

ORDINANCE NO. 01987-1

An Ordinance of the TOWN OF ULEN
Granting a Franchise to TCI OF INDIANA, INC. for the
Construction and Operation of a
Cable System

The Town of Ulen, Indiana, having determined that the financial; legal and technical ability of TCI of Indiana, Inc. is sufficient to provide services, facilities and equipment necessary to meet the future cable-related needs of the community, does hereby ordain as follows:

1. Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:
 - a. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.
 - b. "Franchise Authority" means the Town of Ulen, Indiana, or the lawful successor, transferee or assignee thereof.
 - c. "Grantee" means TCI of Indiana, Inc., or the lawful successor, transferee or assignee thereof.
 - d. "Gross Revenues" mean the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System; provided, however, that such phrase shall not include revenues received from any national advertising carried on the Cable System, nor shall such phrase include any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

e. "Public Way" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the City which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

2. Grant. The City hereby grants to Grantee a non-exclusive Franchise to construct and operate a Cable System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the City and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain or retain in, on, over, under, upon, across or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

3. Term. The Franchise granted pursuant to this Ordinance shall be for an initial term of fifteen (15) years from its passage and final adoption.

4. Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

5. Restoration of Public Ways. If during the course of Grantee's construction operation or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

6. Safety Requirements. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable Federal Communications Commission or other federal, state and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the City.

7. Franchise Fee. Grantee shall pay to the Franchising Authority a franchise fee equal to 5.0% of Gross Revenues received by Grantee from the operation of the Cable System on an annual basis. The franchise fee payment shall be due and payable ninety (90) days after the close of the preceding calendar year. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation.
8. Renewal of Franchise. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of the Cable Communications Policy Act of 1984, as amended.
9. Transfer of Franchise. Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.
10. Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, General Comprehensive Liability Insurance in the amount of \$500,000 for bodily injuries, (including accidental death) to any one person, and subject to the same limit for each person in an amount not less than \$300,000 on account of any one occurrence, and Property Damage Liability Insurance in an amount not less than \$500,000 resulting from any one occurrence.
11. Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee of the exact nature of the alleged non-compliance. Grantee shall have thirty (30) days from receipt of the notice to respond to the Franchising Authority to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, to initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.
12. Acts of God. The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.
13. Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority

or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices or responses to the Franchising Authority shall be addressed as follows: Ned C. Boatright, 104 Ulen Blvd., Lebanon, IN 46052 with a copy to: Chris L. Shelby, P.O. Box 743, Lebanon, IN 46052. The notices or responses to the Grantee shall be addressed as follows: TCI of Indiana, Inc., P.O. Box 729, Bloomington, Indiana 47402, with a copy to the attention of Legal Department, addressed to the Grantee, at 5455 South Valentia Way, Englewood, Colorado 80111. The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

14. Severability. If any section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of common jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

15. See attached Addendum.

Passed and adopted this 30 day of October, 1987.

ATTEST:

Ned C. Boatright
PRESIDENT TOWN BOARD *NCB*

Charles Jones
MEMBER TOWN BOARD *NCB*

ATTEST:

TCI OF INDIANA, INC.

Robert R. Park, Jr.

BY:

William T. Lee
Its *Vice President*

ADDENDUM

a. Installation of Equipment. The parties agree that the entire system to be installed shall be installed underground, except for the amplification devices to be located at various intervals, which intervals shall be agreed upon between the Franchise Authority and the Grantee. The parties do agree, however, that said amplification devices shall be located to the greatest extent possible, so that they are shielded from public view by shrubs, trees, or other existing structures.

b. The parties contemplate that on the initial installation all homes and building sites shall have access to the Cable System, so as it will not be necessary at a later date to extend the system to additional homes and building sites that already exist in the present Town of Ulen, Indiana. Further, the parties further acknowledge that in order to effectuate said service the Grantee has attained a License Agreement from Ulen Country Club, Inc., to string cable along its eastern boundary and the western boundary of the Franchise Authority.

c. The Grantee further agrees to provide the same cable service it is currently supplying and will continue to supply to the City of Lebanon, Indiana.

~~d. The rates to be charged the individual subscriber shall be the same as charged to the subscribers of the City of Lebanon, Indiana.~~

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~~e. Should the Grantee desire to change its rates, said procedure shall be the same as provided with the City of Lebanon, Indiana, and in compliance with the Subk. Communications Policy Act of 1984 as amended and as rules are promulgated thereunder.~~

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