Buckeye Lake

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ORDINANCE NO. 94-16

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO TIMES MIRROR CABLE TELEVISION OF LICKING COUNTY, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE VILLAGE OF BUCKEYE LAKE; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE; PROVIDING FOR REGULATION OF THE CABLE TELEVISION SYSTEM; AND PERMITTING ATTACHMENT TO POLES IN THE VILLAGE.

WHEREAS, Times Mirror Cable Television of Licking County, Inc. is a corporation duly authorized and existing under the laws of the State of Ohio; and

WHEREAS, said Times Mirror Cable Television of Licking County, Inc. wishes to renew its nonexclusive franchise to operate, maintain and expand a Cable Television System in the Village of Buckeye Lake; and

WHEREAS, this Ordinance is adopted in reliance upon said representations by the Company, now therefore,

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BUCKEYE LAKE, OHIO THAT THE PARTIES AGREE AS FOLLOWS:

SECTION 1. DEFINITIONS

For the purposes 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.

a. "Cable Act" is the Cable Telecommunications Policy Act of 1984, as amended in 1992.

b. "CATV System" is the Cable Television System, which may provide video, audio, digital, voice, data and other services to residential and commercial customers over the Company's facilities.

c. "Company" is Times Mirror Cable Television of Licking County, Inc. the grantee of rights under this Franchise.

d. "Council" is the Village Council of the Village of Buckeye Lake, Ohio.

e. "Mayor" is the mayor of the Village of Buckeye Lake, Ohio.

f. "Gross Revenues" shall mean any and all compensation derived from cable video services including, but not limited to revenue from subscriber rates, pay television, installation and connection charges; provided however, it does not include any taxes on services furnished by the grantee imposed directly on any subscriber by a local, state or federal government unit and collected by the grantee for such entity. Gross revenues shall not include compensation derived from advertising.

g. "Basic Service" is the lowest level of cable television service and includes over the air broadcast channels and public, educational and government access channels.

h. "Village" is the Village of Buckeye Lake, Ohio.

SECTION 2 FRANCHISE CONDITIONS

a. Grant. The Village hereby grants to the Grantee the non-exclusive right to operate a cable television system within the Village, under the terms and conditions hereof.

b. Franchise Term. The Franchise and rights herein granted shall take effect upon the effective date of this Ordinance and shall continue in force and effect for a primary term of fifteen (15) years from the date hereof. Provided, however, that if renewal of the Ordinance is not completed in the thirty (30) to thirty-six (36) month period prior to expiration contained in the renewal procedures of the Cable Act and the Village does not provide formal notice of its intent to not renew, then this Ordinance shall be extended for an additional three (3) year term.

c. Franchise Fee. The Grantee shall pay to the Village, three percent (3%) of its annual gross revenues beginning 180 days from the franchise acceptance. After execution of this Franchise Agreement the Village may, at any time during the term of the Franchise, on its own initiative, refrain from collecting a Franchise Fee from the Grantee, reduce the amount of the Franchise Fee it collects from the Grantee, or increase the amount of the Franchise Fee it collects from the Grantee up to a maximum of 5% of the gross revenues of the Grantee. The Grantee agrees to implement a decrease in said Franchise Fee within ninety (90) days of receipt of notification. The Grantee agrees to implement an increase in said Franchise Fee within one hundred eighty (180) days of notification. A written copy of councilmatic action must accompany notification. The Village may make a maximum of two changes per calendar year.

The Grantee shall pay Franchise Fees to the Village on a quarterly basis. All Franchise Fee payments shall be delivered to the Village within thirty (30 days) of the close of each quarter. The Village The Village may assess a late fee to the Grantee at a rate equal to the current monthly prime rate for any payments due but not tendered within forty-five (45) days after the close of each quarter.

No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim the Village may have for further or additional sums under this Agreement.

d. Franchise Revocation Procedure. The Village Council may at any time declare a forfeiture of this grant for the material violation or default by the Company of any of the material terms thereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given written notice by the Village of such violation or default and of the attempt to declare a forfeiture and thereafter such violation or default shall continue for a period of not more than sixty (60) days and in such event, all the rights and privileges of said Company under the provisions of this Ordinance may be forthwith declared forfeited and revoked.

No revocation or termination shall be effective unless the Village Council, at any regular meeting at which all interested parties have been heard, shall have adopted an ordinance setting forth the reasons for the termination.

Provided, however, the Company shall not be deemed to be in default for performance of any provision of this grant, nor shall any forfeiture be invoked for any violation or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God, or any cause beyond the control of the Company. Nothing contained in this forfeiture clause shall be deemed a limitation of the rights and powers reserved by the Village.

SECTION 3. EXTENSION OF SERVICE

Upon the annexation of any territory to the Village, the portion of any utility that may be located or operated within such territory and upon the streets, alleys or public grounds thereof, shall thereafter be subject to all the terms of this grant as though it were an extension made thereunder.

a. Company shall, subject to the provisions of this Ordinance as to service, be required to permit and person to have access to the services of Company, subject only to the payment of required charges, provided, however, that no extension of the CATV System is required to any location unless there is a density of at least fifty (50) homes per mile, as measured from Company's nearest trunk, or unless a customer or customers shall pay in advance for and share equally, the actual additional expense incurred for the line extension in addition to the normal installation charge to be payable by each customer for the installation of Cable service. The service shall be furnished to all paying customers without unlawful discrimination as to rates and service within the Village or any future area annexed into the City. The above language applies to residential properties.

b. Franchisee shall make cable television service (s), subject to its programming agreements, available to all commercial establishments in the Village that its cable distribution plant passes; provided, however, that if there are any unusual costs associated with providing service to such establishments, the prospective commercial subscriber shall pay such costs, provided, further, that Franchisee has reasonable access to conduits, poles and/or other appropriate facilities.

c. All basic service to the public schools in Buckeye Lake shall be excluded from charges and rates and shall upon written request be furnished and delivered to a designated point outside the school building, but on the property or grounds of any public school within the Village of Buckeye Lake, without charge, so long as the school is located within 300 feet of the Company's existing trunk line.

The same free service shall be furnished upon written request to the Municipal Building, Police, and Fire Stations, so long as facilities are within 300 feet of Company's existing trunk line.

SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Company shall, at all times during the life of this franchise be subject to all lawful exercise of the police power by the Village, and to such reasonable regulation of general applicability as the Village shall hereafter by resolution or ordinance lawfully provide.

SECTION 5. INSURANCE

A. Insurance Requirement. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, General Comprehensive Liability Insurance including automobile insurance in the amount of $500,000 for bodily injuries to any one person , and subject to the same limit for each person in the amount not less than $1,000,000 in account of any one occurrence, and Property Damage Liability Insurance in an amount not less than $500,000 resulting from any one occurrence. Said insurance shall designate the Village as an additional named insured. Such insurance shall be non-cancelable except upon thirty (30) days prior written notice.

B. To the fullest extent permitted by law, Grantee shall at its sole cost and expense, fully indemnify, defend and hold harmless the Village, its officers, public officials, boards and commissions, agents, and employees from and against any and all lawsuits, claims (including without limitation, worker's compensation claims against the Village or others), causes of action, actions, liability, and judgments for injury or damages (including but not limited to expenses for reasonable legal fees and disbursements assumed by the Village, in connection therewith):

1. To persons or property, in any way arising out of or through the acts or omission of the Grantee, its subcontractors, agents or employees, to which Grantee's negligence in any way contribute.

2. Arising out of any claim relating to Grantee's programming for invasion of the right of privacy, for defamation of any person, firm, or corporation, or the defamation of any person, firm or corporation or the violation or infringement of any copyright, trademark, trade name, service mark or patent to any other right of any person, firm or corporation but excluding claims arising out of or related to Village programming.

3. Arising out of Grantee's failure to comply with the provisions of any federal, state, or local statute, ordinances or regulation applicable to Grantee in its business hereunder.

SECTION 6. COMPANY RULES

The Company shall have the authority to promulgate rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations, under this Franchise, and to assume an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Ohio.

SECTION 7. RATES

The Company recognizes that under the Cable Act, the Village may have the ability to regulate cable rates pursuant to the rules established by the Federal Communications Commission. However, under the provisions in the Cable Act, the Village is not required to regulate rates and may desire to not seek rate regulation authority, in its sole discretion.

The company reserves the right to render free service in such locations which the Company, in its sole discretion, deems to be in the public interest.

SECTION 8. SERVICE, ADJUSTMENT & COMPLAINT PROCEDURE

Except for circumstances beyond the Grantee's control such as acts of God, wars, riots and civil disturbances, the Grantee shall establish a maintenance service capable of locating and correcting major system malfunctions promptly. Said maintenance service shall be available, in addition to normal business hours, to correct such major system malfunctions affecting a number of subscribers which occur from the time the Grantee's office closes until 12:30 a.m. Monday through Friday and from 8:00 a.m. until 12:30 a.m. on Saturdays, Sundays, and holidays.

Grantee shall keep a record or log of all complaints received and maintain record of said complaints and actions for a period of 3 years.

The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

The cable television system to be operated by Grantee shall meet with the technical performance requirements set forth in the FCC's Rules for Cable Television.

SECTION 9. CONDITIONS ON STREET OCCUPANCY

a. USE: All transmission and distribution structures, lines and equipment erected by the company within the Village shall be so located as to cause the least amount of interference, to any extent practicable with the proper use of streets, alleys and other public ways and places, and to cause the least amount of interference with the rights of property owners who adjoin any of said streets, alleys or other public ways and places.

b. RESTORATION: In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Mayor of the Village of Buckeye Lake, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before said work was commenced.

c. RELOCATION: In event that at any time during the period of this Franchise, the Village shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Company, upon reasonable notice by the Village, shall remove, relay, and relocate its poles, wires, cables and other television fixtures at its own expense.

d. TEMPORARY REMOVAL OF WIRE FOR BUILDING MOVING: The company shall, on the request of any person holding a building moving permit issued by the Village, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than 7 days advance notice to arrange for such temporary wire changes.

e. TREE TRIMMING: The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the Village and at the expense of the Company.

SECTION 10. APPROVAL OF TRANSFER

The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this Franchise to another without Council approval, which approval shall not be unreasonably withheld, except that for the purpose of financing the purchase of its CATV System in the Village of Buckeye Lake, Ohio, TMCT of Licking County, Inc. hereby is authorized and granted permission to transfer and assign all or any part of its property and franchise rights granted by this Ordinance to such parent company as shall have control of said Company, as security therefore for the duration of said indebtedness. Council approval shall not be required in the event Company assigns or transfers all or substantially all of its stock or assets to another entity controlling, under common control with or controlled by Company.

Any further assignment or transfer of said Franchise by either TMCT of Licking County, Inc., or its assignee, transferee or mortgagee shall be subject to the provisions contained in this Ordinance, and no such further sale, transfer or assignment shall be effective until the vendee, assignee, or lessee has filed in the office of the Mayor an instrument or lease accepting the terms of this Franchise and agreeing to perform all of the conditions thereof.

SECTION 11. VILLAGE RIGHTS IN FRANCHISE

The right is hereby reserved to the Village to adopt, in addition to the provisions herein contained and existing applicable ordinance, such additional regulations as it shall find necessary in the lawful exercise of its police power, provided that such regulations, by ordinances or otherwise, shall be reasonable, and not in conflict with the rights herein granted and shall not be in conflict with state or federal law.

SECTION 12. TAMPERING WITH INSTALLATION

a. Subscribers shall operate only one receiver at a time from each outlet installed by the Company, and shall refrain from tampering with installation in any way. The company shall have the right, in addition to any other lawful remedy it may have, to discontinue service to any subscriber tampering with its installation or related equipment or attempting in any way to use the Company's service except as intended by the Company. The subscriber violating these conditions shall not be entitled to any rebate or other consideration by the Company.

SECTION 13. OTHER FRANCHISES

In the event the Village enters into a franchise, permit, license, authorization or other agreement of any kind with any other person or entity other than the Grantee for the purpose of constructing or operating a cable system or providing Cable Service to any part of the Franchise Area, which contains terms more favorable to such person or entity in any regard than similar provision of this Agreement, this agreement shall be deemed amended as of the effective date of the other franchise, permit, license, authorization or other agreement, so as to give the Grantee the benefit of any such more favorable terms.

SECTION 14. DISCRIMINATION PRACTICES PROHIBITED

The Grantee shall not, as to rate, charges, service, service facilities, rules, regulations, or in any other respect, make or grant unlawful undue preference or advantage to any person, nor subject any person to any unlawful prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. Connection and/or service charges may be waived or modified during promotional campaigns of the Grantee.

SECTION 15. INVALIDITY

Each section of this Ordinance and each part of each section hereof is hereby declared to be an independent section or part of section, and the holding of any section or part thereof to be unconstitutional, void, illegal, ineffective or contrary to the provisions of the Charter of the Village of Buckeye Lake, or any amendments thereto, for any reason, shall not affect any other section or part of section of this Ordinance.

SECTION 16. EFFECTIVE DATE

This Ordinance shall be in force from and after the date of passage.

Passed the 22nd day of August, 19 94.

Mayor James E Barker

Attest: Clerk of Council Antoinette Hasman

Approved as to form: Law Director Harry K. Thayer

Terms of this franchise agreed to by:

Times Mirror Cable Television of Licking County, Inc.

By: R W Neely Date: 8-29-94

Title: VP