

AN ORDINANCE GRANTING A NEW FRANCHISE TO GALAXY CABLE T.V., ITS SUCCESSORS AND ASSIGNS TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF LEBANON, INDIANA, AND TO CONSTRUCT EXTENSIONS AS NEEDED, AND ALSO SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LEBANON, INDIANA, That a new Cable Television system franchise be granted to Galaxy Cable T.V. as hereinafter set forth.

Section 1. Definitions. For the purpose of this ordinance, the following terms, phrases, words, abbreviations and their derivations shall have the meaning herein given. 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) "City" shall mean the City of Lebanon, Indiana.
- (b) "Council" shall mean the governing body of the City.
- (c) "Company" shall mean the grantee of rights under this ordinance.
- (d) "Person" shall mean any person, firm, partnership, association, corporation, company or organization of any kind.
- (e) "Franchise area" shall mean that area within the corporate limits of the City.
- (f) "Street" shall mean the surface of and the space above and below any public street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the franchise area.
- (g) "Property of Company" shall mean all property owned, installed or used by the Company in the conduct of a CATV business in the City.
- (h) "CATV" shall mean a cable television system as hereinafter defined.
- (i) "Cable Television System" shall mean a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable audio and/or visual radio, television, electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- (j) "Basic CATV Service" shall mean the distribution of broadcast television signals by the Company.
- (k) "Subscriber" shall mean any person or entity receiving basic CATV service.

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- (1) "Gross Annual Basic Subscriber Revenues" shall mean any and all compensation and other consideration received directly by the Company from subscribers in payment for regularly furnished basic CATV service. Gross annual basic subscriber revenue shall not include any taxes on services furnished by the Company imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Company for such governmental unit.
 - (m) Master Antennae System "MAS" as prescribed by the FCC Rules and Regulations.

Section 2. Grant of Authority. There is hereby granted by the City to the Company the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street, public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporation including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

Section 3. Non-Exclusive Grant. The right to use and occupy said street, and other public ways for the purpose herein set forth, shall not be exclusive, and the City reserves the right to grant a similar use in said streets to any other person.

Section 4. Term of Franchise. The franchise and rights herein granted shall take effect and be in force 30 days from and after the final passage hereof and upon filing acceptance by the Company and shall continue in force and effect for a term of 15 years after the effective date of this franchise. The franchise may be renewed for a term to be set by the Council following a full public hearing affording due process.

Section 5. Conditions of Street Occupancy and Cable Attachment to City of Lebanon Utility Poles.

(a) All transmission and distribution structures, lines, and equipment erected by the Company within the franchise area shall be so located as to cause minimum interference with the proper use of

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streets, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said street or other public ways and places. The CATV system shall be constructed and operated in compliance with all City, State and National construction and electrical codes and shall be kept current with new codes. The Company shall install and maintain its wires, cables, fixtures and other equipment in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

(b) In case of disturbance of any street, public way, or paved road, the Company shall, at its own cost and expense and in a manner approved by the City replace and restore such street, public way or paved area in as good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Company, upon reasonable notice by the City, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(d) So far as practical, the company shall use existing poles such as those erected and maintained by the Indiana Bell Telephone Company and the Lebanon Utilities where a satisfactory rental agreement can be reached with the telephone company and the electric system. New poles will be placed only at locations where existing poles are inadequate or not available, provided, however, that any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.

(e) The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have

the authority to require such payment in advance. The Company shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

(f) The Company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Company.

(g) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies; provided, however, that the Company shall in all such cases have the rights and obligations of abandonment of property of the Company, subject to City ordinances.

(h) The City shall have the right to make additional use, for any public or municipal purpose, of any pole or conduits controlled or maintained exclusively by or for Company in any street, provided such use by City does not interfere with the use by Company. The City shall indemnify and hold harmless Company against and from any and all claims, demands, causes of action, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of Company's poles or conduits.

Section 6. Safety Requirements.

(a) The Company shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys, and

public ways or places of the franchise area, wherever situated or located, and shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

Section 7. System Construction and Extension.

(a) Company, whenever it shall receive requests for service from at least fifteen (15) subscribers within 1320 cable feet of its aerial trunk cable, or from at least twenty-five (25) subscribers within 1320 cable feet of its underground trunk cable, shall extend its system to such subscribers at no cost to the subscribers for system extension other than the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1320 feet shall be measured in extension length of Company's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's home or premises.

(b) No person, firm or corporation in the Company's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstance, such as requirement for underground cable, or more than 150 feet of distance from distribution cable to connection of service to subscribers, or a subscriber density less than the density specified herein, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor and easements.

(c) In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, Company's rights and duties under this ordinance shall be deemed to include such additional territory.

Section 8. Operational Standards. The Company shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

Section 9. Local Office, Complaint. The Company shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added

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message or toll charges, so that complaints regarding cable television operations may be promptly reported to the company. Should a subscriber have an unresolved complaint regarding cable television operation, the subscriber shall be entitled to file his complaint with the City Clerk-Treasurer, who has primary responsibility for the continuing administration of the franchise and the procedures for resolving complaints, and thereafter to meet jointly with a representative of the Council and a representative of the Company within thirty (30) days to fully discuss and resolve such matters. The Company shall notify each subscriber, at the time of initial subscription to the service of the Company, of the procedures for reporting and resolving such complaints.

Section 10. **Rates.** The Company shall maintain on file with the City Clerk-Treasurer a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rate and charges shall be filed with the City Clerk-Treasurer at least thirty (30) days in advance of the effective date thereof.

Section 11. **Preferential or Discriminatory Practices Prohibited.** The Company shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedule to which any customer coming within such classification would be entitled, and provided further that connection and service charges may be waived or modified during promotional campaigns of Company.

Section 12. **Franchise Payments.** The Company shall pay, subject to MAS", to the City, on or before March 31 of each year, a 5% franchise fee based on gross annual basic subscriber revenues received for cable television operation in the City for the preceding calendar year, for those streets and public ways that have been dedicated to the City. No other fee, charge or consideration shall be imposed, sales tax or other taxes levied directly on

a per subscription basis and collected by the Company shall be deducted from the gross annual basic subscriber revenues before computation of sums due the City is made. The Company shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year.

Section 13. Indemnification of City. The Company shall at all times protect and hold harmless the City from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including, court costs and attorney fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Company in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system. City shall give Company prompt notice of any such claims, actions and suits, without limitation in writing.

The Company shall maintain in full force and effect during the life of any franchise, public liability insurance in a solvent insurance company authorized to do business in the State of Indiana, at no less than in the following amounts:

- a. \$100,000 property damage in any one accident;
- b. \$500,000 for personal injury to any one person;
- c. \$5,000,000 for personal injury in any one accident;

provided that all such insurance may contain reasonable deductible provisions not to exceed \$1,000.00 for any type of coverage, and provided further, the City may require that any and all investigation of claims made by any person, firm or corporation against the City arising out of any use or misuse of privileges granted to the Company hereunder shall be made by, or at the expense of the Company or its insurer.

Section 14. Procedures.

(a) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of Company's cable television system, including action

in regard to a change in subscription rates, shall be taken only after thirty (30) days' public notice of such action or proposed action is published in a local daily or weekly newspaper having general circulation in the City; a copy of such action or posed action is served directly on Company; and, the Company has been given an opportunity to respond in writing and/or at a hearing as may be specified by the City, and members of the general public have been given an opportunity to respond or comment in writing on the action or proposed action.

(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 City. 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 be a necessary party to any hearing conducted in regard to its operations.

Section 15. Procedure Upon Termination. Upon expiration of the franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets, and public ways of the City, for the purposes of removing therefrom any or all of its property and otherwise. In so removing said property the Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets and public ways and places in as good condition as existing at the time of the removal.

Section 16. Approval of Transfer. The Company shall not sell or transfer its plant or system to another, other than a parent company or wholly-owned subsidiary of the Company, nor transfer any right under this franchise to another without Council approval. Provided, that no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk-Treasurer an instrument duly executed reciting the fact of

in regard to a change in subscription rates, shall be taken only after thirty (30) days' public notice of such action or proposed action is published in a local daily or weekly newspaper having general circulation in the City; a copy of such action or posed action is served directly on Company; and, the Company has been given an opportunity to respond in writing and/or at a hearing as may be specified by the City, and members of the general public have been given an opportunity to respond or comment in writing on the action or proposed action.

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such sale, assignment or lease accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval will not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating, or the assignment of certain rights in the system, or the pledge of stock by the Company for the purpose of financing.

Section 17. New Developments.

(a) It shall be the policy of the City to amend this franchise upon application of the Company, when necessary to enable the Company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers.

(b) The Company, upon passage of this ordinance will not decrease the level of their cable TV coverage and will expand it to include but not limited to the following service:

Present Service

6 WRTV/ABC - Indianapolis
 18 WFLI/CBS - Lafayette
 4 WTTV/Independent - Bloomington
 40 WHMB/Independent - Indianapolis
 8 WISH/CBS - Indianapolis
 9 WGN/Independent - Chicago IL
 20 WFYI/PBS - Indianapolis
 17 WTBS/Independent - Atlanta GA
 13 WTHR/NBC - Indianapolis

Additional Service

CSPN
 USA
 CNNI
 MUSIC TV
 NASHVILLE NETWORK
 CABLE HEALTH NETWORK
 SATELLITE NEWS CHANNEL

Premium Services

WALT DISNEY (new) 20
 HBO 7

Provided, however, that the additional services set out above shall be on line within 180 days of the passage of this ordinance.

(c) The Company will provide a converter to each subscriber free of charge.

(d) Company will not be committed to carrying of any of the above satellite service if they are no longer available via

satellite and Company reserves the right to change services as technology and availability is developed by the industry. Company will continue to carry no less than 18 channels to the basic subscribers.

(e) Company reserves the right to pass through to the subscribers any excessive copyright charges to the Company for the receiving and distribution of any distant signals.

Section 18. Miscellaneous Provisions.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk-Treasurer.

(b) The Company shall assume the cost of publication of this franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the City Clerk-Treasurer and the Company's filing of acceptance and shall be paid at that time.

(c) The Company shall provide without charge one outlet to each governmental office building, fire station, police station, and public/non-profit private school building and hospitals located within the city limits that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be the option, duty and expense of the building owner.

(d) In the case of any emergency or disaster, the Company shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period.

Section 19. Compliance with Applicable Laws and Ordinances.
The Company shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be deemed necessary to the exercise of police power. Such regulation shall be reasonable and not destructive to the rights herein granted and not in conflict with the laws of the State or other local laws or regulations.

Section 20. Violations.

(a) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distribution any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

(b) It shall be unlawful for any person, firm or corporation to make any unauthorized connection whether physically, electrically, acoustically, inductively or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the operator of said system.

(c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

Section 21. Penalties. Any person violating or failing to comply with any of the provisions of Section 20 of this ordinance shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed \$100.00.

Section 22. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsec-

tions, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 23. Federal Regulation. Any modification resulting from amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first.

Section 24. Forfeiture and Termination. The City may terminate this franchise in the event of the willful failure, refusal or neglect by Grantee to substantially comply with any material requirement of limitation contained in this ordinance. The City shall comply with the following procedures: (1) The City Council shall, with advice of legal counsel, make a written determination that after reasonable investigation it appears that Company has willfully failed, refused, or neglected to substantially comply with the material provisions of this ordinance. However, the Council shall not be justified in determining that an apparent violation by Company of this Ordinance exists, unless it also appears that there is no reasonable explanation, excuse or justification for such apparent violation. Further, a dispute between the City and Company over policies, practices or procedures which are not clearly stated in or based on the language of the Ordinance shall not be deemed a sufficient basis for a determination of apparent violation.

If the Council finds good cause to make its determination on the standards set forth above, then it shall give written notice to Company stating clearly its factual and legal basis for such determination. Company shall then have a period of thirty (30)

days after its receipt of such notice in which to comply with the provision. If the apparent violation is not remedied within the thirty (30) day period, the City Council may order the matter of apparent violation to be brought up for discussion at a regularly scheduled meeting. Company shall be served with notice at least thirty (30) days prior to the meeting as to the topic, time, place and procedure for the meeting, and the same shall be publicized by the City Clerk-Treasurer at least once in the ten (10) days before such meeting in a newspaper of general circulation in the franchise area.

At the meeting, the Council shall permit representatives of Company to be heard, together with any residents of the franchise area who have requested to be heard on the topic of the apparent violation. Based on the facts and arguments of Company, any relevant factual presentations of residents, and the Council's own investigation, the Council shall make a decision whether the apparent violation was in fact a willful failure, refusal or neglect to substantially comply with a material provision of the Ordinance. Such decision shall be in writing stating clearly the factual and legal basis for the decision, shall be rendered and made public within thirty (30) days of the meeting, and Company shall be provided a copy thereof within two (2) business days after the decision is published.

If the Council shall determine that such willful failure, refusal or neglect by the Company was not in the public interest and was without just cause, then the Council may, by resolution, declare that the franchise of such Company shall be terminated unless the Company shall comply with the ordinance provision within such period as the Council may fix.

If Company disagrees with a Council determination as to termination, renewal or extension and chooses not to comply with the material provision at issue, or does comply under protest, then Company may pursue any and all equitable or legal means of judicial review. If Company seeks judicial relief in the form of judicial stay, injunction or other temporary restraint of the effectiveness

of the Council's decisions, both the City and the Council agree not to oppose unnecessarily Company's pursuit of such relief.

Pending a final disposition of Company's judicial review, Company shall have the right to continue the business of providing Cable Service to its Subscribers, may receive revenue and profits from such business, and shall in all ways be considered by the City as having a claim of right to continue as the Company, provided that Company shall continue to comply with the material provisions of the Ordinance which are not in dispute. (Compliance by Company with material provisions in dispute shall not be construed as an admission of liability.)

In the event, Company is ultimately unsuccessful in pursuit of its judicial remedies, or if Company is permitted to and does not comply with any final determination, then Company shall commence, immediately after a judicial mandate shall be issued and entered on the records of a Court, to solicit buyers for the Cable Television System, and shall use best efforts to sell the system. In the event Company is unable to find, after its best efforts, a bona fide buyer who will pay a fair market price for the system, then Company shall have the right to shut down and remove any and all of the equipment, property or other facilities making up the Cable Television System in the franchise area, all to be accomplished within one hundred eighty (180) days after a final order is issued by a court, or by the Council in the event Company chooses not to seek judicial review of the Council's final determination. Company may continue to operate the system within such 180 day period, and until it is shut down and removed. However, at Company's sole option, it may abandon some or all of the equipment, property or facilities of the Cable Television system; but in so doing, Company relinquishes all right to compensation by the City or any third party using or taking over such system after Company has abandoned it.

Section 25. Notices. All notices required herein shall be in writing, and shall be deemed to have been duly given to the required party three (3) 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 shall be address as follows:

If to City: Clerk-Treasurer
City of Lebanon
City Building
Lebanon, IN 46052

With a copy to: City Attorney
City of Lebanon
City Building
Lebanon, IN 46052

If to Company:

With a copy to: Legal Department

Parties may designate other addresses from time to time by giving due notice to each other.

Section 26. Effective Date. This ordinance shall take effect and be in force thirty (30) days from and after its passage, subject to acceptance by the Company within said 30 day period.

James H. [Signature]
Presiding Officer

Attest:
James O. [Signature]
Clerk-Treasurer

Presented by me to the Mayor of the City of Lebanon, Indiana, on this 24th day of February, 1992.

James O. [Signature]
Clerk-Treasurer

Approved and signed by me on this 24th day of February, 1992.

James H. [Signature]
Mayor

Conf as a [unclear] [unclear] [unclear]
Anne Hood Councilperson
Jack Blane Councilman
John W. [unclear]
James K. Urban
Eric D. [unclear]