

SPECIAL MEETING CITY COUNCIL SACRAMENTO

FEBRUARY 23, 1981

MONDAY

6:30 p.m.

I HEREBY CALL a Special Meeting of the Sacramento City Council on Monday, February 23, 1981, at the hour of 6:30 p.m. to be held at:

CITY COUNCIL CHAMBER
SECOND FLOOR, 915 I STREET
SACRAMENTO, CALIFORNIA

to meet in Joint Session with the following:

SACRAMENTO COUNTY BOARD OF SUPERVISORS

for the purpose of conducting a hearing and to consider and act upon the following:

CABLE T.V. - DRAFT ORDINANCE
CHAPTERS 1 TO 3

1. Chapter 1 - General Provisions
2. Chapter 2 - Cable Television Commission
3. Chapter 3 - Issuance and Renewal of Franchises

ISSUED: This Seventeenth Day of February, 1981

ATTEST:

PHILLIP L. ISENBERG
Mayor


LORRAINE MAGANA
City Clerk

SUGGESTED AGENDA

Meeting - February 23, 1981

BOARD OF SUPERVISORS
AND
CITY COUNCIL
Sacramento, California

CHAPTERS 1-3, CABLE TELEVISIONS ORDINANCE

The following is a suggested agenda for the deliberations by the two governing bodies respecting Chapters 1 through 3 of the proposed Cable Television Ordinance on February 23, 1981. The identification of issues suggested below is not intended to limit discussion or consideration of other issues. The following is simply a staff recommendation concerning matters which the governing bodies should expressly consider as part of their deliberations.

1. Definition of "Basic Service". (See Ordinance Pgs. 2-3).

The definition embodies a statement of the minimum service a Franchisee would be required to provide under the franchise. All services identified in that definition would be required to be provided for the minimum monthly charge.

2. Franchise Areas. (Ordinance, P. 7).

The initial franchise would cover the entire unincorporated area of the County and the incorporated areas of each of the participating Cities. Future franchises issued by the Cable Television Commission could either cover the above-described area, the unincorporated area of the County only, or the incorporated area of the City of Sacramento only. Later provisions in the ordinance would give agencies whose area would be covered by future franchises a veto over the issuance thereof.

3. Future Incorporation and Annexation. (Ordinance, Pgs. 8-9).

These provisions define how and to what extent future annexations of and incorporations within the unincorporated area would impact a cable television franchise(s).

4. Vested Rights. (Ordinance, P. 10).

The provisions of this Section vest within a Franchisee as a contractual entitlement the rights specified. These rights are terms of the ordinance which would not be subject to revision by the regulatory authorities. All other provisions would be subject to revision by the regulatory authorities. A complete analysis of the effect of these provisions will need to await consideration of the remainder of the ordinance in its entirety.

5. Reservation of Rights. (Ordinance, Pgs. 10-11).

The County and Cities participating in the program would reserve their rights to individually issue supplementary franchises outside of "service areas" within territories in which extension of the Cable Television System has not commenced. Later provisions in the ordinance require bidders to identify "service areas" within which all residences would be uniformly served. Such service areas could not be invaded by franchises issued individually by the County or Cities. However, extension outside of service areas depends upon the extent of density. Competing franchises could be issued in areas within which the Franchisee has not extended.

6. Board of Directors - Cable Television Commission. (Ordinance, P.13).

The Board of Directors of the Commission would consist of nine (9) members. Five members would be Supervisors, three members would be Sacramento City Council members, and one member would represent the other three Cities. If none of the three Cities participate, there would be four members from the Sacramento City Council.

7. Payments to County and Cities. (Ordinance, P. 17).

The Commission would be required to pay 20 percent of its revenues from franchise fees to the County and Cities, in accordance with their proportionate populations.

8. Life of Commission. (Ordinance, P. 18).

The maximum duration of the Cable Television Commission would be approximately 20 years, ending December 31, 2001. Other provisions require that the initial franchise be for a term of 15 years. The purpose of a 20-year term for the Commission would be to allow subsequent franchises to be issued for a realistic period. Should there be only one franchise, the Commission would expire when the first franchise expires if that franchise is not renewed. There would be no authority to renew the first franchise beyond December 31, 2001. The practical effect of this limitation would be to require renegotiation of a renewal and creation of a new organization to administer a renewed franchise.

9. Procedure for Issuance of Initial Franchise. (Ordinance, P. 23).

The procedure is not prescribed. It is the recommendation of staff that this issue remain pending until after the ordinance has been fully considered.

10. Procedure for Issuance of Other Franchises. (Ordinance, P. 25).

The Cable Television Commission would issue the franchises. However, any agency whose territory is affected would have the right to veto such a subsequent franchise.

11. Renewal of Franchises. (Ordinance, Pgs. 26-28).

A Franchisee must request renewal two years in advance of expiration of the term. The Commission is given nine months to determine whether the franchise should be renewed. Renewal is subject to veto by participating agencies. Since for the first franchise renewal could be only for five years, there would be ample time to develop mechanisms for either the Commission or a new regulatory framework to govern a long-term renewal.

12. Property Purchased. (Ordinance, P. 29).

If the franchise is not renewed, the Commission or its assignee would be authorized to purchase the Franchisee's property utilized in providing cable television services. Exactly what property should be subject to purchase is a matter which could require extended consideration. The current draft of the ordinance broadly vests the Commission or its assignee with a right to purchase the Cable Television System; land, buildings and other improvements related to the franchise; and studio facilities and equipment, service vehicles and inventories of repair parts. Some or all of such properties could be purchased. Prospective bidders may object to such expansive provisions.

13. Amount of Payment. (Ordinance, Pgs. 29-30).

The basis for determining value in relation to purchase would be "cost". Prospective bidders have recommended that the acquisition basis be "fair market value". "Fair market value" is an expansive valuation method which, as applied to a cable television system, could produce price determinations which are exceedingly high and difficult to predict. In addition, the cost of experts to provide testimony concerning such issues would be great, as would the time required to litigate them. This is also an issue which may require extended deliberations.

14. Arbitration of Value. (Ordinance, P. 33).

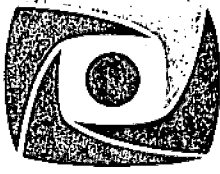
Valuation of the property to be purchased would be determined by an arbitration panel. Such would be the most expeditious and inexpensive method of achieving a neutral determination of the issues. The ordinance would require the Franchises to identify the amount of its demand for the purchase in advance of final election by the Franchisee or its assignee to buy.

SPECIAL MEETING
of the
SACRAMENTO CITY COUNCIL
and the
SACRAMENTO COUNTY BOARD OF SUPERVISORS

CABLE TELEVISION
February 23, 1981

PERSONS ADDRESSING THE
BOARD AND COUNCIL

1. Joe Gray, 555 Capitol Mall, Gray and McMurtry representing Teleprompter, page 2 Basic Service: re 2 channels for each major networks opposed - may be royalties to be paid - difficulty with local - suggest that it read the same as FEC regulations; page 10 Vested Rights, problem on investment; request that bidders vested rights be tighten up - not subject by amendment to ordinance; page 11 re Change in Law.
2. Joe Diepenbrock, Attorney at Law, Sacramento Cablevision, Inc:
 - a. Basic service - 2 channels per network redundant;
 - b. Converter rentals - exclusion of
 - c. S. page 5 - word "entertainment" be included
 - d. Life of Commission - recommend 30 year life
 - e. Revenue page 3 pyramid of taxes - suggest no double tax
 - f. Vested Rights - cable service instead of basic service
 - g. New franchises outside service area - give notice to Commission and operator of intent to award franchise
 - h. Comm-termination of franchise - Changes in Law/arbitration and compensation
 - i. Chapter 2 - 30 year life for commission - repeat
3. Terry Soley, United Cable Television of Sacramento, submitted written statement and spke to recommended changes.
4. Mike Monasky submitted written statement and spoke to that statement.
5. Michael Messner, Cable Consultant, KTXL-TV, multiple verses single franchise; rate regulation; basic service - fuzzy legal area; questioned by Pope on what can be done.
6. Lee Amundson, Sacramento Media Association, 30-50 channels, 15 at least to public access.



**united
cable television
of sacramento, inc.**

A Subsidiary of United Cable Television Corporation

February 23, 1981

Mr. William R. Freeman
Assistant County Executive
700 H Street
Sacramento, CA 95814

Dear Mr. Freeman:

On behalf of United Cable Television, Inc., I look forward to participating in the county and cities' franchise selection process.

I would like to take this opportunity granted by your public hearing process to address several issues and make suggested changes vis-a-vis chapters 1-3 of the proposed ordinance:

1. On page 2, I suggest striking the words "without option" (Re: line two of "Basic Service" definition). This restricts the freedom of choice for the consumer, and restricts competition among cable system operators to provide creative tiering packages to meet the varied consumer preferences.
2. On page 2, I suggest striking the words "if any" (Re: line form of "Basic Service" definition). This allows cable system operators to propose "universal service" for Tier I subscribers, or "free" service. As we all know, nothing of value provided to consumers is "free". The cost is simply distributed among other subscribers who are subsidizing basic service subscribers.

We do not regard this practice as fair to the general public, nor a financially responsible practice by competitors. If you leave the language in, you are encouraging this practice; so we encourage you to take a stand on this issue now.

3. On line five, after "the following", I suggest that you add "subject to FCC regulation."

Mr. William R. Freeman

Page 2

February 23, 1981

While the FCC has recently dropped many of their restrictions, the limit has been a 30 mile radius for carrying network broadcasting. Therefore, if you carry, e.g., San Francisco network stations, local stations would fairly want "non-duplication protection."

4. On page three, section "e", please add to end of paragraph "upon payment of appropriate rates and fees." As it reads now, the company would permit the viewer to view, e.g., Channel 29-HBO at no charge.

5. On page six, section "u", the last sentence reads, "of a Cable Television System". Please change this to read "of public utilities".

Many "easement" rulings go back to the days before cable television was even heard of, and we need the same access as public utilities have been authorized to use.

6. On page 7, section "d" (cont from page 6), top paragraph, please add at end of sentence "except for public utility easements."

A landlord, for example, who has a private road should not be allowed to deny his/her tenants cable television, just as he/she cannot deny them access to a telephone.

7. On page 10, section "a", please add after "Basic Service" on line three, "premium, two-way, and other cable television broadband telecommunication services." Or, simply change "Basic Service" to read "broadband telecommunication services."

8. On page 11, under "Right of Intervention", we feel strongly that the Commission should only have the right to intervene if they are a party to it. For example, if the FCC is sued by the cable operator for their three percent required fee, obviously the Commission can be affected by the court's decision and should have the right to intervene. However, if one of our installers gets into a car-truck wreck, and litigation results, the case should only be between the company and the party bringing suit.

Therefore, we strongly urge you to change the statement to read:

"The Cable Television Commission shall have the right of intervention in any suit or proceedings to which a Franchisee is a party and where the Commission or its member jurisdictions is a party in interest."

9. On page 12, beginning on line 8, with "The Board of Directors", please delete the entire sentence.

We feel strongly that this position penalizes the operator for what the state or federal government may do. We suggest that the only valid reason for terminating a franchise is because the operator is not living up to the terms of the franchise requirements. However, we believe it is wrong to penalize the operator.

For example, if the FCC rules at some time that counties or cities cannot regulate services, perhaps you'll want to sue them, but please don't penalize us!

10. On page 23, we would suggest that the specific procedure for selecting the franchisee be spelled out as clearly as possible and contained within the ordinance.
11. On page 24, under "Franchise Resolution", we strongly urge you to add to the sentence beginning on line seven with, "The resolution...the words "only with approval of the company."

As it now reads, this would permit an applicant to at least verbally change the content of their proposal. The integrity of the bidding process should be protected. Once the selection is made, then both parties should participate equally in agreed upon changes.

12. On page 27, top paragraph, the Board of Directors of the Commission is granted discretionary power to determine franchise renewal or termination. We feel strongly the paragraph should be rewritten to require the Board to determine "for cause" the termination of the operator based on their "failure of performance."

Mr. William R. Freeman
Page 4
February 23, 1981

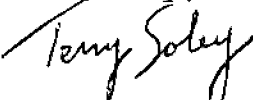
Also, in the second paragraph, we think the paragraph should be rewritten to require the Board to make a decision in a reasonable amount of time rather than allowing the Board to terminate a franchise simply by their inaction.

13. On page 29, under section, "Authority to Purchase System," we strongly urge you to change line four that reads, "on a cost basis" to read "at fair market value."

We certainly agree that the Commission has the right to renew or terminate, "for just cause," the company that has served the community for 15 years. Further, we are willing to take the risk inherent in building a broadband telecommunications system and invest the necessary capital (perhaps 60-80 million!) to do so. However, as any business person is aware, the real worth of that business includes the thousands of subscribers who wish to continue to transact business in year sixteen. We think it is very fair to assess operating income, projected revenues, etc., in evaluating the real worth of a company, and very unfair to use a "cost basis" definition for determining the real value of a business.

In summary, (and on a lighter note!), we appreciate the opportunity to participate in the franchise award process and we hope the suggested changes are meaningful and fair to the government, the operator, and, most importantly, the citizens.

Sincerely,



Terry Soley
Franchise Director

TS/lb

4925-13th Avenue, Sacramento, 95820
Monday, February 23rd, 1981

Honorable Members of the Joint Cable Television Commission:

My interest regarding the CATV Regulations concern human health and safety and environmental consideration.

I received 3 1/2 pages of the second draft document, after having notified Mr. Bill Freeman's office, in person, of my interest in becoming involved in the public hearing process for these CATV Regulations. I ask the commission how the general public can be expected to respond to proposed regulations when they are NOT made available in a complete manner.

I would make the following additions to the current draft regulations:

--to add to General Provisions, Purposes, a subparagraph (f) to read; "to guarantee protection of human health and safety and the environment from adverse impacts of the components of the CATV System.";

--to add to Definitions, the terms "Human Health and Safety" to be defined as "the physical welfare of the public, including occupational AND general health, exclusive of lifestyle."; and "Environment", as defined by the California Environmental Quality Act of 1970." ;

--to add to General Characteristics of Franchise Issued, subparagraph (e) to "require guarantee of protection of human health and safety and the environment from adverse impacts of the CATV system;

--to add to "Authority", the word "environment" to read, "... promotion and protection of the peace, health, safety, general welfare and environment of the citizens within their respective jurisdictions." ;

--to add to "Ordinances-Police Powers" the word "environment" to read "...protection and promotion of the health, safety, welfare, and environment of their citizens..." ;

--to change the wording in "Technical Standards", Article 4(a) to read, "...a general provision that this system shall not endanger or interfere with human health and safety and the environment." ;

--to add to "Complaints" a wording change to read, "...in the above provisions, including adverse impacts on human health and safety and the environment." ;

--to add to the wording in "Undergrounding", Article 4(b), to read, "...as not to be unsightly, unsafe, and/or unhealthy." Safety considerations for undergrounding cable for CATV should include mitigation measures for proper shielding of ElectroMagnetic Radiation (EMR) and use of safe, non-PCB type coolants in cables. The nature

of coolant solvents and solutes should be subject to public record and scrutiny. ;

--to add to CATV Services, Article 4(c), the word "environment", to read, "...and not be detrimental to the public peace, health, safety, welfare, and/or environment." ;

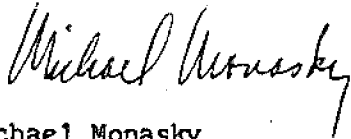
--to add to "Commission Powers" the word "environment" to read, "...for the purpose of promoting and protecting the public convenience, health, safety, welfare, and environment." ;

--to add to "Termination of Franchise", Article 5(b), wording to read "...any actual harm or damage to human health and safety and to the environment."

In closing, I would be remiss in not including my hope that strict, governmental regulation be exercised over any monopolistic profits in any phase of the CATV System to prevent corporate abuse of the public interest.

Thank you for your time and consideration.

Sincerely,



Michael Monasky

Attn. Bill Freeman:

2/19/81

The Sacramento Media Association recommends the following be incorporated into the Sacramento CATV Draft Ordinance:

a. "Basic Service" -- shall mean a single set of television and FM radio reception services provided without option in connection with each residential hook-up for a uniform monthly charge, if any, which includes, at a minimum, the following:

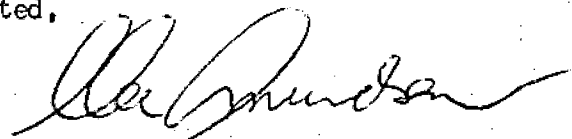
VII. Reception of all federally licensed LPTV (low power Television) stations whose signal is intended for general, non-pay use, and whose city grade signal falls largely within the city or county. (this is not intended to include LPTV pay TV utilizing electronic scrambling techniques to defeat non-pay use)

VIII. Inclusion in the "Basic Service" a separate FM cable capable of delivering no less than 50 (fifty) channels, including a minimum of fifteen (15) to be set aside for educational community access use as administered ^{by} the CABLE TELEVISION COMMISSION or its representatives.

Additional comments:

Considering major network affiliated stations duplicate such a large percentage of their programming, it seems a waste of valuable cable space to require duplication of service. We would suggest the inclusion instead of three program services such as Nicolodian, (the childrens programming network), Ted Turner's Cable News, The Sports Network, etc. We don't object to network duplication - we just don't give it a high priority feeling that maximum diversity should be a major goal of the BASIC SERVICE PACKAGE.

Respectfully submitted,



Lawrence Lee Amundsen
Sacramento Media Association
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Sacramento, California 95817

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