

ORDINANCE NO. 79-2

AN ORDINANCE GRANTING A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE

BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF CHATHAM, ILLINOIS:

SECTION 1. SHORT TITLE. This Ordinance shall be known and may be cited as the "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 here. 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.

(1) "Village" is the Village of Chatham in the State of Illinois.

(2) "Company" is the grantee of rights under this Ordinance awarding a franchise and is known as Consolidated Cable TV, Inc.

(3) "Person" is any person, firm partnership, association, corporation, company or organization of any kind.

(4) "Resident" is any person whose place of abode or business is located within the corporate limits of the Village of Chatham.

(5) "System" shall mean the entire cable distribution installation located in the Village of Chatham.

(6) "Basic Cable Service" shall mean the primary service transmitted on the cable system and shall include and not necessarily be limited to those signals from any FCC licensed television station, the wire service of one national news service, and local weather information as supplied by local weather sensors and/or the National Oceanic & Atmospheric Administration.

(7) "Ancillary Service(s)" shall mean any other signals transmitted on the system which the Company offers for consumption by the subscribers. The Company shall have the right to sell the ancillary service(s) at a monthly charge which is in addition to the charge for Basic Cable Service.

SECTION 3. GRANT OF AUTHORITY. In consideration of the faithful performance and observance of the conditions and reservations herein specified, Consolidated Cable TV, Inc., a corporation, herein after referred to as the Company, its successors and assigns, is hereby granted the non-exclusive right to erect, maintain and operate television transmissions and distribution facilities and additions thereto (and other electronic facilities) in, under, over, along, across and upon the streets, avenues, sidewalks, alleys and other public places in the Village of Chatham, and subsequent additions to said Village, including easements for sewers owned by the Village for the purpose of transmission and distribution of television and radio programs, and various communications and other electronic services, in accordance with the laws and regulations of the United States of America, the State of Illinois, and this Ordinance, for the period of Fifteen (15) years from and after the effective date of this Ordinance, unless sooner terminated as herein provided.

SECTION 4. LEASE OF POLE FACILITIES: UNDERGROUND SERVICE. The poles used for the Company's distribution system shall be those erected and maintained by the public utility providing telephone service and the municipal utility providing electric service. Wherever possible, it shall be the sole responsibility of the Company to negotiate rental agreements with said utilities to secure the necessary space on said poles for its operation under this franchise. Where the use of poles owned by said utilities are not practicable or mutually satisfactory rental agreements cannot be entered into with said public utilities following a good faith effort on the part of the Company to obtain such agreements, the Company may erect poles where necessary but only after the location of such pole(s) have been approved by the Village's Authorized Agent.

Where poles are not available for attachment by the Company, the Company shall have the right to install underground lines in the manner hereinafter provided. The erection of poles and the installation of underground cables shall be subject to all existing ordinances and regulations of the Village applicable thereto. The Company shall pay to the Village the sum of \$5.00 per pole per year for the use, where applicable, of the municipal utility poles. The \$5.00 per pole rental per year shall apply to the maximum number of poles used by the Company at any time during a calendar year and shall be paid on or before January 31 each year for such use during the preceding year.

SECTION 5. REQUIRED UNDERGROUND SERVICE. Where the telephone service and electric service are both underground, the Company shall install its distribution system in the same underground fashion, provided that the Company shall, at its own expense, properly backfill any excavation made from said line and restore the surface of the ground to a condition reasonably equal with its condition prior to such excavation and to subsequently correct by additional backfilling any sinking or settlement of such excavation for a period not to exceed one year.

SECTION 6. RIGHT OF WAY OCCUPANCY. (a) The Company's transmission and distribution system, poles, wires, cables and appurtenances shall be located, erected and maintained so as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets, alleys, or other public ways and places, and not to interfere with improvements the Village may deem proper to make.

(b) Restoration. In case of the disturbance of any pavement, sidewalk, driveway, or other surfacing, the Company shall, at its own cost and expense and in a manner approved by the Village's Authorized Agent, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed in as good a condition as before said work was commenced.

(c) Relocation. In the event that at any time during the period of this franchise or any extension thereof the Village by reason of the construction of public facilities, traffic conditions, public safety, or street vacation, shall lawfully elect to alter or change the grade of any street, alley, or public way, requiring the moving or relocation of any of the facilities of the Company, the Company, upon reasonable notice by the Village, shall remove and relocate its poles, wires, cables, underground conduits and other fixtures at its own expense.

(d) Temporary Removing of Wire for Building or Moving. The Company shall, on the request of any person holding an appropriate permit issued by the Village, temporarily remove, raise or lower its wires to permit the moving of the buildings. The expense of such temporary removal, raising or lowering of the wires shall be paid by the person requesting the same and the Company shall have the authority to request such payment in advance.

(e) Tree trimming. The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, public places of the Village so as to prevent the branches of such trees from interfering with the wires and cables of the Company. All trimming shall be done with prior notification of the Village and at the expense of the Company.

(f) All work done by the Company, whether using the Village's poles, other public utility poles, the Company's poles, or the Company's underground cables, shall be performed in a good and workmanlike manner, including service drops and house attachments, and all equipment shall be in accordance with good engineering practice.

SECTION 7. CODES. All construction of the Company, including installation and maintenance of its transmission and distribution system shall be in accordance with the provision of the National Electrical Safety Code, the Statutes of the State of Illinois, and all applicable ordinances of the Village. The Company shall provide the Village's Authorized Agent with a map designating the location of cable television transmission and

distribution facilities prior to construction, and the installation of all Company wires and cables whether on poles owned by the Village, any other public utility, or the Company, or underground, shall require approval by the Village's Authorized Agent.

SECTION 8. ASSIGNMENT. The Company shall not sell, lease or transfer its plant or system to another, or transfer or assign any rights under this franchise to another, without the prior written consent of the governing body of the Village and no such sale or transfer shall be effective until the vendee, assignee, or leasee has filed in the Office of the Village Clerk a statement duly executed reciting the fact of such sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Consent shall not be unreasonably withheld.

SECTION 9 INDEMNIFICATION AND INSURANCE. The Company shall indemnify and hold the Village blameless from any and all liability, damage or expense from accident or damage, either to itself or to persons or property of others, which may occur by reason of the Company's activities in the cable television business and shall provide the following:

(a) Concurrent with the filing of the acceptance of the Company of the franchise herein granted, the Company shall furnish to the Village and file with the Village Clerk and at all times during the term of this Ordinance maintain in full force and effect at its own expense a general comprehensive liability insurance policy in protection of the Village, its officers, boards, commissioners, agents and employees, with a company licensed to do business in the State of Illinois, in a form satisfactory to the Village Attorney, protecting the Village and all persons against all claims, demands, actions, judgments, costs, expenses, and liabilities for loss or damage for personal injury, death or property damaged occasioned directly or indirectly by the operations of the Company under this franchise with minimum liability limits of \$500,000 for personal injury or death of any one person, and \$1,000,000 for

personal injury or death of two or more persons in any one occurrence and \$200,000 for damage to property resulting from any one occurrence.

(b) The insurance policy mentioned in (a) above shall name the Village, its officers, boards, agents and employees as additional insured and contain provision that a written notice of cancellation or reduction of said policy shall be delivered to the Village ten (10) days in advance of the effective date thereof; if such insurance is provided by policy which also covers grantee or any other entity or person other than those named above, then such policy shall contain the standard cross-liability endorsement.

SECTION 10. PERFORMANCE BOND. The Company shall maintain through the term of the franchise, or any renewal or extension thereof, a faithful performance bond running to the Village with good and sufficient surety approved by the Village Board in the penal sum total of \$10,000 conditioned upon the faithful performance of the Company and upon the further condition that in the event the Company shall fail to comply with any law, ordinance or regulation governing the franchise, there shall be recoverable jointly and severally from the principal and the surety of the bond, any damages or loss suffered by the Village as result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of the Company, plus a reasonable amount for attorney fees and costs, up to the full amount of the bond.

SECTION 11. RATES AND CHARGES. The Company shall lay all cables, wires and lines both on the public and private properties of the Village at its own expense, but the Company shall have the privilege of charging its customers both an installation fee to bring the service to their properties and a monthly fee for their continued use of the service. All rates charged the Company's customers shall be standard, uniform, and reasonable.

A schedule of the initial charges for service is attached and shall be placed on file with the Village Clerk upon enact-

ment of the Ordinance by the Village. The Company shall have the right to annually adjust its rates for monthly Basic Cable Service in a percentage equal to the changes in the U. S. Bureau of Labor Statistics Consumer Price Index upon the notification of its customers and the filing with the Village Clerk of a dated revised schedule of changes 30 days prior to the effective date. Changes in rates greater than described above can be effected by the Company upon 60 days notice filed in schedule form with the Village Clerk and shall become effective 60 days subsequent to such filing unless the Company is notified in writing by the Village within 30 days of receipt of the rate schedule that such changes are unacceptable or require further examination by the Village. Further action shall be affected by the utilization of the procedures outlined in Section 12 below. Rates charged by the Company for ancillary services apart or in addition to the Basic Cable Service shall be established by the Company independent of the regulatory procedure described above but shall be on file for inspection by the public in the Company's offices and shall appear on all the Company's brochures or literature describing said services.

SECTION 12. PROCEDURES. (a) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the Village Council in regard to the Company's cable television system, including action in regard to a change in subscription rates as stated above, and the extension of this franchise agreement pursuant to Section 21 shall be taken only after 30 days public notice of such action or proposed action is published in an area or daily or weekly newspaper having general circulation in the Village; a copy of such action or proposed action is served directly on Company and, the Company has been given an opportunity to respond or comment in writing on the action or proposed action. If the Company should request an inquiry, proceeding, investigation or other action, the Village will hold a hearing within 30 days of receipt of the request.

(b) The public notice required by this section shall state clearly the action or proposed action to be taken, the time

provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the Village Council. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained.

The Company shall have the right, through its agents or employees, to be present at all public portions of any such hearing and the opportunity, through said agents or employees, to make an oral statement on its behalf of any such hearing.

SECTION 13. SERVICE PROTECTION. The distribution system shall be installed, operated and maintained in such a manner that no interference will be caused to the reception of signals from standard television stations or to the reception of signals transmitted by any communication service authorized by any Federal Agency.

SECTION 14. COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURE. The Company shall promptly upon commencing operation, establish a procedure for the investigation and resolution of customer complaints. As a minimum, the procedure shall provide for a local office and agent for that purpose at all times during this franchise or any extension thereof, and designate by title the person responsible to the public.

SECTION 15. CUSTOMER CONTRACTS. No contract as to the length of service for a regular monthly residential customer shall be required by the Company under ordinary circumstances. The Company agrees that under ordinary circumstances it shall be the right of the customer to start or terminate all or any ancillary category of his service on cable according to his own wishes by making advance payments of current rates to commence service, and by reasonable notice to the Company to terminate the service. The Basic Cable Service which is defined in Section 2 of this Ordinance shall be the only requisite service a customer must select in order to be a customer to cable. No customer shall be required to subscribe to any ancillary or additional category of service that may be offered by the



Company as a condition for continuing to receive those signals and services that are part of the Basic Cable Service. It is hereby acknowledged, however, that any equipment installed by the Company on behalf of the customer on his premise shall remain the property of the Company, and shall be subject to reasonable inspection and service by the Company at reasonable hours and removal upon termination of service.

In the event that any customer shall fail to meet his obligations according to the approved rate schedule and to meet reasonable Company rules and regulations, the Company shall have the right to withhold or deny services to such customer. In the event service is interrupted at any time for more than 24 consecutive hours the Company shall give each customer to whom such service is interrupted a prorata rebate or credit against charges for whatever services the customer has subscribed to receive, unless the interruption is caused by an act of God or the Village or any public utility or the condition of the municipal or public utility poles or equipment without any fault of the Company.

SECTION 16. TIME FOR BEGINNING CONSTRUCTION AND COMPLETION OF SYSTEM. The Company shall begin construction of the system within sixty (60) days of the effective date of this Ordinance. The Company shall complete the system and have it in full operation within eighteen (18) months of the effective date of this Ordinance. If the system is not complete and in full operation within eighteen (18) months of the effective date of the Ordinance and the Village declares a default as provided in Paragraph 23 below, the Company shall within 120 days after the 30 days in which the Company has to show cause why it should not be held in default to remove all of the uncompleted system, restore all municipal or other public utility poles used by the Company, (except the Company shall not be required to replace any pole undamaged by the affixing and subsequent removal of the Company's equipment beyond the necessary holes drilled) restore the surface of the ground where any pole belonging to the Company is removed, and restore the surface of the ground where any exca-

vation had been done by the Company for the installation of underground cable, and the Village shall recover from the principal and surety of the Company's performance bond, as provided in Paragraph 10 above, for any damage or loss suffered by the Village.

If the Company does not so remove the uncompleted system within 120 days then in addition to the recovery from the principal and surety of the Company's performance bond, as provided in Paragraph 10 above, for any damage or loss suffered by the Village, the Village may take over the system and all the Company's right and interest to the system shall terminate upon payment to the Company within 240 days of the declaration of default of either (a) the Company's actual cost on the date of the notice of default for the plant-equipment in place in the system and the cost of installation as evidenced by invoices, paid receipts, cancelled checks, mechanics lien releases or equivalent evidence of costs paid by the Company, or, (b) the sum the Village receives from any subsequent franchisee within one year of the notice of default in payment for the acquisition of the plant-equipment, whichever amount, (a) or (b) is greater, but in either case, less 5% to be retained by the Village as a penalty for the Company's default.

SECTION 17. EXTENT AND TIME OF REQUIRED SERVICE. After the system is complete the Company must offer service to all residents of the Village as defined by the corporate limits in existence as of the effective date of this Ordinance and upon the request of any resident of the Village the Company shall furnish service within sixty (60) days of the request, except as hereinafter provided; provided the Company shall not be required to offer service to a resident even though within the Village limits where the density of family dwelling units is less than forty (40) per mile.

During the term of this franchise or any extension thereof, the Company shall make the service available to any resident of the Village as the Village Corporate limits may be extended, provided the minimum density requirement as set forth above is

met. The Company shall make service available to residents who become eligible by their place of residence having been annexed to the Village, and by meeting the minimum density requirement, within 180 days of the eligibility of the resident. In the case of lands or subdivisions annexed to the Village after the effective date of this franchise agreement, the Company shall have one year from such eligibility of additional residents to offer service if the trunk line to provide such new service must be extended more than one mile from the nearest trunk line already necessary to serve the portion of the Village required to be served within eighteen (18) months of the effective date of this Ordinance.

For purposes of determining density to define residents to whom service is required to be offered by the Company, dwelling units shall mean either single family houses or individual apartments or condominium units within a building or complex of buildings.

SECTION 18. PAYMENT TO VILLAGE. The Company shall pay to the Village for the privilege of operating a cable television service within the corporate limits of the Village as now exists or hereinafter constituted an annual franchise fee equal to three (3) percent of the total annual gross customer revenues, from Basic Cable Service within the Village as defined in the Definitions in Section 2 of this Ordinance, said payments to be made semi-annually on or before the last day of the sixth and twelfth months of the year. Such payments shall be credited against any business and occupation tax or franchise tax or other Village tax except personal property taxes required to be paid by the Company.

The Village shall have the right to inspect at all reasonable times, at offices of the Company the records of the Company regarding its operations in the Village for the purpose of ascertaining accurately what the actual gross receipts of the Company for Basic Cable television service has been for the present or past years.

SECTION 19. SYSTEM AND SERVICE. The Company shall install a cable system capable of carrying at least 20 channels of video and audio signals designed for color transmission which can be modified for two way services when the technology and marketplace requirements permit.

The Company shall provide without charge and upon written request from the School Principal a cable outlet for transmission of Basic Cable Service to each primary and secondary school in the Village.

The Company shall provide without charge and upon written request from the Village's Authorized Agent, a cable outlet for transmission of Basic Cable Service to each Village office building, Village library, fire station, and police station within said Village.

SECTION 20. SAFETY CONDITIONS AND POLICE POWER. The Village reserves the general right to see that the system of the Company is constructed and maintained in a safe condition consonant with the Village Ordinances. In the event the Village shall find that an unsafe condition does exist, it may order the Company to make necessary repairs forthwith and if the Company shall fail to so do, the Village may cause said repairs to be made and collect all cost therefrom the Company. In accepting this franchise, the Company acknowledges that its rights hereunder are subject to the police power of the Village to adopt and enforce general ordinances necessary to the safety and welfare of the public; and the Company agrees to comply with all applicable general ordinances enacted by the Village Board pursuant to such power.

SECTION 21. TERM OF FRANCHISE: EXTENSION OF TERM. The franchise and rights here granted shall take effect and be in force from and after the final passage hereof as required by law and upon the filing of an unqualified acceptance by the Company with the Village Clerk and shall continue in force and effect for the term of fifteen (15) years from and after said effective date. The Company is further granted a conditional right to an extension of its franchise for a period of ten (10) years provided notice of such intent is served in writing on the

Village at least six (6) months prior to the expiration of the initial fifteen (15) year term and such extension is approved by the Village pursuant to the procedures of Section 12 above.

SECTION 22. Ownership Disclosure. On acceptance of this franchise and thereafter as any change occurs in ownership or management of the Company, the Company shall promptly provide to the Village

(1) A list of partners, or officers and members of board of directors of the Company and of any parent corporation; and

(2) A list of all stockholders holding three percent (3%) or more of the voting stock of the Company and the parent corporation, if any.

SECTION 23. Periodic Review. Within thirty (30) days of the fifth and tenth anniversary dates of this ordinance the Village and the Company shall hold review sessions, at regular meetings of the Village Board each of which shall be open to the public. The following topics shall be reviewed and may be adjusted at each such session; pole rental to the Village and the limits of the indemnity insurance required of the Company, to the extent that inflation and other economic conditions have affected the cost to the Village of accomodating the use of its utility poles by the Company, and the reasonable range of potential liability for risks covered by the required insurance.

In addition, at each such review meeting any amendments to this Ordinance and any applicable judicial or FCC rulings shall be discussed and any appropriate action taken.

SECTION 24. DEFAULT AND FORFEITURE. The Village shall be entitled to cancel and terminate this franchise and all rights thereunder provided to the Company, upon any of the following acts or omissions by the Company:

(a) A material breach, whether by act or omission, of any terms or conditions of this franchise ordinance, or

(b) material misrepresentation of fact in the application for or negotiations of the franchise, or

(c) insolvency of the Company, or the application of the Company for an adjudication as a bankrupt, or the

adjudication of the Company as a bankrupt upon an involuntary petition; or

(d) failure to provide customers or users with adequate service;

provided however, that in each case the Village shall serve upon the Company written notice of such violation and the Company shall thereupon correct such violation or show cause why such violation should not or cannot be corrected not more than thirty (30) days from and after the date of receipt of said notice. Within said thirty (30) days the Company shall have the right to request a meeting with the Village to present to the Village Board and have considered the sufficiency of the Company's actions to correct such violations or the validity of the cause shown by the Company why such violations should not be corrected, and if the Village does not approve the action taken by the Company to correct the violations, or accept the cause given by the Company why such violations should not be corrected, the Village shall promptly state in writing its reasons for such disapproval or rejection. In the event the Company fails to correct such violations within said time or satisfactorily show cause why such violations should not be corrected, this franchise shall thereupon be null and void and of no further force or effect, but all rights accruing to the Village against the Company shall continue in favor of the Village. Failure to enforce or insist upon compliance of any of the terms or conditions of this Ordinance shall not constitute a waiver or relinquishment of any such terms or conditions by the Village, but the same shall be and remain at all times in full force and effect.

SECTION 25      FCC RULES. Any modification of the rules and regulations of the FCC shall be incorporated into this Ordinance and franchise within one (1) year of its effective date.

SECTION 26 AMENDMENTS. The provisions of this franchise are compatible with the existing laws of the State of Illinois and regulations of the FCC. In the event of any amendment, modification or supplemental legislation or regulation which change the limitations now imposed by such law or regulations, other than as provided in Section 25 hereof, this franchise shall, upon written notice of either the Village or Company to the other, be amended and changed in accordance with such amendment, modification or supplement. This franchise may be amended at any time with the consent of both Village and Company.

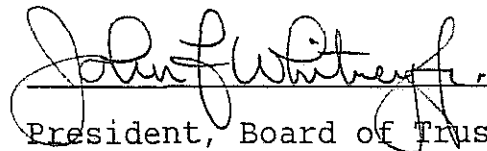
SECTION 27. SEPARABILITY. If any section, subsection, sentence, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate and distinct and independent provision and such holding shall not effect the validity of the remaining portion thereof.

SECTION 28. This Ordinance shall be in full force and effect 10 days after its passage, approval and due publication.

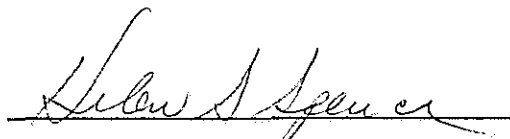
PASSED, JANUARY 30, 1979

APPROVED JANUARY 30, 1979

PUBLISHED \_\_\_\_\_ 1979

  
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President, Board of Trustees  
of the Village of Chatham

ATTEST:

  
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VILLAGE CLERK