Ordinance 84-30

An Ordinance Amending the Bloomington Municipal Code to Add a New Title 3 and Chapter 3.02 Entitled "Cable Communications Systems", Regulating the Procedure for Granting of Cable Communication Franchises.

WHEREAS, It is in the interest of the City that cable communication systems be made available to the people of the City to deliver a diversity of television and information services, and that the provisions of the Bloomington Municipal Code should facilitate and encourage orderly and responsible development of systems to provide the people with broadband communication service that is versatile, reliable, and efficient; and

WHEREAS, Although Federal legislation is pending which may establish substantive as well as procedural requirements for future franchises, it is necessary that the City begin a franchising process without further delay in order to allow sufficient time for evaluation and negotiation prior to expiration of the current franchise in September, 1985, and that it is in the best interest of the City to establish an orderly and equitable procedure for soliciting and evaluating proposals for future franchise contracts as soon as possible;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION I. The Bloomington Municipal Code is hereby amended to add a new Title 3 and a new Chapter 3.02 entitled CABLE COMMUNICATIONS SYSTEMS to read as follows:

Chapter 3.02

CABLE COMMUNICATIONS SYSTEMS

BOARD AUTHORITY AND APPLICATION PROCEDURES

3.02.010 Statutory Authority. Because the operation of a cable communication system requires the permission of the City to use the public ways, the Council determines that it is proper and in the public interest to franchise such systems pursuant to Ind. Code 36-9-6-4 and Ind. Code 36-9-6-13.

3.02.020 Definitions.

(a) "Applicant" means any person who files an application with the Clerk under the terms of this Chapter.

(b) "Board" shall mean the Board of Public Works of the City.

(c) "Cable communications system," "cable television system," "cable system" or "system" shall mean any system which receives and amplifies signals broadcast by one or more televison and/or radio stations and which transmits programming originated by the system itself or by another party, and distributes such signals by wire, cable, microwave, fibre, satellite or other means to persons who subscribe to such service; provided, that "cable communication system" or "system" does not include any similar system not requiring the use of public ways.

(d) "City" means the City of Bloomington, Indiana, a municipal corporation of the State of Indiana.

(e) "Clerk" or "Clerk of the Council" means Clerk of the City of Bloomington.

(f) "Common Council" or "Council" means the Common Council of the City of Bloomington.

(g) "FCC" means the Federal Communications Commission and any legally appointed successor.

(h) "Franchise" means the non-exclusive right to construct, operate, and maintain a cable communication system.

(i) "Franchise area" means the corporate boundaries of the City for which a franchise is granted under the authority of this Chapter.

(j) "Grantee," "Franchisee," "Company" or "Operator" means the organization granted a franchise by the City under this Chapter and its lawful and

approved successors.

(k) "Public way" means the surface and the area above and below the surface of any public street, highway, lane, alley, sidewalk, path, bridge, tunnel, parkway, waterway, right-of-way or easements and any public utility easements or right-of-ways dedicated generally for public utility areas.

(l) "RFP" means the document entitled "Request for Proposals" for Cable Communications Franchises as approved by Resolution of the Board and Common Council.

(m) "Telecommunications Council" means the Bloomington Telecommunications Council as established by Title 2 of The Bloomington Municipal Code.

3.02.030 Administration and Enforcement. The Board shall have the power and duty to: (a) Execute franchising contracts under the terms and procedures provided in this chapter; and in the event that more than one franchise is granted within the City, to insure that all systems are compatible.

(b) Promulgate any and all rules and regulations which it deems necessary to enable it to carry out its duties under this Chapter; provided that, if within thirty (30) days after delivery of certification to the Clerk of the adoption of rules and regulations by the Board, the Common Council shall by Council action disapprove or reject such rules and regulations, the adopted rules and regulations of the Board shall be of no effect and the rules and regulations shall remain as they were in effect prior to disapproval or rejection by the Council. If the Council does not act within the thirty (30) days after delivery of certification, the adopted rules and regulations by the Board shall become effective.

3.02.040 Previously Awarded Franchises. This Chapter shall apply to all cable communication system franchises granted after the effective date of this Chapter. Nothing in this Chapter shall be construed to prohibit the City's right to extend any existing franchising agreement if such is deemed to be in the public interest.

3.02.050 Authority to Approve and Execute Franchising Contracts. Subject to the provisions of this Chapter, the Board is hereby authorized to approve and execute one or more non-exclusive franchising contracts conveying the right to construct, reconstruct, operate, and maintain, within the public ways in the City, poles, cables, and any other equipment necessary to the operation of a cable communication system.

3.02.060 Initial Resolution and Approval of the RFP. Applications will be accepted following action by the Council determining that a franchise should be granted for the City and approval by Resolution of the Request for Proposals.

3.02.070 Notice of Determination. Within thirty (30) days after the determination that a franchise should be granted, and approval of the RFP, the Clerk of the Council shall give notice of the determination by: (a) Posting of that notice in three public places; (b) Publication of that notice once each week for two (2) weeks in one newspaper of general circulation in the city; and (c) Mailing of that notice to any person the Clerk knows to be interested in submitting an application, and (d) Publication in at least one newspaper of national circulation and trade magazine or publication of the cable industry.

3.02.080 Submission of Applications. Within ninety (90) days after the posting or the first publication provided for in Section 3.02.070, whichever occurs last, all interested persons shall file with the Clerk twenty (20) copies of their application containing the terms of an offered franchising contract, all information required by the RFP, other information as necessary to compare each applicant with other applicants, and an appropriate request for pole usage agreements with any utility. The application shall be in the form and contain the information required by the City and Council attorneys, and shall include payment of a bidding application fee of two thousand dollars ($2,000), payable to the City of Bloomington. The application fee shall be deposited in the general fund and shall be refunded to all unsuccessful applicants within thirty (30) days following final Council action on the Board's recommendation of a franchise contract as set out in Section 3.02.130 herein.

3.02.090 Applications and Public Documents. All applications shall be public records under Indiana Code 5-14-3 and the Clerk shall make copies of the application available for immediate inspection by any person. The Clerk shall place copies of the applications in the Clerk's office, public library,

and Indiana University library. Anyone may obtain copies of all or parts of any application upon payment of a reasonable fee for duplication.

3.02.100 Public Hearings. Within the thirty (30) days after the final date for filing of applications, the Telecommunications Council shall conduct a public hearing at which any person may comment on the various applications before the Telecommunications Council. The Clerk shall publish notice in one newspaper of general circulation in the city ten (10) days prior to the hearing. Any person wishing to comment at the hearing shall be given an opportunity to be heard.

3.02.110 Final Action by the Board. (a) Within ninety (90) days after the final date for filing applications, the Telecommunications Council shall submit the applications with its evaluation to the Board. The Board shall have forty-five (45) days from receipt of the Telecommmunications evaluation to determine in a single resolution which applications to accept or reject. Prior to final action of the Board, the Board shall hold a public hearing at which any person may comment on the applications and evaluation by the Telecommunications Council to the Board. Notice of the hearing shall be given as provided in Section 3.02.100.

(b) If the Board determines after hearing that further consideration should be given to the granting of a franchise, either as proposed in an application, or otherwise, and/or that competitive bidding is further required, then the Board may order such additional hearing or hearings as it deems appropriate, and may, with good cause shown, extend any of the time limits imposed in this Chapter.

(c) Such resolution of the Board shall specify the reasons for rejection of any application and shall set forth the language of any recommended franchising contract and the Council ordinance approving and confirming such contract. A copy of such resolution shall be immediately sent to all applicants. If the language of the franchising contract varies from that proposed by the applicant, such acceptance shall be conditional upon the applicant agreeing to the recommended contract by written agreement filed with the Board no later than twenty (20) days after the Board's action. If such agreement is not filed, the application shall be deemed rejected without further action of the Board.

(d) No provision of this Chapter shall be construed to require the City to grant any franchise contract nor to prohibit extension of any existing franchise agreement if such is deemed to be in the public interest.

3.02.120 Council Review of Rejections. Any person, whose application is rejected by the Board, may within ten (10) days of such action petition the Common Council for review of that decision by filing notice thereof and a copy of the Resolution of the Board with the Clerk of the Council. If the Council determines that the rejection is improper under this ordinance it may by resolution direct the Board to reconsider its action. On reconsideration the Board shall make further final decision pursuant to Section 3.02.110.

3.02.130 Council Action on Recommended Contracts. Within thirty (30) days of the Board's resolution recommending a franchising contract, the Council shall introduce the ordinance approving and confirming the contract as accepted in the Board's resolution. The Council may:

(a) Adopt the ordinance, and following approval by the Mayor, the Public Works Board shall execute the franchising contract. Ten (10) days after the Board executes the contract, the franchising contract holder shall pay an award fee by certified check in the amount of ten thousand dollars ($10,000) payable to the City of Bloomington which sum shall be utilized to compensate the City for costs incurred in the preparation, evaluation, and award of a franchise, including reasonable consultant's fees;

(b) Defeat the ordinance, in which case the application is denied; or

(c) By resolution direct the Board to consider certain modifications or amendments to the franchising contract, in which case the Board shall reconsider the application pursuant to Section 3.02.110.

In making its determination hereunder, the Council shall review the record of proceedings before the Board, and it may, in its discretion, consider new evidence. Under no circumstances shall the Council by ordinance approve or confirm any franchising contract unless the precise language has been accepted by the Board prior to the Council's action.

3.02.140 Contents of Applications. The Board shall reject any application containing an offered franchising contract which does not contain the following: (a) A description of the area of the requested franchise;

(b) A construction schedule. Company shall provide service to all potential subscribers within the City where the density is thirty (30) or more

homes per strand or trench mile. Service shall be extended at no extension cost to potential subscribers. The following table fixes the minimum percentage of households located in areas of the franchise where the density is thirty (30) or more households per mile which shall have cable television service available within the given number of years from the date of execution of the franchise contract under the following construction schedule.

Number of Years	Percentage of Households with Requisite Density
2 years	50%
4 years	90%

(c) A statement that whenever possible, Company shall install all necessary trunk and feeder cable conduit in new subdivisions contemporaneously with the provision of electric service to said subdivision consistent with good construction practices. Where feeder cable conduit is not necessary, Company shall install all feeder cable contemporaneously with the provision of electric service consistent with good construction practices.

(d) A schedule indicating the initial tap-in and connection charges and the monthly rates to be charged subscribers.

(e) A description of the insurance policies to be acquired in satisfaction of the requirements specified within the RFP.

(f) A verified statement which discloses all persons, by name and residential address, who have a beneficial interest of five percent (5%) or more in the applicant. Persons affected by this section shall also disclose any buy-sell agreements of their beneficial interest.

(g) A statement of the corporation's current financial strength and ability to carry out the proposed franchise agreement.

(h) A statement of the financial projections upon which Bloomington subscriber rates and system expenditures will be based.

(i) A statement of applicant's policy for accommodating developers or contractors who wish to obtain engineering, material and/or supervisory help to install feeder cable within new subdivisions.

(j) A copy of applicant's affirmative action policies.

3.02.150 Criteria in Evaluating Applications. (a) The Board may recommend a franchising contract with the applicant(s) whose application(s) represent the most desirable for the City.

(b) In determining which application represents the most desirable application the Telecommunications Council and the Board shall consider all factors normally considered in any case in which the Telecommunications Council or Board must make such a determination, including the following:

(1) The extent of conformity of the applicant's proposal to the requirements and intent of the RFP, including community, governmental and educational access provisions.

(2) The financial and technical feasibility of the proposal contained in the application;

(3) The technical ability of the applicant;

(4) The financial ability of the applicant to construct, maintain, and operate the system;

(5) The confirmation of the applicant's reputable business practices and his community knowledge and responsibility.

(6) The speed of construction of which the applicant is capable;

(7) The quality of the service which the applicant promises and of which the applicant is capable, andd the rates proposed for subscribers;

(8) Any special factors insuring that the applicant will carry out the purposes of this Chapter and that the award of the franchise to the applicant is in the best interest of the City, including any other considerations deemed pertinent by the Board in its task of safeguarding the public health, safety and welfare, and which will facilitate and encourage the orderly and responsible development of cable communication systems. The Board shall make its determinations based on the record with a written statement of its findings and conclusions and the reasons therefore.

GENERAL REGULATORY PROVISIONS

3.02.160 Compliance with Other Applicable Laws. (a) The operator shall comply with all statutes, codes, ordinances, rules, and regulations applicable to its business.

(b) A franchise granted pursuant to this Chapter authorizes only the operation of a cable communication system, and does not take the place

of any other franchise, license, or permit which law requires of the operator.

(c) The Council, the Board, or the Telecommunications Council shall have the power to adopt, in addition to the provisions contained in this Chapter, the franchising contract, or any other applicable ordinances or regulations, such additional ordinances or regulations as they shall find necessary in the exercise of their powers, provided that such ordinances or regulations shall be reasonable and shall not unconstitutionally conflict with the rights granted in the franchising contract.

3.02.170 New Developments. (a) It shall be the policy of the City to liberally amend this Chapter and franchising contract, upon application of the operator, when necessary to enable the operator to take advantage of any developments in the field of cable communications that afford it an opportunity to better serve its customers. However, this section shall not be construed to require the City to initiate any such amendment.

(b) Company shall notify City in writing of any point of conflict the Company believes to exist between federal or state government law or regulation, or City ordinance and the franchise agreement.

(c) Notwithstanding changes in FCC regulation but to the extent allowed by such changes, the City may require compliance with such regulations and standards existing at the time of the passage of this ordinance.

SECTION II. Severability. Should any provision (section, paragraph, sentence, clause, or any other portion) be declared by a court of competant jurisdiction to be invalid for any reason, the remaining provisions shall not be affected, if such remaining provision can, without the invalid provision or provisions, be given the effect intended by the Council in adoption of this Chapter. To this end the provisions of this Chapter are severable.

SECTION III. Pursuant to Section 3.02.060 as adopted in Section I of this Ordinance, the Council hereby determines that a franchise should be granted for the City.

SECTION IV. This ordinance shall be in effect from and after its passage by the Council and compliance with provisions of law.

PASSED and ADOPTED this 12th day of September , 1984, by the Common Council of the City of Bloomington, Monroe County, Indiana.

Patricia A. Gross
PATRICIA GROSS, President
Bloomington Common Council

ATTEST:

Patricia Williams
PATRICIA WILLIAMS, City Clerk

PRESENTED by me to the Mayor upon this 14th day of September , 1984.

Patricia Williams
PATRICIA WILLIAMS, City Clerk

SIGNED and APPROVED by me upon this 14th day of September , 1984.

Tomilea Allison
TOMILEA ALLISON, Mayor
City of Bloomington

SYNOPSIS

This ordinance adds a new Chapter to the Municipal Code entitled "Cable Communications Systems" regulating the granting of cable communications system franchises.