

ORDINANCE NO. 84-7

ORDINANCE GRANTING EASEMENT TO OMEGA OF INDIANA CABLE COMPANY, ITS SUCCESSORS AND ASSIGNS, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN WABASH COUNTY, INDIANA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF EASEMENT AND RATIFYING AND APPROVING THE GRANTING OF A FRANCHISE GRANT TO AND CONTRACT WITH OMEGA OF INDIANA CABLE COMPANY FOR A CABLE TELEVISION SYSTEM AND PROVIDING FOR REGULATIONS AND USE OF SAID SYSTEM.

WHEREAS, it appears to the Board of Commissioners of Wabash County, Indiana, that Wabash County residents are desirous of having a closed circuit electronic community television system and it is in the best interest of said County and its residents that a franchise for the construction and operation of such system, including the right to use public facilities for the erection thereof, be granted; and

WHEREAS, a public meeting and hearing was held in the Commissioners' Room of the Courthouse, Wabash, Indiana, to discuss such system pursuant to request by Omega of Indiana Cable Company; and

WHEREAS, the Commissioners of Wabash County, Indiana, have investigated the granting of a cable television franchise for Wabash County, Indiana, and has fully informed itself concerning Omega of Indiana Cable Company's legal, character, financial, technical and other qualifications and the adequacy of its construction arrangements, finds that it is in the best interest of Wabash County to grant such a franchise to Omega of Indiana Cable Company subject to certain terms and conditions; and

WHEREAS, action taken by the Commissioners of Wabash County, Indiana, in granting a franchise agreement to Omega of Indiana Cable Company is hereby approved upon passage of this ordinance, which franchise agreement is attached to this ordinance as "Exhibit A."

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF WABASH COUNTY, INDIANA:

Section 1. Short Title: This Ordinance shall be known and may be cited as the "Wabash County Cable Television Ordinance."

Section 2. Definitions: For the purpose of this Ordinance, the following terms, phrases, words, and their derivations, shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

said County including, but not limited to, the telephone company, electric utility, the gas utility, and to use such powers, poles, lines, and cables, and other equipment and facilities, subject to all existing and future ordinances, and regulations of said County and State of Indiana. The poles used for the Company's distribution shall be those erected and maintained by the Telephone Company, the Electric utility, or other public utilities, when and where practical, provided mutually satisfactory rental agreements can be entered into with said companies. It is the stated intention of the County that the holders of public licenses and franchises within said County shall cooperate in the joint usage of their poles and pole line facilities whenever possible and wherever such use does not interfere with the normal operation of said poles and pole lines. At the expiration of the term of this franchise, or at such other date as this franchise may by its terms terminate, upon notification by the County, the Company shall, or any public utility to which the facilities the Company are connected may, at the expense of the Company, remove all facilities from the Company from, in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places in the County.

Section 5. Franchise Agreement. The Franchise Agreement dated May 31, 1983, between the County and the Company, a copy of which is on file and available for public inspection in the offices of the Auditor of the County and which is made a part hereof, as if fully set forth herein, is hereby adopted by Ordinance and the terms and conditions contained therein for the granting of this Franchise shall have the same force and effect as if fully set forth herein.

Section 6. Assignment. The consent to the assignment of said Franchise Agreement by Omega of Indiana Cable Company to Triax Associates, II, granted by the County on September 24, 1984, a copy of which is on file and available for public inspection in the office of the Auditor of the County and which is made a part hereof, as if fully set forth herein, is hereby adopted by Ordinance and the terms and conditions contained therein for the assignment of this Franchise shall have the same force and effect as if fully set forth herein.

Section 7. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the Franchise Agreement, for any

FRANCHISE AGREEMENT AND CONTRACT FOR  
COAXIAL CABLE

THIS INDENTURE, made and entered into by and between The Board of Commissioners of Wabash County, on behalf of Wabash County, Indiana, (hereinafter referred to as "County"), and Omega of Indiana Cable Co., an Indiana limited partnership, having its principal office in the Town of North Manchester, Indiana, (hereinafter referred to as "Cable");

WITNESSETH, THAT:

WHEREAS, County has conducted public proceedings affording full due process of law to all applicants and all other persons interested in the matters contained in this Agreement, and in accordance therewith has accepted the offer of Cable to furnish cable television service to certain customers in the unincorporated areas in the County of Wabash, Indiana, and has agreed to award to Cable a franchise to provide such service, and Cable has agreed that it will undertake to provide cable television service to such customers, all upon the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the parties do hereby agree as follows:

SECTION 1. The County hereby grants to Cable the non-exclusive right, privilege, authority and franchise to install, lay down, maintain and operate a coaxial cable or microwave system for television, radio and other audio-visual electrical signal distribution in, over, on and under the streets, alleys and public highways of the County, with the necessary manholes and other appliances therefor, and to erect poles and to stretch wires and cables necessary and incident thereto, and to maintain and use the same of the purpose of erecting and operating a coaxial cable distribution system for television, radio and other audio-visual signal distribution to subscribers.

SECTION 2. Cable shall undertake to provide service either by coaxial cable or other signal reception and transmission devices to those customers meeting Cable's density requirements.

SECTION 3. Rights and privileges of the franchise shall continue for a period of fifteen (15) years from the date of this contract.

SECTION 4. Where practicable, Cable shall make use of the poles already erected in said streets, alleys and public highways where satisfactory rental agreements can be reached with the utilities which own them. New poles will

EXHIBIT A

SECTION 11. Cable shall indemnify and save the County free and harmless from any and all liability, loss, cost, damage or other expense from accident or damage, either to itself or to the person or property of others which may occur by reason of the exercise of the rights and privileges herein granted; and shall, for the purpose of carrying out the provisions of this Section and prior to the commencement of construction of any kind, have in full force and effect a sufficient policy (or policies) of insurance (providing \$500,000 personal injury, each person; \$1,000,000 personal injury each accident; and \$500,000 property damage) issued by an insurance company (or companies) authorized and qualified to do business in the State of Indiana.

SECTION 12. Cable shall not assign, transfer, mortgage or encumber its rights and privileges hereunder without prior written consent of County, which consent shall not be unreasonably withheld. Any encumbrance shall be subordinate to the terms of this Agreement.

SECTION 13. This Contract shall take effect and be in full force upon its ratification by adoption of an ordinance of the Board of Commissioners of Wabash County, Indiana.

SECTION 14. The County, having conducted a full public proceeding affording due process, herewith approves the legal, character, financial, technical and other qualifications of the franchisee as well as the adequacy and feasibility of the construction arrangements of the franchisee as set forth in its application.

SECTION 15. Cable shall earnestly and diligently seek to resolve all customer complaints within ten (10) days. Subscribers who so desire shall be permitted to disconnect from the system at the end of any monthly billing cycle.

SECTION 16. During the franchise period, Cable will furnish at its expense one free cable television outlet at each public school, church and municipal building in the franchise area, together with non-pay television subscriber service at each such outlet; provided, however, that Cable shall furnish such service only at such places as are located not more than one hundred fifty (150) feet from main cable lines installed by Cable to serve residential customers. This language shall be construed to mean that Cable shall not be required to serve any church, school or municipal building unless it is located not more than one hundred fifty (150) feet from a main cable installed by Cable to serve its residential customers under the other provisions of this franchise.