

TIPPECANOE COUNTY
Ordinance 2005-47-CM

AN ORDINANCE OF THE COUNTY OF TIPPECANOE, INDIANA, PURSUANT TO THE AUTHORITY GRANTED UNDER I.C. 36-1-3-4 AND THE FEDERAL COMMUNICATIONS ACT OF 1934, AS AMENDED AND AS MAY BE AMENDED FROM TIME TO TIME, TO PROVIDE FOR THE GRANT OF A CABLE SYSTEM FRANCHISE TO PROVIDE SERVICE TO THE RESIDENTS OF TIPPECANOE COUNTY, INDIANA; TO PROVIDE FOR THE ADMINISTRATION AND ENFORCEMENT OF THE PROVISIONS OF THIS ORDINANCE; AND TO PROVIDE FOR REMEDIES AND/OR PENALTIES FOR THE VIOLATION OF THE PROVISIONS CONTAINED HEREIN.

WHEREAS, the County of Tippecanoe, Indiana, hereinafter referred to as "County", has received a request from Mulberry Cooperative Telephone Company, Inc., hereinafter referred to as "Company", for a non-exclusive franchise to provide cable television service in certain unincorporated areas of the County on the terms and conditions as set forth herein, which terms and conditions have been made available for inspection in the office of the Tippecanoe County Auditor; and

WHEREAS, the purpose of this Ordinance is to (1) provide for the granting of cable system franchise rights to Company for the provision of cable services to the residents of the County of Tippecanoe, State of Indiana, and (2) to set forth the respective rights, obligations and remedies of the County and the Company in binding agreement form, consistent with the provisions of the Federal Communications Act of 1934, as amended, and the Federal Communications Commission's Rules and Regulations promulgated pursuant thereto, from which this Ordinance shall be interpreted consistent therewith.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY, STATE OF INDIANA:

SECTION 1. 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.

- A. ACT shall mean the Federal Communications Act of 1934, as amended.
- B. CABLE SERVICE shall mean the providing of video and/or other programming services to Subscribers in certain unincorporated areas of the County, to the extent deemed subject to regulation under the Act and/or by the FCC.
- C. CABLE SYSTEM shall mean a facility consisting of a set of lines, fixtures, equipment attachments, and all appurtenances thereto which are used to operate and maintain the Cable System and designed to provide Cable Service to subscribers in the County.
- D. BOARD OF COMMISSIONERS OF TIPPECANOE COUNTY is the authorized legislative body of the County of Tippecanoe, Indiana.
- E. COMPANY is the grantee of the rights under this Ordinance and means Mulberry Cooperative Telephone Company, Inc., an Indiana corporation.
- F. COUNTY shall mean the unincorporated areas of the County of Tippecanoe, located in the State of Indiana, the Grantor of Rights under this Regulatory Ordinance.
- G. FEDERAL COMMUNICATIONS COMMISSION or FCC shall mean that Federal Agency constituted by the Communication Act of 1934, as amended.
- H. FRANCHISE shall mean any authorization granted herein to construct, operate and maintain the Cable System.
- I. GROSS SERVICE RECEIPTS shall mean the total amount of money received during the applicable calendar year by the Company from its subscribers within the County as monthly Cable Service fees. Gross Service Receipts shall not include the receipts from other telecommunications services provided by the Company. Gross Service Receipts shall also not include Franchise fees, FCC user fees or state or federal taxes, to the extent that those charges are passed through to the Company's subscribers.
- J. PERSON is any person, firm, partnership, association, corporation, company, or organization of any kind.
- K. SHALL is mandatory language and MAY is permissive.
- L. SUBSCRIBER shall mean any person who receives any Cable Service delivered by the Cable System.
- M. USER OF CABLE SYSTEM shall mean a person who utilized the Cable System to produce or to transmit programs or other communications to Subscribers.

SECTION 2. Grant of Authority. In consideration of the faithful performance and observance of the conditions and reservations hereinafter specified, there is hereby granted by the County to the Company and its successors and assigns the nonexclusive right to construct, maintain and operate a cable television system ("Cable System") in the County, all in accordance with the laws and regulations of the United States of America, the State of Indiana, and the ordinances and regulations of the County of Tippecanoe. For this purpose the County hereby grants to the Company a non-exclusive Franchise, right and privilege to construct, erect, operate, modify and maintain, in, upon, along, across, above, over and under the public highways, streets, alleys, sidewalks, and public rights-of-ways now laid out or dedicated, and all extensions thereof and additions thereto in the County which have been dedicated for compatible uses, such poles, wires, cable, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the County of a Cable System for the purpose of distributing television and radio signals, and other electronic impulses in order to furnish television and radio programs, and other

electronic and information services to the public. The right so granted includes the right to use and occupy the public streets, alleys, and public rights-of-ways and all manner of easements which have been dedicated for compatible uses, for the purposes herein set forth.

SECTION 3. Pole Use. Where the use of poles or underground conduits owned by public utilities is not practicable and rental agreements cannot be entered into with said public utilities, the Company shall have the right to erect and maintain its own poles or underground conduits, as such may be necessary for the proper construction and maintenance of the Cable System; provided, however, that the Company shall obtain prior approval from the County as to the necessity for and location of any new poles or underground conduits to be erected. Nothing in this Section shall preclude the Company from contracting with the County or any utility now or hereafter having pole lines or underground conduits in the County to provide and maintain the Cable System of the Company.

SECTION 4. Installation and Maintenance of Attachments. The Company shall, at its own expense, make and maintain its attachments in safe condition and in good repair, and in a manner suitable to the utility companies and the County.

In the maintenance and operation of its Cable System in the streets, alleys and other public places, and in the course of any new construction or additions to its facilities, the Company shall proceed so as to cause the least possible inconvenience to the general public. Any streets, alleys, sidewalks, or other public places distributed or damaged in the construction or maintenance of the Cable System shall be promptly repaired to the satisfaction of the County by and at the expense of the Company.

SECTION 5. Pole Erection and Construction. The Company's Cable System poles, underground conduits, and the wires and appurtenances thereon, shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or interfere with new improvements the County may deem proper to make, or hinder unnecessarily or obstruct the free use of streets, alleys, bridges or other public property. Removal of poles or rearrangement of its facilities to avoid such interference will be at the Company's expense.

SECTION 6. Specifications. The Company's poles, cables, wires, underground conduits and appliances, in each and every location, shall be erected and maintained in accordance with (1) such requirements and specifications as the County shall from time to time prescribe, (2) requirements and specifications of the National Electrical Safety Code and the National Board of Fire Underwriters, (3) any amendments or revisions of said codes or practices and (4) in compliance with any rules or orders now in effect or that may hereafter be issued by any regulatory agency or other authority having jurisdiction in the State of Indiana.

All installation of equipment shall be of a permanent nature and in accordance with good engineering practice. The Company's service drops shall be installed in a neat and workmanlike manner, including the house attachments, so as to preserve the best overall appearance of power, telephone and Cable System drops through the air and attached to the buildings. Cable System service drops are to be installed where practicable from the cable away from a pole so as to preserve climbing space on the pole.

In the event a customer discontinues cable service and requests removal of the Company's service drop, such removal shall be accomplished in a neat and workmanlike manner at the Company's expense. Any underground drops or pedestals may be abandoned in place for future use by other customers and need not be removed.

The Company shall grant to the County, free of expense, joint use of any and all poles owned by it for any proper municipal purpose acceptable to the Company, insofar as such use may be accomplished without interfering with the free use and enjoyment of the Company's own wires and fixtures; and the County shall hold the Company harmless from any and all actions, causes of actions or damage caused by placing of the County's wires or appurtenances upon poles of the Company. Proper regard shall be given to all existing safety rules governing construction and maintenance in effect at the time of construction.

SECTION 7. Relocation of Facilities. In the event that at any time during the period of the Ordinance, the County shall elect to alter or change the grade of any streets, alleys or other public ways, the Company, upon reasonable notice by the County, shall remove, release and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at the Company's expense.

SECTION 8. Tree Trimming. The Company shall have the authority and is hereby required to trim trees upon and overhanging streets, alleys, sidewalks and public places of the County to prevent the branches of such trees from coming in contact with the wires, cables and Cable System components of the Company, all trimming to be done at the sole expense of the Company.

SECTION 9. Damages. The Company shall exercise special precaution to avoid damage to facilities of the County and of others supported on said poles or underground conduits; and hereby assumes all responsibility for and agrees to indemnify the County from and against any and all loss or damage, or claim therefore, resulting from the attachment to such poles or underground conduits of the Company's facilities and from any and all acts or omissions of the Company in connection therewith. The Company shall make an immediate report to the County of the occurrence of any loss or damage and hereby agrees to pay the cost incurred in making repairs to such facilities of the County or others who may be harmed by actions of the Company in the construction or maintenance of its Cable System.

SECTION 10. Insurance. The Company shall indemnify, protect and save harmless the County from and against losses and physical damage to property, and bodily injury or death to persons, including payments made under any workmen's compensation law, and including costs and attorney fees

which may arise out of or be caused by the erection, maintenance, presence, use or removal of all Cable System equipment of any kind or nature whatsoever within the County, or by any act of the Company, its agents or employees, or in any way arising out of the granting of this franchise. The Company shall carry public liability insurance to protect itself, the utility companies and the County from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Such insurance policy shall specifically provide that the County and the utility companies who own any poles or underground conduits that Company may attach its Cable System to shall be named insureds. The amounts of such insurance against liability due to physical damage to property shall be not less than Three Hundred Thousand Dollars (\$300,000.00) as to any one claim and not less than One Million Dollars (\$1,000,000.00) aggregate in any single policy year; and against liability due to bodily injury or to death of persons, not less than Three Hundred Thousand Dollars (\$300,000.00) as to any one person, and not less than One Million Dollars (\$1,000,000.00) as to all such claims arising from any one accident. The Company shall also carry such insurance as it deems necessary to protect it, the utility companies who own any poles or underground conduits that Company may attach its Cable System to and the County from all claims under the workmen's compensation laws in effect that may be applicable to the Company. All insurance required by this Ordinance shall be and remain in full force and effect for the entire period of this Ordinance. The policies of insurance, or a certified copy or copies thereof, shall be deposited by the Company with and kept on file by the Tippecanoe County Auditor.

SECTION 11. Minimum CATV System Service. Subject to and in accordance with the rules and regulations of the Federal Communications Commission, the Company's Cable System shall make available to all subscribers FM radio signals and Cable Service on at least 10 channels, including the special access channels required by the rules and regulations of the Federal Communications Commission.

SECTION 12. Rates. The Company agrees that all rates charged to subscribers to its Cable System service shall be standard, uniform and reasonable. A copy of the Company's schedule of charges for installation and furnishing of service shall be filed with the Auditor of the County not less than thirty (30) days prior to the effective date of such charges or any changes.

SECTION 13. Unauthorized Use of Service. Persons receiving Cable Service may not alter, extend or otherwise tamper with the Company's facilities to serve more equipment than being contracted for.

SECTION 14. Technical Standards.

A. All television signals impressed upon the Cable System shall be capable of being received on any television set of standard manufacture, when equipped, as necessary, with converters, special decoding equipment or auxiliary circuits.

B. Upon completion of construction and commencement of operations, and periodically thereafter, performance tests will be conducted by the Company, at its sole expense, to insure that all FCC (or other federal or state regulatory agency with jurisdiction) standards are met.

SECTION 15. Police Power. The Company shall at all times during the life of this permit be subject to all lawful exercise of the police power of the County and to such reasonable regulation as the County shall hereafter by resolution or ordinance provide.

SECTION 16. Service Area.

A. The Company shall offer Cable Service to all residential subscribers in unincorporated areas of the County that it currently provides telecommunications services to upon request located within one hundred fifty (150) feet of Grantee's feeder cable where there exists a minimum density of thirty-five (35) dwelling units per mile of cable (excluding homes receiving competitor's services). The Company may elect, but has no obligation, to offer Cable Service to areas and Persons not meeting the above standard.

SECTION 17. Payment. In consideration of the rights, privileges and permit hereby granted to Company and in compensation to the County for the use of its public places, Grantee agrees to pay to the County no later than March 1 for the preceding calendar year an annual fee in the amount equal to three percent (3%) of its annual Gross Service Receipts. In its billing statements to Subscribers, Company may pass the above 3% franchise fee through to the Subscriber and so indicate on the Subscriber's billing statement.

The Company shall file with the County an annual report of its annual Gross Service Receipts at the time of making the annual compensation payment. The County may at any reasonable time have access to the Company's books and records for audit purposes.

Consistent with regulatory parity, this section shall not go into effect and no payment shall be required hereunder until the County has updated the Franchisee(s) of any other competing Cable System(s) and any such Cable System(s) are required at the same time to remit the payments required in this section.

SECTION 18. Purpose of Payment. The payments provided for in this Ordinance to be made to the County are in payment by the Company to the County for the use of the streets and alleys, and additional supervision, maintenance, inspection, regulation, burdens and costs to the County occasioned by reason of the granting of the rights hereunder.

SECTION 19. Underground Facilities. The Company at its own expense, shall place its facilities underground in those areas of the County where all of the utilities are underground.

SECTION 20. Approval of Construction. Wherever this Ordinance requires the approval of the Company's construction of facilities, such approval shall be given by the person designated by the Board of Commissioners of Tippecanoe County.

SECTION 21. Complaint Procedures. The Company shall maintain a local business office or agent easily accessible to the citizens of Tippecanoe County for the purpose of receiving subscriber complaints expeditiously and normally within 48 hours. The Board of Commissioners of Tippecanoe County may appoint a commission or may designate any officer of the County with the responsibility of monitoring the Company's operations and in cases where customer complaints are unsatisfied by the Company's response to the complaints, such commission or person shall have the power, and the Company shall accept and give recognition to, recommended changes in the Company's complaint procedures.

SECTION 22. Service and System Maintenance. The Company shall, at its own expense, at all times maintain and furnish telephone answering service and system maintenance service to subscribers during reasonable regular business hours. The Company, in addition to having its telephone listed in the local telephone directory, shall advise each of its subscribers in writing of such telephone number.

SECTION 23. Compliance with State and Federal Law.

A. The Company shall conform to all laws, rules and regulations of the United States and of the State of Indiana in the construction and operation of its Cable System; and all rules and regulations of the Federal Communications Commission relating to cable television franchises, as now enacted or subsequently amended, are incorporated herein by reference. The Company shall take such additional action as is necessary to incorporate formally in the terms of this franchise any modifications required by amendments of applicable federal and state laws, rules and regulations governing the contents of cable television franchises within one (1) year of their adoption.

B. This Ordinance is in full compliance with the rules and regulations of the Federal Communications Commission relating to cable television franchises as now enacted.

C. Nothing herein shall be construed to prohibit the Company from requesting a waiver of any state or federal rule or regulation, provided that a copy of such request shall be served upon the County.

SECTION 24. Effective Date. This Ordinance shall take effect and be in force, after its passage by the Board of Commissioners of Tippecanoe County.

SECTION 25. Transfer of Franchise. The Franchise and any rights granted herein shall be deemed a privilege to be held in personal trust by the Company to succeed to the Franchise and any such rights granted herein shall not be assigned, transferred, sold or disposed of, without the prior consent of the Board of Commissioners of Tippecanoe County expressed by resolution. Such consent shall not be unreasonably withheld provided that the proposed assignee agrees to comply with all the provisions of this Ordinance and is able to provide proof of financial responsibility and other qualifications satisfactory to the County. No consent by the County shall be required for a transfer in trust, mortgage or other instrument of hypothecation to secure an indebtedness of the Company. The consent of the Board of Commissioners of Tippecanoe County to any sale or other transfer shall not constitute a waiver or release of any of the rights of the County under this Ordinance.

SECTION 26. Term of Franchise. The Franchise granted the Company herein, shall terminate fifteen (15) years from its effective date, subject to renewal for a period of five (5) years on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be lawfully specified by the County and as are consistent with the requirements of the Act and the rules and regulations of the FCC. The Company's application for Franchise renewal may be granted pursuant to the provisions of Section 626 [47 USC 546] of the Act, as may be amended. The Company shall have the right, to be a party to any proceedings in which its rights, privileges, or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules or regulations. Notwithstanding the above, the County in its sole discretion and in accordance with state law, may preclude the Company's presence should the necessity of a closed session arise.

SECTION 27. Final Termination of the Franchise. Upon final termination of the Franchise, the Company shall remove its cables, wires and equipment from all poles or underground conduits of the County and all space reserved for the County's use on poles or underground conduits belonging to others, provided that the Company's cables, wires, and equipment only need be removed to the extent that their presence is not authorized by other agreement or applicable state or federal law to provide telecommunications services. If not so removed, the County shall have the right to remove or have its contractor remove them at the risk, cost and expense of the Company and without any liability therefor.

SECTION 28. Penalties. Any violation by the Company, its assignees, lessee or successor, of the material provisions of this Franchise shall be cause for the forfeiture of this Franchise and all rights hereunder, provided that the County shall first notify the Company in writing of the condition or act on which the violation is charged, and the Company shall have thirty (30) days within which to remedy such condition or act; and provided further, that should it be impossible to correct the said violation within said thirty (30) days, then the Company shall have a reasonable time to make said corrections. Failure to pay all monies due from the Company to the County hereunder after thirty (30) days' written notice by the County to the Company shall be grounds for revocation of the Franchise.

SECTION 29. General Terms. Failure to enforce or insist upon compliance with any of the terms or conditions of this Ordinance shall not constitute a waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

If any section, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional, such validity shall not affect the validity of the Ordinance and any portions in conflict are hereby repealed.

SECTION 30. REGULATORY PARITY. In the event that County has entered into any agreement or adopts any ordinance or Franchisee which provides any Cable Service provider with more

favorable terms than those applicable to Company under this ordinance, then this ordinance shall be deemed modified to contain such more favorable terms.

SECTION 31. Notices. Notices under this Ordinance except as otherwise indicated shall be addressed to the Company by addressing the same to:

Randy Maish, General Manager
Mulberry Co-op Tel. Co. Inc.
PO Box 370
Mulberry, IN 46058-0370

and for the County to:

Tippecanoe County Auditor
County Office Building
20 N. 3rd Street
Lafayette, IN 47901

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on first reading this 7th day of November, 2005, by the following vote:

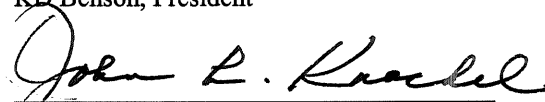
VOTE

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

Yes


KD Benson, President

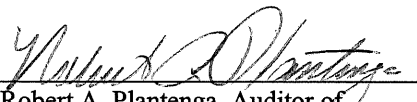
Yes


John L. Knochel, Vice President

Yes


Ruth E. Shedd, Member

ATTEST:


Robert A. Plantenga, Auditor of
Tippecanoe County

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on second reading this 21st day of November, 2005, by the following vote:

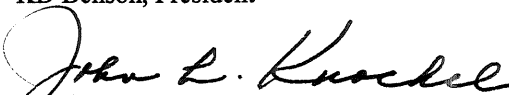
VOTE

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

Yes


KD Benson, President

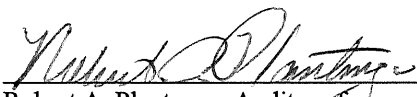
Yes


John L. Knochel, Vice President

Yes


Ruth E. Shedd, Member

ATTEST:


Robert A. Plantenga, Auditor of
Tippecanoe County

APPROVED AS TO FORM AND LEGALITY

David W. Luhman, Attorney