablevision Company, Ltd. be deemed improper, and therefore be sent back to the Board of Public Works for further reconsideration. This motion failed by voice vote.

The Council then voted on the main motion to resolve that the rejection of the application of Indianapolis Cablevision Company, Ltd. was improper, and directed the Board of Public Works to reconsider this application. The resolution, which was later entitled "Proposal No. 607, 1980", was adopted on the following roll call vote; viz:

17 AYES: Mr. Boyd, Dr. Borst, Mrs. Brinkman, Mr. Campbell, Mr. Clark, Mr. Dowden, Mr. Durnil, Mr. Gilmer, Mr. Hawkins, Mr. Holmes, Mr. McGrath, Mr. Miller, Mr. Rhodes, Mr. Schneider, Mr. SerVaas, Mrs. Stewart, Mr. West

12 NOES: Mr. Cottingham, Mrs. Coughenour, Mr. Howard, Mr. Jones, Mrs. Journey, Mrs. Nickell, Mr. Page, Mrs. Parker, Mr. Rader, Mr. Strader, Mr. Tintera, Mr. Vollmer

Proposal No. 607, 1980, was then retitled SPECIAL RESOLUTION NO. 89, 1980, and reads as follows:

CITY-COUNTY SPECIAL RESOLUTION NO. 89, 1980

A SPECIAL RESOLUTION directing the Board of Public Works to reconsider its action under Sec. 8 1/2-26 of the "Code of Indianapolis and Marion County, Indiana" regarding a CATV franchise.

WHEREAS, Indianapolis Cablevision Company, Ltd. has petitioned the City-County Council to review the rejection of its application for a cable television franchise by the Board of Public Works; and

WHEREAS, the City-County Council has considered such petition, and determined that the rejection of such application was improper under Chapter 8 1/2 of the

"Code of Indianapolis and Marion County, Indiana"; now, therefore:

**BE IT RESOLVED BY THE CITY-COUNTY COUNCIL OF THE
CITY OF INDIANAPOLIS AND OF MARION COUNTY, INDIANA:**

SECTION 1. The City-County Council finds that the rejection of the application of Indianapolis Cablevision Company, Ltd. for a cable television franchise by the Board of Public Works of the Department of Public Works is improper under Chapter 8 1/2, specifically Sec. 8 1/2-27 of the "Code of Indianapolis and Marion County, Indiana".

SECTION 2. The Board of Public Works be, and is hereby directed to reconsider its action in rejecting the application of Indianapolis Cablevision Company, Ltd. for a cable television franchise at the earliest practical date, and in particular to consider and give appropriate credit for, or make appropriate adjustments with respect to:

(a) The benefits of a single cable television system for all of Indianapolis and Marion County;

(b) Differences between the applicants' compliance with the instructions to bidders, Form P, as to the form of franchise contract;

(c) Category 7 (channel tiering and rates) to the extent sufficient consideration was not given to : (i) the fact that the initial rates bid are subject to change upon completion of construction;

(ii) the public's interest in having an economy service available to ensure that cable television will be available to the greatest number of citizens; and (iii) the effect of Proposal No. 554, 1980, and reported action in other cities with respect to the provision of security alarm services by cable television companies;

(d) The erroneous statement in Board Resolution No. 2436, 1980, that the up-stream capacity of Indianapolis Cablevision in category 9 (institutional network) will not be available until the fourth year of operation; and

(e) The lack of timely and sufficient information concerning Indianapolis Cablevision, and the other applicants, in category 12 (quality of service).

SECTION 3. Following reconsideration pursuant to Section 2 above, the Board shall make a further final decision pursuant to Sec. 8 1/2-26 of the "Code of Indianapolis and Marion County, Indiana", on the assumption that the Council may reject the application recommended in Board Resolution No. 2436, 1980, and with the recommendation of the Council that the bid of Indianapolis Cablevision Company, Ltd. be accepted.

SECTION 4. This resolution shall be in full force and effect from and after adoption and approval by the Mayor.

Dr. Borst then moved, seconded by Councillor McGrath, for adoption of a proposal finding that the rejection of the application of United Cable Television Corporation of Indianapolis was also improper and that this application be sent back to the Board of Public Works for further reconsideration. This motion failed on the following roll call vote; viz:

8 AYES: Dr. Borst, Mr. Holmes, Mr. Howard, Mrs. Journey, Mr. McGrath, Mr. SerVaas, Mr. Vollmer, Mr. West

20 NOES: Mr. Boyd, Mrs. Brinkman, Mr. Campbell, Mr. Clark, Mr. Cottingham, Mrs. Coughenour, Mr. Dowden, Mr. Durnil, Mr. Gilmer, Mr. Hawkins, Mr. Jones, Mr. Miller, Mrs. Nickell, Mr. Page, Mrs. Parker, Mr. Rader, Mr. Rhodes, Mr. Schneider, Mrs. Stewart, Mr. Tintera

1 NOT VOTING: Mr. Strader

ANNOUNCEMENTS AND ADJOURNMENT

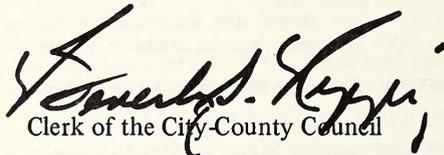
There being no further business, and upon motion made by Councillor Miller, and seconded by Councillor Gilmer, the meeting adjourned at 10:30 p.m.

We hereby certify that the above and foregoing is a full, true and complete record of the proceedings of the City-County Council of Indianapolis, Marion County, Indiana, held at its Special Meeting on the 17th day of November, 1980.

In Witness Whereof, we have hereunto subscribed our signatures and caused the Seal of the City of Indianapolis to be affixed.

ATTEST:


President


Clerk of the City-County Council

(SEAL)