

ORDINANCE NO. C-42-70

AN ORDINANCE TO ENACT CHAPTER 123 OF THE CODIFIED ORDINANCES OF THE CITY OF GROVE CITY, OHIO RELATIVE TO COMMUNITY ANTENNA TELEVISION SYSTEMS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT

SECTION 1. Chapter 123 of the Codified Ordinances of the City of Grove City is hereby enacted to read as follows:

Section 123.01 Definitions

(A) The term, "community antenna system" (more commonly referred to as a "CATV system", but occasionally referred to as a "Wired City"), means any facility which originates or transmits or distributes electronic signals to subscribers for a fee or fees, including video and/or audio signals from operating television stations and AM and FM radio stations, but not limited to such signals. Specifically included as permissible are services and/or programming originated by the system.

(B) The term, "community antenna system", shall not be applied to the following facilities:

- (1) A facility servicing fewer than fifty (50) subscribers.
- (2) A facility serving one or more rental complexes, including apartments and/or townhouses and/or single dwellings, under the same ownership, control or management, and including commercial establishments located on the premises of such rental complex or complexes.
- (3) A facility serving individual hotels or motels, or more than one hotel and/or motel under the same ownership, control and management.
- (4) A facility owned and operated by a non-profit organization with service limited to the premises of said non-profit organization.

(C) The term, "operator", shall mean any person, persons, partnership, firm company, corporation or association operating a community antenna system and holding a permit granted by an ordinance of Council to operate same within the corporate limits of the City.

(D) The terms, "transmission and distribution", "carriage and/or utilization", and "origination", refer to methods, techniques and procedures in the operation of a community antenna system as authorized by the Federal Communications Commission, either by virtue of enabling rules and regulations or in the absence of prohibiting rules and regulations.

Section 123.02 Transmission and Distribution of Signals

The transmission and distribution of electronic signals may be made at the option of the operator as follows; and in addition to being as authorized by the Federal Communications Commission, will, if applicable, be in accordance with rules, regulations and tariffs of the Ohio Public Utilities Commission.

(A) Through coaxial cable and/or other electrical conductors installed and maintained by the operator and attached to poles and/or placed underground.

- (1) Even though the operator is authorized to install his own poles, it is the stated intention of the Council that wherever possible, the operator shall obtain the cooperation of all other holders of public licenses and franchises within the City to

allow joint usage of their poles wherever such usage does not interfere with their own normal usage of said poles, so that the number of new or additional poles erected in the City by the operator may be minimized. Such cooperation shall include the rights of joint usage at realistic rates with reasonable terms.

(2) Approval for location of new poles will be granted by the City when such locations have been approved by the City Engineer.

(3) The provisions of paragraphs (A) and (A) (1) notwithstanding, the operator, wherever economically feasible and practical, shall utilize an underground system in lieu of new poles erected by him, even in those areas where the utility companies, public and private, have erected poles, and are continuing to use them.

(4) The operator shall grant to the City, free of expense, joint use of all his poles, and underground conduits, assuming adequate wind-load and weight factors for poles, for any proper municipal purposes, insofar as it may be done without interfering with the free use and enjoyment of the operator's own coaxial cable, wire and fixtures.

(a) If the City does make any use of poles owned and maintained by the operator, the City shall hold the operator harmless from any and all actions, causes of action, or damages caused by the City's wires or appurtenances upon the poles of the operator.

(b) Any construction and utilization by the City, as regards poles of the operator, shall conform to the same requirements set forth for the operator in the general areas of safety, quality, maintenance and RF (radio frequency) interference.

(5) The right of construction, including easements, is not applied, except in locations where the City has the authority to grant such rights and easements. All other rights of construction, including easements, shall be the responsibility of the operator.

(B) Through coaxial cable or other electrical conductors installed and maintained by the operator, but attached to poles and/or in the underground conduit owned by the Ohio Bell Telephone Company; and/or attached to poles owned by the Columbus and Southern Ohio Electric Company; and/or attached to poles owned by any other public or quasi-public utility.

(C) Through the common carrier facilities, including coaxial cable and/or other electrical conductors and/or radiowave transmission, owned by the Ohio Bell Telephone Company.

(D) Through the common carrier facilities of the Ohio Bell Telephone Company for main and lateral cable service, with the operator installing and maintaining his own service through coaxial cable and/or other electrical conductors, between terminating units of the Ohio Bell Telephone Company and the dwellings and business establishments of subscribers.

(E) Through the air by means of radiowave transmission facilities of the operator, either totally or in part in combination with (A), (B), (C), and (D) of Section 123.02.

(F) Through the air by means of radiowaves transmitted by some other common carrier source, including satellite, either totally or in part in combination with (A), (B), (C), (D), and (E) of Section 123.02.

(G) Through any combination of the alternatives for transmission and distribution of electronic signals as set forth in (A), (B), (C), (D), (E), and (F) of Section 123.02.

Section 123.03 Conditions of System Construction, Maintenance and Operation.

The operator shall comply with the following conditions:

(A) Construction and maintenance of the transmission and distribution system shall be in accordance with the National Electrical Safety Code (also referred to as the Code of the Board of Underwriters), and such applicable ordinances and regulations of the State of Ohio and City of Grove City as may be presently in effect or may become effective in the future.

(B) The operator shall, at his cost and expense, install and maintain during the life of the permit granted by ordinance, and/or cause to be installed and maintained by the Ohio Bell Telephone Company, adequate shielding, filtering and grounding as to prevent interference with television and radio reception of non-subscribers to the operator's service or services.

(C) All Federal Communications Commission rules and regulations governing RF (radio frequency) interference presently in effect, and as may become effective in the future, will be observed.

(D) Additional emphasis is supplied to Paragraph (C) of Section 123.03 as follows:

(1) Any significant interference with the City's or any other radio communication activities, as determined by the City Administrator, shall be immediately eliminated by the operator.

(E) All installations of equipment shall be of a permanent nature and durable, installed in accordance with accepted good engineering practices; sufficient to comply with all existing State of Ohio and City of Grove City rules, regulations and ordinances, so as not to interfere in any manner with the right of the public or individual property owners; and shall not interfere with the travel and use of public places; and during construction, repair and removal thereof, shall not obstruct or impede traffic or unnecessarily or unreasonably interfere with the use or enjoyment of public or private property adjacent thereto. No installation shall begin without prior approval being obtained from the Administrative Assistant.

(F) In operating his system, the operator shall meet the following minimum requirements:

(1) The system will produce a picture, whether a black and white or in color, that is undistorted, free from ghost images and accompanied by proper sound on typical, standard production television sets in good repair, and equal in all aspects to what the state of the art permits.

(2) The system will transmit signals of adequate strength to produce good sound and/or good pictures with good sound at all subscriber outlets without causing cross-modulation in the cable or interfering with other electrical or electronic systems.

(3) The operator will be able to demonstrate by instruments or otherwise to subscribers, upon request, that a signal of adequate strength and quality as described in Paragraphs (F) (1) and (2) of Section 123.03, is being delivered by the system.

(4) The operator will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.

(5) The operator will strive, insofar as is practical, for the betterment of his system, taking advantage of all reasonable improvements as they become available to him.

(G) The operator shall maintain a business office in Franklin County, Ohio, which will be open at least 9:00 A.M., to 5:00 P.M., Monday through Friday; and at least 9:00 A.M., to Noon, Saturdays, excluding legal holidays. This office will have a listed telephone, with an adequate number of lines to handle typical traffic, and will be so operated that complaints and requests for repairs and adjustments may be received and processed with a minimum of delay.

(H) The operator shall provide the City with the name of his chief management employee, so that complaints or comments made to any City office may be referred to the operator for proper action.

(I) In the case of any emergency or disaster, the operator shall, upon request of the City, make available, without charge, any or all of his facilities for use by the City during the emergency or disaster.

(J) The operator shall make his basic service available without charge, upon written request, to all public and parochial schools and all municipally owned or leased buildings located within the City.

(1) Installation and service will be subject only to a school or municipal building being contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized by the operator for the transmission and distribution of signals.

(2) This requirement is for a single connection per school or municipal building.

(3) There will be no limit as to the number of television receivers a school or municipal may operate from this connection, but, the expense of installing and maintaining an internal distribution system will be the responsibility of the school or the city.

(4) Any internal distribution system installed by a school or the City must conform to all applicable Federal, State, and City rules, regulations and ordinances, and must be operated in such a manner as not to interfere with the operator's system.

(K) The operator shall provide one (1) video channel for use by the City as it deems fit, without restriction, and shall not knowingly compete with any program presented by the City, through duplication thereof, in whole or in part.

Section 123.04 Prohibitions

(A) The operator is prohibited from allowing his facilities to be utilized for political or other partisan purposes unless, as a matter of publicly stated policy, he had adopted guidelines calling for strict adherence to existing rules and regulations of the Federal Communications Commission governing political broadcasts and telecasts and including the "Fairness Doctrine". Excluded from this provision is programming originated by a licensed radio or television station, said station being subject to the aforementioned rules and regulations of the FCC.

Section 123.05 Indemnification, Insurance and Bonds.

(A) The operator shall indemnify and save harmless the City of Grove City and all agents, officers, employees, and representatives thereof from all claims, demands, causes of action, copyright action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Workmen's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the operator's construction, erection, maintenance, use of presence of, or removal of any poles, wires, lines, cable, conduit, appurtenances thereto, or equipment or attachments thereto.

(1) The operator shall carry good and sufficient public liability and property damage insurance to fulfill the terms of Paragraph (A) of Section 123.05, which insurance shall be in the amounts of not less than \$500,000 for property damage in any one occurrence, nor less than \$1,000,000 aggregate in any single policy year and not less than \$500,000 bodily injury or death of any one person, with a minimum of \$1,000,000 as to any one occurrence. Such policy shall be subject to the approval of the City Attorney as to its form and extent of coverage (as distinguished from dollar amount of coverage). Such policies shall specifically insure against claims arising as the result of underground excavation.

(2) The City of Grove City shall be named as an additional insured in any such policy or policies.

(3) The policy shall provide by endorsement that it may only be cancelled or amended by the insurance company after sixty (60) days notice, in writing, to the City.

(4) Said policy (or policies) must be in force before the operator commences any construction or installations.

(5) Either the original policy (or policies) or certified copies must be on file with the City.

(6) The policy shall provide that the naming of the City as an additional insured shall not exempt the insurer from liability to the City for damage to property owned by it or in which it has an interest.

(B) Within thirty (30) days from the effective date of this ordinance, the operator shall furnish a bond to the City in the amount of \$5,000 guaranteeing the faithful performance of the obligations of the operator under the terms of this ordinance, subject to these requirements:

(1) Such bond shall be executed by the operator and one or more sureties approved by the City Attorney.

(2) Either the bond (or bonds) or certified copies must be on file with the City.

(3) The bond (or bonds) must provide by endorsement that it cannot be cancelled or amended by the bonding company prior to the ten (10) days notice to the City.

Section 123.06 Scope of Operations

In addition to the conventional services currently being offered by operating community antenna systems, including the signals of TV, AM, and FM stations and also programming originated by the operators, this ordinance, anticipating the future of a "Wired City", specifically covers the following:

(A) Pay television (programming for which a special or extra fee is charged), if not prohibited by the Federal Communications Commission, and if such service is offered by the Operator.

(B) The sale of advertising in connection with locally originated programming, if such sales are authorized by the Federal Communications Commission, and if such sales are made by the operator.

(C) Any other service or services involving the use of electronic signals if authorized by the Federal Communications Commission and if such additional services are offered by the operator.

Section 123.07 Rates for Service to Subscribers

The operator is authorized to charge and collect installation fees and service fees from subscribers to which it provides service; provided, however, that the company shall not, as to rates, charges, or regulations, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage. No customer shall be required to continue to receive the services of the Company any longer than such customer shall desire.

The rates to customers shall be:

(A) For a single standard outlet to a customer, the Company shall charge no more than \$10.00 as an installation fee and no more than \$5.00 as a monthly service charge and for each additional standard outlet to the same customer the Company shall charge no more than \$5.00 as an installation fee and no more than \$1.50 as a monthly service fee;

(B) Commencing with the third year in which the system is in operation the Company may increase rates over the maximum provided in Section 123.07 (A), by an amount equal to the percentage increase in the cost of living as reflected by the Consumer Price Index for Services Excluding Rent as published by the United States Department of Labor, Bureau of Labor Statistics in the Monthly Labor Review. In determining such increases, if any, the most current index issued as of the effective date of this ordinance shall be used as a base;

(C) Except as provided for in this section, the Company shall not charge higher rates to customers without prior approval by the City.

Section 123.08 Special Requirements

(A) The operator, in compliance with current rules and regulations of the Federal Communications Commission, shall afford full time, simultaneous carriage to WBNS-TV, WOSU-TV, WLWC, and WTVN-TV, and to any other television station licensed to the City of Columbus by the FCC and which goes on the air.

Section 123.09 Special Provisions

Taking into account certain additional services which, to be successful, necessarily would have to cross corporate lines of many Greater Columbus municipalities, and considering these services to be in the public interest, and not wanting to curtail their development, the following services are specifically exempted from licensing requirements and excluded from fee payments to the City, so long as said services are offered by an operator holding a permit under ordinance.

(A) Services created primarily for area hotels and motels, and utilized as a promotional-informational vehicle for Greater Columbus, reaching only guests in participating hotels and motels.

(B) Services created for special and/or occasional closed circuit presentations, not for the viewing and/or listening of the general public.

(1) This particular exclusion/exemption is not applicable to any regular, continuing service or services which the operator may offer pursuant to Paragraph 123.07 (C).

(C) Services created for non-profit organizations.

(D) The exemptions and exclusions detailed herein shall apply to both originations by the operator and to signals merely re-transmitted and/or distributed by the operator.

Section 123.10 Authority to Operate a Community Antenna System in the City.

(A) There is hereby granted by the City to the Company the non-exclusive right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over and under, the streets, alleys, public ways and public places, now laid out or dedicated and all extensions thereof and additions thereto in the City, wires, poles, cables, underground conduits, conductors and fixtures necessary for the maintenance and operation

in the City of a community antenna television system for the reception and distribution of television signals and energy, frequency modulated radio signals, and commercial and non-commercial visual and aural signals which are not otherwise herein prohibited. The Company shall have the right in the operation of the system to make attachments to City-owned property at such rates and upon such terms and conditions as shall from time to time be determined by the governing body. The rights herein granted shall extend to any area annexed to the City and the Company shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

The Company shall have the right to enter into agreements for the attachment onto and use of facilities owned and operated by public utilities operating within the City; the Company shall strictly comply with the terms, provisions and restrictions of said agreements, and copies of all agreements made with other public utilities operating within the City shall be placed on file with the Clerk of Council's office upon their execution.

(B) Service to subscribers shall commence within twenty-four (24) months after the effective date of this ordinance.

(C) This ordinance shall take effect and will be in force from and after the earliest period allowed by law, and upon the filing by the operator with the City of its acceptance, in writing, of each and all of the terms and provisions of this ordinance; provided, however, if the operator shall fail to file such written acceptance within thirty (30) days after the passage of the ordinance by Council, then this ordinance shall be null and void.

(D) If any section, sub-section, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, or in conflict with rules and regulations of the Federal Communications Commission then such portion shall be deemed a separate, distinct and independent provisions of this ordinance and such holding shall not affect the validity of the remaining portions hereof.

(E) Should the operator violate any of the provisions of this ordinance or any reasonable rules and regulations or other laws, or should the operator fail to promptly perform any of the provisions hereof, all rights herein granted to the operator, shall, at the option of the City, be forfeited and terminated after written notice to the Company and continuation of such violation, failure or default for a period of more than ninety (90) days. In the event the Company is adjudged bankrupt, all rights herein granted to the Company shall, at the option of the City, be forfeited and terminated.

(F) This ordinance shall remain in full force and effect for a period of fifteen (15) years from its effective date and shall be automatically renewed for successive periods of ten (10) years, unless either the City or the operator serves notice in writing to the other not less than six (6) months prior to the conclusion of the fifteen (15) year period or prior to the conclusion of any successive ten (10) year period of its desire to terminate or modify this ordinance.

Section 123.11 Condition of Service

(A) No less than ninety (90) days after the initial offering of service to subscribers, the operator shall make available his basic monthly service to all applicants whose residences or commercial establishments are contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized for the transmission and distribution of signals.

(B) In anticipation of ultimately making all services available to every dwelling unit and commercial establishment within the corporate limits regardless of location, the operator is to strive to achieve this goal as rapidly as possible, and is to keep the council advised of all extensions of service beyond that contemplated in his original plans and specifications as approved.

(C) All expanded service, once offered by the operator, shall be made available to all applications whose residences or commercial establishments are contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized for transmission and distribution.

Section 123.12 Permit Fees and Payment Thereof.

(A) The operator, for the privilege granted by this ordinance to operate a community antenna system in the City of Grove City, which entitled him to offer his service or services, and to install his distribution and transmission facilities in, under and over the streets, highways and other public grounds of the City, subject to the overall provisions of this ordinance, which have been conceived for the protection of the City and its citizens, shall make payments to the City as follows:

(1) The operator, each year, shall pay six (6) percent of all gross receipts to the City.

(2) The operator will be permitted no deduction from gross receipts with the exception of any direct sales or use taxes which may be imposed in the future on a portion or all of his receipts. Such direct sales or use taxes, whether the result of legislation passed by appropriate authorities creating new taxes or as the result of legislation expanding existing taxes, may be deducted by the operator from his gross receipts.

(3) The operator shall pay a minimum fee of \$1500.00 annually for the period of this ordinance.

(a) The first payment of \$1500.00 shall accompany the operator's acceptance of this ordinance, as required by paragraph (C) of Section 123.10.

(b) The operator shall have the option of operating under a calendar year or fiscal year plan; and the minimum fee may be prorated during his first year to correspond to his books, with a like, balancing adjustment during the final year of the period covered by his initial permit. Once the operating year has been established, payment of the minimum fee will be made thirty (30) days following the start of each new year.

(c) The minimum fee shall be credited to the required six (6) percent of gross receipts payable annually to the City.

(B) All payments to the City under this ordinance shall be made quarter-annually within the year as determined by the operator pursuant to Paragraph (3) (b) above.

(1) The first three quarterly payments may be on the basis of unaudited total gross receipts, and shall be due and payable within thirty (30) days of the end of each quarter.

(2) The year-end payment shall be due and payable within ninety (90) days after the close of the operator's operating year.

(a) The operator, at the time of this payment, shall submit complete accounting information to substantiate the amount of payments made; certified verification will be provided to the City, attested to by an independent audit of the operator's books and certified to by a Certified Public Accountant.

(C) All payments to the City shall be by check made payable to the City and either hand-delivered or sent by registered mail to the City.

(D) The City of Grove City and its delegates shall have the right to reasonable inspection of the books, records, maps, plans and other like material of the operator at the office of the operator during normal business hours.

Section 123.13 Basis of Service

The service to be offered by the operator shall be on a solely voluntary basis on the part of the subscriber, who, if his residence or commercial establishments is contiguous to main or lateral cables or within range of radiowaves if radiowaves are utilized for transmission and distribution, may subscribe to the aforementioned service at will. Under no circumstances will the operator require a subscriber to pay for service longer than the service is desired.

Section 123.14 Delays

Provisions of this section notwithstanding, delays in the performance of the operator's obligations under the ordinance which are caused by, equipment shortages, a state of war or national emergency, acts of God, or any circumstances beyond the control of the operator, as determined by the Council, shall not be construed to be in violation of the requirements set forth therein, and reasonable extensions of time shall be granted therefor.

Section 123.15 Scope of Ordinance

(A) This is an enabling ordinance authorizing the operation of a CATV system in the City of Grove City, but it does not take the place of any franchise, license or permit which may be additionally required by law of the operator, either currently or at some later date.

(B) It shall be the responsibility of the operator to obtain any and all such franchises, licenses, or permits necessary to the operation and conduct of his business activities.

(C) Failure of the operator to obtain and conform to the provisions of any and all such franchises, licenses or permits, and to make prescribed payments if required as a condition of their issuance, shall be considered in violation of this ordinance, and subject to the penalties set forth in Paragraph 123.10 (E).

Section 123.16 Statement of Intent

(A) Considering the concept of the "Wired City" to be valid and believing that it will not only become a reality in the foreseeable future but will require a combination of cable and off-the-air transmission for the ultimate in services, the philosophy of Council is as follows:

(1) In setting forth the guidelines for the operation of CATV (this, for all practical purposes, being the beginning of a "wired city"), insofar as Council may do so without being in conflict with rules and regulations of the Federal Communications Commission, it is the intent to make possible the offering of a variety of services, while at the same time affording the City and its citizens maximum protection.

(2) In these guidelines is recognition of the right of the operator (or operators) to have a profitable enterprise, and to return invested capital to stockholders with a gain.

(3) In summation, the philosophy might be stated as one based on mutual good faith, as involving the City, its citizens and the operator.

(B) Underscoring certain pertinent facts having to do with communications ventures, primarily radio and television type services, which are considered relevant to the enabling legislation for CATV, and which are detailed below in sub-paragraphs (1), (2), (3), and (4), it is the stated intention of Council not to impose unreasonable ceilings on rates to subscribers (which in the final analysis, under the free enterprise system, will be dictated by the subscriber, and not by the operator or some regulatory body); nor to specify unrealistic fees to be paid by the operator to the City.

(1) The speculative nature of a CATV system required to compete in and to meet the demands of a "Wired City" without the benefits (or protection) of an exclusive operator's permit, is noted, together with a need for substantial capital on a long term basis.

(2) Restricted broadcast competition for radio and television station, a monopolistic condition created by FCC allocation tables or spectrum limitations, is noted.

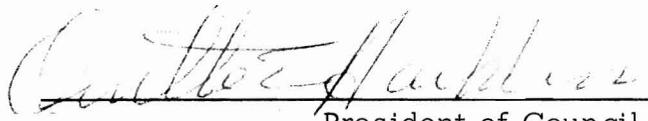
(3) That broadcast stations pay no fees to anyone for using the public's air space for the transmission of their signals, is noted.

(4) And that broadcast stations are subject to no rules or regulations of the Federal government, where the right of regulation is solely vested, establishing maximum charges for advertising nor imposing a pre-determined rate of return on investment, are also noted.

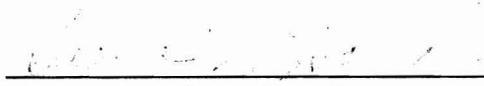
(C) In order for the operator to meet the prerequisites of "maximum value service" to subscribers, his system necessarily must be viable, and worthwhile investment for ownership otherwise, operating funds for optimum service and sufficient additional capital for expansion and extension of service in the future, as both anticipated and desired by Council, will not be available.

SECTION 2. This ordinance shall take effect at the earliest date allowed by law.

SUBMITTED: 10/5/70
PASSED: 12/7/70
EFFECTIVE: 1/6/71



President of Council

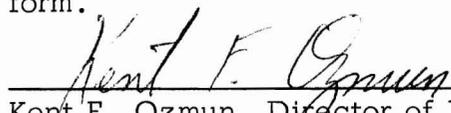


George M. Haughn, Mayor



Maria T. Kochensparger, Clerk of Council

I Certify that this ordinance is correct as to form.



Kent F. Ozmun, Director of Law