

MARTIN COUNTY ORDINANCE NO.

AN ORDINANCE GRANTING A FRANCHISE TO LOOGOOTEE CABLEVISION COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN MARTIN COUNTY, INDIANA, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MARTIN COUNTY, INDIANA, AS FOLLOWS:

SECTION 1 - TITLE

This Ordinance shall be known and may be cited as Community Antenna Television Franchise Ordinance.

SECTION 2 - PREAMBLE

This Ordinance was passed and approved after a full, open, and public hearing upon prior notice and opportunity of all interested parties to be heard and upon careful consideration of Loogootee Cablevision Company, Inc. qualifications, including its legal, character, financial and technical qualifications, and the adequacy and feasibility of its construction arrangements.

SECTION 3 - DEFINITIONS

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

A. "County" is the Board of Martin County Commissioners, a municipal corporation under the laws of the State of Indiana.

B. "Grantee" is Loogootee Cablevision Company, Inc., a corporation organized and existing under the laws of the State of Indiana, and it is the grantee of rights under this franchise.

C. "President" is the President of the County Board of Commissioners of Martin County, Indiana, or its designated representative.

D. "Federal Communications Commission" or "FCC" is the present Federal Agency of the name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

E. "Person" is an individual, firm, partnership, association, corporation, company, or organization of any kind.

F. "Gross subscriber revenues" shall include any and all compensation or receipts derived from installation, disconnection and reinstallation charges and periodic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee. Nor shall it include revenue from "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels, and per program or per channel charges, if any.

G. "Regular Subscriber Services" shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel basis.

SECTION 4 - GRANT OF AUTHORITY

There is hereby granted by the County to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, and the highways, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the County, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the County of a cable television system for the transmission of television signals and other signals either separately or upon or in conjunction with any public utility maintaining the same in the County with all of the necessary and desirable appli-

ances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under, and upon the County highways, sidewalks, alleys, easements, and public grounds and places in Martin County to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes herein set forth shall not be exclusive, and the County reserves the right to grant a similar use of said Martin County Highways , alleys, easements, public ways, and places to any person at any time during the period of this franchise, and which franchise does not include that area covered by franchise inside the corporate limits of the City of Loogootee in said County.

SECTION 5 - POLICE POWER

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the County. The right is hereby reserved to the County to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power, provided that such regulations shall be reasonable and not in conflict with the rights herein granted, the laws of the State of Indiana, the laws of the United States of America, or the rules of the Federal Communications Commission.

SECTION 6 - INDEMNIFICATION

Grantee shall save the County harmless from all loss sustained by the County on account of any suit, judgment, execution, claim, or demand whatsoever against the County resulting from negligence on the part of Grantee in the construction, operation, or maintenance of its cable television system in the County; and for this purpose Grantee shall carry property damage and personal liability insurance with some responsible insurance company or companies qualified to do business in the State of Indiana. The

amounts of such insurance to be carried for liability due to property damage shall be \$100,000.00 as to any one person and \$100,000.00 as to any one accident; and against liability due to injury to or death of persons, \$100,000.00 as to any one person and \$300,000.00 as to any one accident. The County shall notify Grantee, in writing, within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise made against the County on account of any negligence aforesaid on the part of the Grantee. Failure by the County to properly notify Grantee within (30) days of any such claim, suit, or demand against the County shall release Grantee from its obligation to indemnify the County as provided herein.

SECTION 7 - COMPLAINT PROCEDURE

Grantee shall maintain a business office of a toll-free telephone listing in the County for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within five (5) days of their receipt and shall in good faith attempt to resolve them swiftly and equitably. The following County official shall be responsible for receiving and acting upon any unresolved complaints; County Auditor.

SECTION 8 - CONSTRUCTION AND MAINTENANCE

(A) All structures, lines and equipment erected by Grantee within the County shall be so located as to cause minimum interference with the proper use of highways, alleys, easements, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the County now or hereafter in force. Existing poles, posts, conduits, and other such structures of the electric power system of the County or of any telephone company or other public utility shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The County shall actively assist Grantee to the fullest extent necessary in obtaining

reasonable joint pole or conduit use arrangements from the owners of existing poles or conduits.

(B) In case of any disturbance by Grantee of pavement, sidewalk, drive way or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the County, replace and restore all paving, sidewalk, driveway, or surface so disturbed in as good condition as before said work was commenced.

(C) In the event that at any time during the period of this franchise the County shall lawfully elect to alter or change any highways, alley, easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the County, shall remove, relay, and relocate the same at its own expense; provided, however, that where public funds are available for such relocation pursuant to law, Grantee shall not be required to pay the cost.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees upon and overhanging all highways, alleys, easements, sidewalks, and public places of the County so as to prevent the branches of such trees from coming into contact with Grantee's facilities.

(F) All poles, lines structures, and other facilities of Grantee in, on, over, and under the highways, side walks, alleys, easements, and public grounds or places of the County shall be kept by Grantee at all times in a safe and substantial condition.

(G) Grantee shall not be required by County to construct lines and provide service in areas deemed by Grantee not to be practical.

SECTION 9 - FCC RULES APPLICABLE

This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission,

specifically including Part 76, and by the laws of the State of Indiana. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the County and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

SECTION 10 - FRANCHISE TERM

This franchise shall take effect and be in full force from and after passage hereof, subject to acceptance by Grantee as herein provided, and the same shall continue in full force and effect for a term of fifteen (15) years, beginning with the date of such acceptance; provided, however, that should FCC certifications be necessary prior to implementation of the cable television service contemplated under this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification.

SECTION 11 - RENEWAL PROCEDURE

Grantee shall have the unlimited option to renew this franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the County, in writing, not less than three months prior to expiration of this franchise.

SECTION 12 - FORFEITURE

If Grantee should violate any of the terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the County regulating the use of Grantee of the highways, alleys, public utility easements or public ways of the County, and should Grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after Grantee shall have been notified in writing the County to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul

all the rights and privileges granted by this franchise; provided, that such forfeiture shall be declared only by written decision of the County Commissioners after an appropriate public proceeding before the County Commissioners affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the County may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty that forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court or competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this six month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

SECTION 13 - SURRENDER RIGHT

Grantee may surrender this franchise at any time upon filling with the Commissioners of Martin County a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate.

SECTION 14 - TRANSFERS

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the County and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the County which

approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of hypothecation of the franchise by the Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the County.

SECTION 15 - FRANCHISE FEE

In consideration of the terms of this franchise, Grantee agrees to pay the County a sum of money equal to three (3) percent (%) of Grantee's gross subscriber revenues per year from regular subscriber services in the County. Such annual sum shall be payable one-half ($\frac{1}{2}$) thereof at the end of each semi-annual period. The semi-annual anniversary shall be the last day of June and last day of December of each year, and each semi-annual payment shall be paid within sixty (60) days thereafter. All other license fees or taxes levied upon Grantee by the County shall be credited against the payment required herein.

SECTION 16 - RECEIVER SALE PROHIBITED

As a condition of this franchise, Grantee agrees that it shall not engage in the business of sale or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 17 - ACCEPTANCE

This Ordinance shall become effective when accepted by Grantee and shall then be and become a valid and binding contract between the County and Grantee; provided, however, that this Ordinance shall be void unless Grantee shall, within ninety (90) days after the final passage of this Ordinance, file with the Commissioners of the

County a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Ordinance.

SECTION 18 - UNLAWFUL ACTS

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its leasee.

(B) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

(C) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this Section.

SECTION 19 - SEVERABILITY

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 20 - EFFECTIVE DATE

This Ordinance shall become effective upon acceptance by

Grantee as provided in Section 17. The effective date shall be the date upon which the written acceptance provided for in Section 17 is received by the County Commissioners.

ADOPTED AND FILED for public inspection this ____ day of _____, 1981.

BOARD OF MARTIN COUNTY
COMMISSIONERS BY:

James L. Freeman, President
Robert E. Howell
Dale E. Obef

ATTESTED:

Vincent J. Williams
Auditor of Martin County