

AGENDA

PUBLIC HEARING

WEDNESDAY, SEPTEMBER 5, 1984, 7:30 P.M.

COUNCIL CHAMBERS

- I. ROLL CALL
- II. DISCUSSION OF PROPOSED LEGISLATION/PUBLIC COMMENTS
  1. Ordinance 84-30 An Ordinance Amending the Bloomington Municipal Code to Add a New Title 3 and Chapter 3.02 Entitled "Cable Communications Systems"
  2. Resolution 84-14 To Approve and Authorize the Advertisement of a Request for Proposals for Cable Communications Systems
- III. ADJOURNMENT

AGENDA

COMMON COUNCIL

WEDNESDAY, SEPTEMBER 5, 1984, 7:30 PM

(Following Public Hearing)

COUNCIL CHAMBERS

- I. ROLL CALL
- II. AGENDA SUMMATION
- III. MESSAGES FROM COUNCILMEMBERS
- IV. MESSAGES FROM THE MAYOR
- V. PETITIONS AND COMMUNICATIONS
- VI. LEGISLATION FOR SECOND READING/VOTE
  1. Appropriation Ordinance 84-11 To Specially Appropriate from the Local Road and Street Fund Expenditures Not Otherwise Appropriated by the City of Bloomington  
Committee Report: Do Pass 9-0
  2. Ordinance 84-49 To Transfer Appropriations Within the General Fund (Council Office and Human Resources Dept.)  
Committee Recommendation: Do Pass 8-1
  3. Resolution 84-16 To Designate the Property Located at 310 West 6th Street as an Economic Revitalization Area  
Committee Recommendation: Do Pass 8-1
  4. 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  
Committee Recommendation: Do Pass 5-3-1
  5. Resolution 84-14<sup>1b</sup> To Approve and Authorize the Advertisement of a Request for Proposals for Cable Communications Systems for the City  
Committee Recommendation: Do Pass 7-2

VII. LEGISLATION FOR FIRST READING

1. Ordinance 84-50 To Amend the Bloomington Zoning Maps from RS to BG  
re: 215 W. 14th Street (Dunn Realty)

VIII. MINUTES FOR APPROVAL: August 15, and 22, 1984

IX. ADJOURNMENT

In the Council Chambers of the Municipal Building held on Wednesday, September 5, 1984, at 7:30 P.M. with Council President Gross presiding over a Public Hearing on the Cable Ordinances.

COMMON COUNCIL  
SPECIAL PUBLIC HEARING  
SEPTEMBER 5, 1984

Roll Call: Service, Porter, Register, Olcott, Gross, Mayer, Foley, Murphy, Young.

ROLL CALL

Gross suggested that Ordinance 84-30 and Resolution 84-14 be considered as one for the purposes of discussion.

Don Agostino, consultant for the Telecommunications Council reviewed the ordinance and detailed the procedures for franchise application. The RFP is the material sent to applicants who respond to public notices and they in turn provide the necessary information about the type of cable service they intend to provide for Bloomington, the technical equipment and rates. Customer complaints are not specifically addressed in either document.

PUBLIC HEARING ON  
ORDINANCE 84-30 and  
RESOLUTION 84-14

Service was concerned about the time period for the bids and wondered if 90 days was enough time and if anything was being done that would slant the refranchise agreement toward the existing company. She stressed the need to be fair to everyone.

Agostino said the shortness of time is only a problem for young entrepreneurial groups that would not have their working capital together.

Jerry Birge then presented a letter to the Mayor and read it to the Council. (Attached to these minutes).

David Wise said that it was important to think ahead if we are to have a 25 year contract. The community is looking for high tech companies to locate here and for them to do so, we must have wide band communications. If the Council takes a position to have cable developed in this direction, then we should ask the franchiser to make a commitment to the technology that is coming.

Agostino said the intent of the document is to avoid leaning toward TCI. In evaluating Birge's letter Agostino said that TCI's comments seem to be minor negotiable terms that could be worked out. Wise's suggestions have already been widely discussed by the Bloomington academic computer community. "We would hope to have the technical ability to provide the service when the concrete need arises." The cable system could be looked at every three or four years and reviewed in terms of community needs. Agostino said that he hoped we could be one of the early systems that could benefit from two-way coaxial cable systems.

Gross asked why the question about 8 year financial projected growth was asked. Agostino said that eight years was a reasonable term; we want some assurance that the company is committed; some firm projections for the future so that the franchiser has a good idea of the company's financial status when rate increases are asked for and data to adjudicate rate increases.

Young said he wanted Birge to respond to all of the complaints, telephone calls, and letters telling of poor service.

Service wondered about the County's expiration date for its franchise. (Birge's comments to the Council indicated that TCI's legal department stated that there was not a fixed date.) Iris Kiesling said that there definitely was an expiration date for the county franchise.

In view of TCI's suggested changes, Council Attorney Powell suggested that the Council table the ordinance and resolution until next week. A special Council meeting could be called to vote on the legislation.

Powell said that months of work have gone into this particular ordinance and resolution and she would recommend the one week delay so that the TCI suggestions could be reviewed and the proper amendments to the documents be made.

The Council agreed by voice vote to table both the ordinance and resolution until September 12, 1984.

The meeting was adjourned at 8:25 P.M.

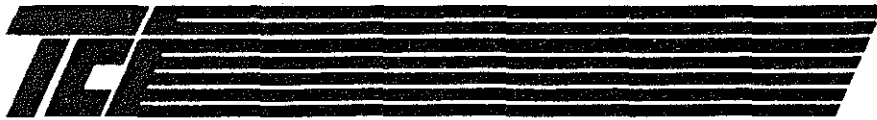
ADJOURNMENT

APPROVE:

Patricia A. Whon  
Patricia Gross, President  
Bloomington Common Council

ATTEST:

Patricia Williams  
Patricia Williams, Clerk  
City of Bloomington



## **TELE-COMMUNICATIONS, INC.**

**SOUTHERN INDIANA AREA OFFICE  
1600 West Third Street P.O. Box 729  
Bloomington, IN 47402**

**812/332-9185**

September 5, 1984

The Hon. Tomilea Allison  
City of Bloomington  
Municipal Building  
Box 100  
Bloomington, IN 47402

Dear Mayor Allison:

We have reviewed what I understand is the "final draft" of the RFP, and accompanying documents for providing cable communications services to the City of Bloomington, IN.

As you are aware, Horizon Tele-Communications, Inc. ("TCI"), through its predecessors, has owned and operated the cable television system in the City of Bloomington for 19 years, providing news, information and entertainment to the citizens of Bloomington. Overall, we feel that the relationship has been a positive one over the years. TCI has certainly been proud to be a part of the Bloomington community since its purchase of Horizon Communications in 1981. It is TCI's intent to continue to operate its cable system within the City of Bloomington.

We can understand and appreciate the City's desire to begin the renewal process early so as to avoid any interruption in the contract between the City and cable operator. However, we have concern with a formal RFP process which implies that TCI might not be allowed to continue to operate a cable system in Bloomington. We will submit a proposal to the City detailing our plans for the cable system in substantially the same format and following the general directives of the RFP. Below are TCI's comments on the draft RFP which we sincerely hope the City will consider. However, TCI's comments in this letter and its future proposal are and will be subject to the reservation of all of its rights of whatsoever kind or nature and with a knowledge that the City of Bloomington considers TCI's participation in the application process to be a prerequisite to TCI's continued eligibility to operate a cable television system

within the City's boundaries.

Below are TCI's comments and requests for changes in the final draft of the RFP and its accompanying documents, which include Ordinance #84-30, an Ordinance for Cable Communications Systems.

1. The introduction states that the franchise for Monroe County also expires in 1985. Even though this document only pertains directly to Bloomington, we feel we must point out that according to our records there is no expiration date on the County franchise.

2. In the "General Instructions," as well as in Ordinance #84-30, proposal selection procedures are detailed. These procedures state that the Board, by resolution, shall set forth the language of the proposed franchise contract. If the contract varies from the applicant's proposal, the Company has 10 days to file an agreement to comply with the variations. If the Company fails to file an acceptance, it will be rejected, or in our case, the franchise will not be renewed. TCI has serious concerns with this policy for two reasons. First, ten days is an extremely short time frame. It is very difficult for the proper personnel at corporate and locally to review and respond within 10 days. We respectfully request 45 days be given if the contract varies from the one submitted by the Company. A much more serious concern lies in the fact that no criteria for negotiation is detailed. The fact that the Company must accept the City's version or not be awarded a franchise amounts to a unilateral agreement. The purpose of a contract between two entities is to set forth a mutually negotiated agreement. Both parties should agree to its provisions. We strongly urge the City to change its procedures to allow for negotiation of a final contract.

3. In the General Instructions under the section detailing desired services, page 5 of 13, it states that the "successful applicant must agree to support any waiver required by the FCC for any voluntary offer of services or technical standards that may exceed FCC requirements". The Company cannot agree to a carte blanche requirement that it will support all waivers. Payment of a franchise fee over 3% of gross revenues, up to 5%, is the only waiver required of which we are aware. The FCC is quite clear on this issue. If the extra funds are required for the regulation of the franchise and if it does not place a financial burden on the cable operator, the FCC will require that a company pay up to 5% of gross revenues. Even if the Company agrees with the request, but the City does not prove such

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need, the FCC will not grant the waiver.

4. On page 8 of 13 of the General Instructions, a basic program lineup is detailed. I must mention recent FCC rulings which clearly spell out that a basic level of service only includes the broadcast signals required to be carried by the FCC. The franchising authority cannot require a cable operator to carry any additional signals. Thus, Bloomington cannot require that WGN out of Chicago be carried on the basic level of service.

5. The forms provided in the RFP are fairly standard forms which are used in bidding situations for new franchises. However, many of them are not applicable in a renewal situation. I mention this point to make certain that the City is aware of this fact. TCI does not want to appear unresponsive in its proposal, its just that several areas are not applicable to TCI.

6. Form F requests financial projections for eight years. Any projections beyond three years are guesses at best. Cable TV is a rapidly developing and changing industry. It is impossible for a company to make meaningful projections beyond three years.

7. Form O requests that all pole usage agreements with any utility in the geographic area be submitted. This is an unusual request as pole usage agreements other than those in Bloomington have no bearing whatsoever on the Bloomington system. Pole usage agreements are very standardized documents, which are supplied by the utility company. Normally, very little negotiation is involved. Additionally, the City is not a party to the negotiations between the cable company and the utility company. Thus, for the City to request a draft agreement to which it is not a party is not germane to this process.

8. With respect to Ordinance #84-30, TCI offers the following comments:

- a. The concern with Section 3.02.11(c) has been expressed above.
- b. Section 3.02.12 allows only 10 days to petition the Common Council for a review if a proposal is rejected. This is a very short time period and should be at least 30 days.

Further, TCI is concerned with the finality

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language contained in the last line of this Section. If the intent is to provide for exhaustion of administrative remedies, TCI has no problem with the concept. If the intent is to provide that the decision of the Council shall be final, TCI objects thereto as it will not waive any avenues of review open to it.

- c. Section 3.02.16(c) is somewhat vague. Obviously, the City can always exercise its police powers and TCI does not seek to limit such rights. However, any power to amend the existing agreements must be qualified so that such amendments will be ineffective if they conflict with existing contractual rights of TCI. TCI does not think the word "unconstitutionally" is appropriate and asks that it be stricken.
  
- d. With respect to 3.02.17(c), we assume that the City is concerned with the technical standards of the system. Thus, we offer the following language for clarification: The phrase "relating to the technical performance of the system" should be inserted between the words "regulations and standards" and "existing at that time".

Horizon Tele-Communications, Inc. intends to make every effort to continue to provide cable television service to Bloomington, and prefers to do so pursuant to mutually agreed upon terms. TCI will submit its proposed plan for the Bloomington system to the City by December 20, 1984.

We hope that discussions between the City and the Company can remain flexible and proceed expeditiously, and that our comments concerning the RFP are incorporated into the final documents.

Very truly yours,



Jerry Birge  
Area Manager

cc: Frona Powell, Council Attorney  
Pat Gross, Council President  
Art Lee  
Don Morris  
Terry Davis  
Sharon Carr  
Anne Talbot