

IN THE COUNCIL OF THE VILLAGE OF NEW CONCORD, OHIO

AN ORDINANCE GRANTING A RENEWAL TO CABLENTERTAINMENT OF OHIO, INC. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN THE VILLAGE OF NEW CONCORD, OHIO, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE AND DECLARING AN EMERGENCY.

WHEREAS, on April 14, 1969, the Council of the Village of New Concord, Muskingum County, Ohio, did by ordinance number D-4-69-1 grant unto Dresden T.V. Cable Service, Inc. an Ohio Corporation, a non-exclusive Franchise for the erection, maintenance and operation within the Village of a community antenna television system for a period of twenty (20) years, and

WHEREAS, that said non-exclusive franchise was subsequently assigned to Vikoa CATV of Ohio, Inc. and thereafter to Cablentertainment of Ohio, Inc. and which franchise expires May 7, 1989, and

WHEREAS, the law requires that the holder of such a franchise declare its intention to seek renewal of the franchise thirty (30) months in advance of its expiration, which the holder has done, and

WHEREAS, it is in the public welfare and interest to renew such Franchise Agreement at the earliest possible date.

NOW THEREFORE BE IT HEREBY ORDAINED as follows:

SECTION 1. STATEMENT OF INTENT AND PURPOSE: AUTHORITY: FRANCHISE APPLICATIONS

1.01 Statement of Intent and Purpose. Grantee has been operating a System pursuant to the Village's cable television franchise ordinance adopted April 14, 1969 which was granted to Dresden TV Cable Service, Inc. and subsequently assigned to Vikoa

CATV of Ohio, Inc. and Cablentertainment of Ohio, Inc. and expires May 7, 1989. The Village intends, by the adoption of this Franchise, to authorize the continued operation of a System following expiration of the current franchise. Such a development can contribute significantly to the communications needs and desires of the Village and many individuals, associations and institutions.

1.02 Authority. Insofar as the State of Ohio delegated to the Village the authority to grant a Franchise for cable system operation within the Village's territorial boundaries, the Village hereby exercises its authority to grant a non-exclusive Franchise permitting the operation of a cable system within the Village.

SECTION 2 SHORT TITLE

This Ordinance shall be known and cited as "The Village of New Concord, Ohio, Cable Franchise Ordinance." Within this document it shall also be referred to as "this franchise."

SECTION 3. DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. Words not defined shall be given their common and ordinary meaning.

3.01 "Basic Service" shall mean the level of cable service which is available to subscribers for the lowest fee offered and which includes the provision of re-transmission of local broadcast signals, and any other program service offered by the Grantee as part of the level.

3.02 "Cable Service Territory" shall mean the area to be served by the system of Grantee within the Village limits of the Village of New Concord, Ohio.

3.03 "Channel" shall mean a six (6) megahertz (MHz) frequency band, which is capable of carrying either one standard video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

3.04 "Village" shall mean the Village of New Concord, Ohio.

3.05 "FCC" shall mean the Federal Communications Commission.

3.06 "Grantee" shall mean Cablentertainment of Ohio, Inc. and its successors, transferees or assignees.

3.07 "Gross Revenues" shall mean subscriber monthly fees, installation and reconnection fees, derived by Grantee from the operation of the system, less taxes collected on behalf of taxing authorities, subscriber deposits, revenues from sales of equipment, and that portion of revenues paid for copyright and for nonbroadcast television programming. Gross revenues shall also include leased channel fees.

3.08 "Owner" shall mean a person with a legal or equitable interest in ownership of real property.

3.09 "Person" shall mean any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

3.10 "Public Property" shall mean any real property owned by the Village other than a street.

3.11 "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane,

path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement or right-of-way now or hereafter held by the Village, or dedicated to the Village or to general public use.

3.12 "System" shall mean a system of antennas, cable wires, lines, towers, waveguides or other conductors, converters, equipment or facilities, used for distributing video programming to home subscribers, and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electrical signals to subscribers.

3.13 "Subscriber" shall mean any person or entity who subscribes to a service provided by Grantee by means of the System.

SECTION 4. GRANT OF AUTHORITY.

4.01 Grant of Franchise. For the purposes of operating and maintaining a system in the Cable Service Territory, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the Streets and Public Property such lines, cable conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the System. Grantee is also authorized to utilize public rights of way and to utilize easements within the Village which have been dedicated for compatible uses, as provided for in 47 U.S.C. Section 621 (a) (2).

4.02 Franchise Term. The initial term of this Franchise shall commence upon May 6, 1989, and shall expire fifteen (15) years from the said date, unless renewed as herein provided.

4.03 Conditions of Franchise. The rights afforded to Grantee by Sections 4.01 and 4.02 are granted subject to the conditions hereinafter provided.

SECTION 5. DESIGN AND SERVICE PROVISIONS.

5.01 System Design. Grantee's system has been constructed to include a subscriber Residential Network. The Residential Network has a minimum capacity for Twenty-eight (28) channels.

5.02 Technical Requirements. Grantee has constructed and maintains a system that meets at least the technical standards applied by the FCC. Procedures for testing the technical capacity of the System shall conform with technical and testing standards applied to cable systems by the FCC.

5.03 Level of Services. Grantee's current basic program services are set forth in Exhibit A, but Grantee retains the right to delete, replace and/or re-arrange programming during the Franchise term, after notice to the Village, but at no time deliver less than the 17 Channels now provided.

SECTION 6. CONSTRUCTION PROVISIONS.

6.01 Service Area. All dwelling units within the cable service territory have been provided with access to service from the System, provided that all such permission as may be required from

the owner of the property or any authorized person was reasonably available.

6.02 Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may erect its own poles and install its own conduit, with written approval of the Village Council, which approval shall not be unreasonably withheld. All poles and conduit installed within the Cable Service Territory shall be made available for attachment or use by Grantee, at just and reasonable rates applied to public utilities.

In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of such construction or development, and of the particular date on which trenching will be available for Grantee's installation of conduit, pedestals or vaults, laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Cost of trenching and easements required to bring service to the development shall be borne by the developer or property owner. Grantee shall give the Village at least 48-hour advance notice of proposed excavation in Village streets or rights-of-way.

6.03 Construction Codes and Permits. Grantee shall obtain any required permits from Village before commencing construction involving the opening or disturbance of any street or public property. Grantee shall comply with all applicable building and zoning codes. Grantee shall arrange its lines, cables and other

appurtenances, on any street or public property, in such a manner as to cause no unreasonable interference with the usual and customary use of said street or public property by any person.

6.04 Repair of Streets and Public Property. Any and all streets or public property which are disturbed or damaged during the construction, operation or maintenance of the system shall be promptly repaired by Grantee, at its expense and to the condition prior to the disturbance or damage.

6.05 Trimming of Trees. Grantee may cut or trim trees and vegetation interfering with National Electrical Safety Code and other clearance requirements.

SECTION 7. OPERATION AND MAINTENANCE.

7.01 Books and Records. The Village shall have the right to inspect and copy, during normal business hours, all of the Grantee's non-proprietary books and records which relate to the operation of this Franchise. Grantee shall first be given seventy-two (72) hours' notice of the inspection request, the description of and purpose for the inspection and description of the books and records, the Village wishes to inspect.

7.02 Communications with Regulatory Agencies. Copies of each document filed with all federal, state and local agencies with respect to the Sytem shall be made available for inspection by the Village upon request. Copies of responses from the agencies to Grantee shall likewise be made available for inspection by the Village. The Village shall maintain the confidentiality of all

non-public documents.

7.03 Annual Reports. Upon request of the Mayor or Council, Grantee shall file with the Village a financial statement by Grantee's chief executive officer certifying its gross revenues for the proceeding year; and the current list of names and addresses of Grantee's principal management personnel.

7.04 Maintenance and Complaints.

(A) Grantee shall maintain an office in Zanesville, Ohio, which shall be open during all usual business hours and shall have a telephone number, so as to receive subscriber and non-subscriber complaints and requests for repairs and adjustments.

(B) Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause.

(C) All technical employees of Grantee shall be clearly identified as employees of Grantee.

7.05 Subscriber Practices.

(A) If any subscriber fails to pay a properly due monthly subscriber fee, or any other properly due fee or charge, Grantee may disconnect the subscriber's service outlet, provided, however, that such disconnection shall not be effectuated until (i) after thirty (30) days after the due date of said delinquent fee or charge or (ii) upon delivery to subscriber of written notice of the intent to disconnect. After the first disconnection, upon payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall reinstate the subscriber's cable service.

(B) Grantee shall not deny service, deny access, or

otherwise discriminate against subscribers on the basis of race, color, religion, national origin, sex or age. Grantee shall adhere to the equal employment opportunity requirements of the FCC.

(C) All subscribers shall be afforded full privacy rights provided for in 47 U.S.C. Section 631.

7.07 Rates and Other Charges. The Village recognizes that Grantee operates the System in a competitive market in competition with other purveyors of information, entertainment, and communication. The Village shall not regulate or oversee Grantee's rates, fees or charges, except to the extent the same may be permitted by Federal law or regulations.

SECTION 8. REMEDIES, DEFENSES, INSURANCE.

8.01 Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of Ohio, and applicable to Federal law.

8.02 Notice of Violation. The Village shall provide Grantee with a detailed written notice of any Franchise violation upon which it proposes to take action, and a thirty (30) day period within which Grantee may cure an alleged violation. Grantee may within fifteen (15) days of receiving such notice notify the Village that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the Village shall specify the matters disputed by Grantee. The Village shall hear Grantee's dispute at the next regularly scheduled Council meeting. A Council decision shall be based upon written findings of fact. The Village

and Grantee shall bear their own costs and attorney fees. Either the Village or Grantee may appeal a disputed matter to arbitration.

8.03 Revocation.

(A) The Village may revoke the Franchise only after declaration of default and only for default by Grantee arising from the following circumstances:

- (1) Material Misrepresentation by Grantee to Village and information required to be provided under the Franchise.
- (2) Grantee becomes insolvent or is adjudged a bankrupt.
- (3) Grantee willfully violates any material orders or rulings of any regulatory body having jurisdiction over the Franchise.
- (4) Grantee has violated any other term or condition of this Franchise.

8.04 Indemnity. Grantee shall indemnify and hold harmless the Village at all times during the term of this Franchise from and against all claims for injury or damages to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.

8.05 Liability Insurance. Throughout the term of this Franchise, Grantee shall maintain a policy of liability insurance covering the Grantee, and naming the Village as an additional insured in the minimum amount of:

- (1) \$300,000 for property damage in any one occurrence;
- (2) \$500,000 for property damage in the aggregate;
- (3) \$500,000 for bodily injury to any one person; and
- (4) \$1,000,000 for bodily injury in any one occurrence.

8.06 Other Remedies.

(A) From and after the effective date of the Franchise, it shall be unlawful for any person to establish, operate or to carry on the business of distributing to any persons in the Cable Service Territory any television signals or radio signals by means of a System unless a Franchise therefore has first been obtained pursuant to the provisions of this Ordinance, and unless such Franchise is in full force and effect.

(B) No person shall intercept or receive signals from the System unless specifically authorized to do so by Grantee.

(C) No person shall tamper with, remove or injure any cable, wires, or equipment used with the System unless specifically authorized to do so by Grantee.

(D) No person shall intentionally deprive Grantee of a lawful charge for cable service.

(E) No person shall re-sell Grantee's cable services without Grantee's express, written consent.

(F) The Village and Grantee have expressly reserved their applicable rights and remedies available in law or in equity.

8.07 Conditions of Access. In addition to the provisions of Section 4.01, and to the extent that this Section is not inconsistent with the Ohio Revised Code, no party who owns or

controls any residential multiple dwelling unit, trailer park, condominium or apartment complex, or subdivision shall interfere with the right of any tenant or lawful resident thereof to receive service from the Grantee, nor demand or accept payment of any fee charge, or thing of value from the Grantee or any tenant or resident in exchange for giving such tenant or resident access to service from the Grantee, provided, however, that an Owner may receive reasonable reimbursement for direct adverse economic impact of such access, if any, based upon evidence of the diminution of investment based expectations, the impairment of the premises' usefulness, the amount of space occupied by the facilities of the System, the prior use, if any, of the space, the continued physical availability of space on the premises for installation of alternative modes of television program reception or delivery, the difference in fair market value of the premises resulting from the installation of System facilities and other reasonable, nonspeculative factors excluding the hold-up value resulting from a landlord's monopoly control of such access. The aforesaid economic impact shall be rebuttably presumed to be a one-time charge of \$1 per dwelling unit. Any controversy or dispute over the reasonableness of reimbursement shall be submitted for resolution pursuant to Section 8.03.

SECTION 9. VARIANCE AND RENEWAL.

9.01 Variance. Applications for a variance to this Franchise, to accommodate a significant change in circumstances, to

prevent unreasonable hardship to Grantee, or to permit technical variations which will satisfy the purpose of this Franchise, may be made by the Grantee to the Village. The Village shall review the application within fourteen (14) calendar days, or earliest meeting of the Village Council, and shall issue a report of the findings of the Village and shall act on a request within thirty (30) days. If Grantee cannot reach agreement with the Village on the variance within such time, it may resort to arbitration as provided for under the laws of the State of Ohio.

9.02 Franchise Renewal.

(A) During the six (6) month period which begins with the thirty-sixth (36th) month before the franchise expiration, the Village may on its own initiative, and shall at the request of the Grantee, commence proceedings for the purpose of --

- (1) Identifying the future cable related community needs and interests;
- (2) Reviewing the performance of the Grantee under the franchise during the then current franchise term; and
- (3) Specifying the material to be submitted with a proposal for renewal.

Community needs and interests may not be established on the basis of facilities, equipment or services which another party has indicated it is willing to provide. Such proceedings shall be completed within twelve (12) months of its commencement.

(B) At any time after the 36th month before franchise expiration, but not prior to completion of any ongoing proceeding

under Subsection (A), the Grantee seeking renewal of the franchise may, on its own initiative or at the request of the Village submit a proposal for renewal.

(C) (1) Upon submittal by the Grantee of a proposal to the Village for the renewal of the franchise, the Village shall provide prompt public notice of such proposal and, during the four (4) month period which begins upon submittal of the renewal proposal but not later than on completion of any proceedings under Subsection (A), renew the franchise or issue a preliminary assessment that the franchise should not be renewed and, at the request of Grantee, or on its own initiative, commence an administrative proceeding, after providing prompt public notice of such proceeding, in accordance with Paragraph (2) to consider whether --

(a) The Grantee has substantially complied with the material terms of the existing franchise and with applicable law;

(b) The quality of the Grantee's services, including signal quality, response to consumer complaints, and billing practices, but without regard to whether the mix, quality, or level of cable services or other services provided over the system has been reasonable in light of community needs;

(c) The Grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the

Grantee's proposal; and

(d) The Grantee's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. The Village may not declare Grantee's proposal unreasonable and deny renewal, nor may community needs be established, on the basis of facilities, equipment, or services which another party has indicated it is willing to provide.

(2) In any proceedings under Paragraph (1), the Grantee shall be afforded adequate notice and the Grantee and the Village or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues raised in the proceeding under subsection (A), to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

(3) A proceeding under this subsection shall be completed within twelve (12) months of its commencement, within which time the Village shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefore.

(D) Any denial of a proposal for renewal shall be based on one or more adverse findings made with respect to the factors described in subparagraphs (A) through (D) of Subsection (C) (1),

pursuant to the record of the proceeding under Subsection (C). The Village may not base a denial or renewal on a failure to substantially comply with the material terms of the Franchise under Subsection (C)(1)(a), or on events considered under Subsection (C)(1)(b)(f) unless the Village has provided Grantee notice and the opportunity to cure, or in any case in which the Village has waived its right to object, or has effectively acquiesced.

(E) Grantee has expressly reserved its rights of appeal pursuant to 47 U.S.C. Section 626(3). In addition to such rights, this Franchise shall remain in effect at all times during which a renewal proceedings or appeal remains pending.

(F) Notwithstanding the provisions of Subsections (A) through (E) of this Section, Grantee may submit a proposal for the renewal of Franchise at any time, and the Village may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this Section have commenced.) The provisions of Subsection (A) through (E) of this Section shall not apply to a decision to grant or deny a proposal under this subsection. The denial of a renewal pursuant to this Subsection shall not affect action on a renewal proposal that is submitted in accordance with Subsections (A) through (E).

(G) The Village may not, upon the expiration of this Franchise, or otherwise, acquire an ownership interest in the System, or require a sale of the System to any other person, unless the Village or such other person acquires the ownership interest at

not less than fair market value for the system as a going concern.

SECTION 10. MISCELLANEOUS.

10.01 Severability. If any law, ordinance, regulation or court decision shall render any provision of this Franchise invalid, the remaining provisions of the franchise shall remain in full force and effect.

10.02 Force Majeure. Prevention or delay of any performance under this Franchise due to circumstances beyond the control of Grantee or Village unforeseen circumstances, or Acts of God, shall not be deemed noncompliance with or a violation of this Franchise.

10.03 More Favorable Terms. In the event that the Village approves or permits a System to operate in the Cable Service Territory on terms more favorable than those contained in this Franchise, such more favorable terms shall be applicable in this Franchise.

10.04 Effective Date. This Franchise shall be effective when adopted for the term set forth in Section 4.02.

PASSED and ADOPTED this 8th day of December 1986.

APPROVED: December 11, 1986

ATTEST: Beryl L. Hammer
Village Clerk

J. Waller
PRESIDENT OF COUNCIL

R. A. Knight
MAYOR

Beryl L. Hammer, Clerk

I hereby certify that the above Ordinance No. D-12-86-1 was posted per Ordinance No. L--1-84-1 from January 2, 1987 to February 13, 1987.