

ORDINANCE NO. 1998(4)

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO TW Fanch-two Co., TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF HOPKINS; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE SYSTEM.

BE IT ORDAINED by the Fiscal Court of Hopkins County:

SECTION I

SHORT TITLE

This Ordinance shall be known and cited as "the County of Hopkins Cable Television Franchise Ordinance." Within this document it shall also be referred to as "this Franchise" or "the Franchise Agreement."

SECTION II

DEFINITIONS

For the purpose of this Franchise Agreement, 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 tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A) "County" means the County of Hopkins, a county in the State of Kentucky. The County Fiscal Court is the authority of the County.
- B) "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or the State of Kentucky or any of their departments, agencies, political subdivisions; riots,

epidemics, landslides, lightening, earthquakes, fires, hurricanes, tornadoes, volcanic activities, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the disabled party.

- C) "Grantee" means TWFancho Co., its agents, lawful successors, transferee or assignees.
- D) "Gross Receipts" means all service fees, installation charges, and all other charges collected by the Grantee from its subscribers of the system. Gross receipts shall include but are not limited to the following services:
  - 1. Basic Service.
  - 2. Standard Service.
  - 3. Pay Television Service.
  - 4. Pay Per View Service.
  - 5. Subscriber Equipment Charges.

Gross receipts shall not include (1) uncollected revenue (bad debt), (2) excise taxes, (3) sales taxes or any other taxes or fees, including franchise fees, which are imposed on the Grantee or any subscriber by any governmental unit and collected by the Grantee for such governmental units.

- E) "Person" means any corporation, partnership, proprietorship, or organization authorized to do business in the State of Kentucky or any natural person.
- F) "Public Property" means any real property other than a street owned by any governmental unit.
- G) "Street" means the surface of and the space above and below any street, road, highway, freeway, lane, pathway, alley, court, sidewalk, boulevard, parkway, drive, or any public easement or right-of-way now and hereafter held by the County which shall entitle Grantee to the use thereof for the purpose of installing or transmitting over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a system.
- H) "System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple subscribers within the County.

### SECTION III

#### GRANT OF AUTHORITY

For the purposes of constructing, operating, and maintaining a System in the County, Grantee may erect, install, construct, repair, replace, relocate, reconstruct, and retain in, on, over, under, upon, across, and along the streets within the County such lines, cables, conductors, ducts, confluent, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other operating equipment as are necessary and pertinent to the operation of the System.

### SECTION IV

#### COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

This Franchise is granted pursuant to the terms and conditions contained herein. Grantee's rights are subject to the police powers of the County to adopt and enforce ordinances necessary to the health, safety, and welfare of the public. Grantee shall comply with all applicable general laws and ordinances enacted by the County pursuant to the power.

### SECTION V

#### TERRITORIAL AREA INVOLVED

This Franchise is granted for the territorial boundary of the County.

### SECTION VI

#### FRANCHISE TERMS

- A) This Franchise shall commence upon the effective date of this ordinance and shall expire fifteen (15) years thereafter unless renewed, revoked, or terminated sooner as herein provided, or extended according to B) below,

provided however, that after the first five (5) years of said Franchise, the governing body of Hopkins County shall review the Franchise and the performance of the Franchisee, and provided the performance is satisfactory, the agreement shall continue, and shall be reviewed at the expiration of an additional five (5) year period, and shall be extended subject to the same provisions for an additional period of five (5) years, for a total of the fifteen (15) year period.

- B) In lieu of renewal, this Franchise may be extended by the County for an additional term of fifteen (15) years upon written request by the Grantee within six (6) months of the expiration of the Franchise. Grantee shall confirm in its request that it still possessed the fiscal and technical capability to operate a System in the County pursuant to the terms and conditions herein. Approval of Grantee's extension request shall not be unreasonably withheld by the County.
- C) This Franchise shall be renewed in accordance with applicable state and federal laws.

#### SECTION VII

##### FRANCHISE NON-EXCLUSIVE

The Franchise granted herein is non-exclusive. The County specifically reserves the right to grant, at any time, one or more additional franchises for a System throughout the County in accordance with state and federal law and under substantially the same terms and conditions as contained herein.

#### SECTION VIII

##### WRITTEN NOTICE

All notices or demands required to be given under this Franchise Agreement shall be deemed to be given when delivered personally to the persons designated below or upon the date actually received as evidence by registered or certified mail receipt addressed as follows:

If to the County:

County of Hopkins  
Courthouse  
Madisonville, KY 42431

Attn: County Judge/Executive

If to the Grantee:

TWFanch-two Co.  
1873 Bellaire Street  
Denver, CO 80222

Attn: Director of Government Affairs

And:

Madisonville Cablevision  
30 Oakdale Avenue  
Madisonville, KY 42431

Attn: System General Manager

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

## SECTION IX

### REPAIR OF STREETS AND PROPERTY

Any and all streets or public property or private property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance, or reconstruction of the System shall be promptly repaired by Grantee, at its expense, and to a condition as good as that prevailing prior to Grantee's work.

## SECTION X

### TRIMMING OF TREES

Grantee shall have the authority to trim trees on public property within utility easements at its own expense as it may deem necessary to protect its wires and facilities.

## SECTION XI

### NOTICE OF RATE INCREASES

Prior to implementing any rate increase, Grantee shall give the following notice:

- A) At least thirty (30) days advance written notice to the County; and
- B) At least thirty (30) days advance notice to subscribers.

## SECTION XII

### DAMAGES AND DEFENSES

- A) Grantee shall at all times indemnify and hold the County harmless from all claims, suits, liability, loss, expense, or damages of every kind and description, including reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence and alleged contractual dispute of the Grantee in the ownership, construction, repair, replacement, operation, and maintenance of the System and by reason of license, copyright, property right, or patent of any article or system used in the construction or operation of said System, provided the County give the Grantee prompt notice of any such claims, actions and suits, without limitation, in writing as provided herein.
- B) In order for the county to assert its rights to be indemnified and held harmless, the County must:
  - 1. Promptly notify Grantee of any claim or legal proceeding which give rise to such right;
  - 2. Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution, or disposition of such claim or

proceeding; and

3. Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

### SECTION XIII

#### LIABILITY INSURANCE

- A) Grantee shall maintain, throughout the term of this Franchise Agreement, liability insurance insuring the County and the Grantee with regard to all damages mentioned in Section XII above in the following minimum amounts:
  - 1) One Million Dollars (\$1,000,000.00) for bodily injury or death from any one accident; and
  - 2) One Million Dollars (\$1,000,000.00) for all other types of liability.
- B) Upon request of the County, Grantee shall furnish to the County satisfactory evidence that an insurance policy has been obtained and is in full force and effect.

### SECTION XIV

#### COUNTY'S RIGHT TO REVOKE

In addition to all other rights which the County has pursuant to law or equity, the County reserves the right to revoke, terminate, or cancel this Franchise and all rights and privileges pertaining thereto in the event that:

- A) Grantee violates any material provision of this Franchise Agreement; or
- B) Grantee practices any fraud upon the County or any subscriber; or
- C) Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

## SECTION XV

### REVOCACTION PROCEDURES

- A) The County shall notify the Grantee of its intention to revoke, terminate, or cancel this Franchise. The written notice shall describe in reasonable detail the specific violation so as to afford Grantee an opportunity to remedy the violation.
- B) Grantee shall have ninety (90) days subsequent to receipt of the notice in which to correct the violation before the County may formally revoke, terminate, or cancel this Franchise. Grantee may, within thirty (30) days of receipt of the notice, notify the county that there is a dispute as to whether a violation has, in fact, occurred. Such notice by Grantee to the County shall stay the ninety (90) day period described above.
- C) The County shall hear Grantee's dispute and shall determine whether a default or violation by Grantee has occurred. In the event the County should determine that a default or violation has occurred, the County shall supplement the decision with written findings of fact.
- D) If, after hearing the dispute, Grantee has been found to be in default, Grantee shall have ninety (90) days from such a determination to remedy the violation or failure. At any time after that ninety (90) day period the County may, by formal action at a public hearing affording reasonable notice and opportunity for Grantee to be heard, revoke, terminate, or cancel this Franchise.

## SECTION XVI

### REMOVAL UPON REVOCATION

Upon the revocation of this Franchise as herein provided, Grantee shall remove all of its above-ground attachments and wires from poles used as authorized herein.

## SECTION XVII

### FORCE MAJEURE

If by reason of a force majeure any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during



the continuance of such inability.

## SECTION XVIII

### MAPS

Upon request of the County, Grantee shall maintain on file with the County a true and accurate map or set of maps showing all System equipment installed and in place in streets and other public places.

## SECTION XIX

### SERVICE AREA

- A) Residents in those areas with an average density of at least forty (40) homes per aerial mile or eighty (80) homes per underground mile, as measured from the nearest point of usable trunk, shall be provided service upon payment of the standard installation charge and applicable monthly fees; except that installations requiring underground drops or aerial drops in excess of one hundred fifty (150) feet shall be considered a non-standard installation to be charged at Grantee's actual cost of installation.
- B) Service to homes not meeting those density requirements above shall be provided on a time plus material basis.

## SECTION XX

### RELOCATION OF SYSTEM FACILITIES

- A) For Public Works. Whenever, because of public necessity or the welfare of the public generally, the County shall elect to change or alter the grade of any street, alley, or public way, or to sell or vacate any street, alley, easement, or public way, or to construct or reconstruct facilities and other public improvements, Grantee shall, after forty-five (45) days prior written request from the County, remove, relay, and relocate its poles, wires, cables, conduits, and other fixtures at its own expense.
- B) Temporary Relocation. Grantee shall, upon the request of the County or any person holding a building moving or demolition permit issued by the County, temporarily raise, lower, relay, relocate, or remove its wires, cables, and other facilities to accommodate the moving or demolition of the building, as

Grantee shall determine. The expense of such temporary relocation of Grantee's facilities shall be paid by the person requesting the same, except in the case where the County is moving or demolishing a building without issuing a permit, and Grantee shall have the authority to establish the reasonable cost of such changes and require such payment in advance. Grantee shall be given no less than fifteen (15) days advance written notice to arrange for such temporary changes.

## SECTION XXI

### SERVICE TO PUBLIC FACILITIES

- A) Upon the request of the County, any law enforcement agency of the County or any public elementary or secondary school facility, Grantee shall provide one (1) cable extension to the exterior of any building housing the requesting party, free of charge for installation and monthly basic service, provided the building is readily serviceable and located within one hundred fifty (150) feet of Grantee's distribution system.
- B) The cost of installing service to the interior of said buildings shall be free for one (1) outlet. The cost of any extra interior wiring of additional outlets shall be determined by Grantee according to the amount of labor and materials required to install the number of service outlets requested. The requesting party shall reimburse Grantee for the reasonable cost of labor and materials to wire such interior extensions.

## SECTION XXII

### FRANCHISE PAYMENT TO COUNTY

- A) In consideration of the rights herein granted, and as compensation to the County of Hopkins for use of its streets, alleys, easements, and other public places, and in lieu of any occupation or license tax, or other utility tax, the Grantee shall pay to the County an amount equal to five percent (5%) of Grantee's gross annual receipts. Payments shall be made annually, and shall be due and payable no later than thirty (30) days after the last day of the calendar year.
- B) Should federal law permit the payment of franchise fees according to a higher percentage of gross annual receipts, the County may decide to increase the percentage of franchise fee payment, not to exceed the maximum allowed by federal law, at the end of each calendar year. Grantee shall begin paying the new franchise fee percentage upon ninety (90) days

advance written notice from the County.

- C) For the purpose of verifying the accuracy of the amount of said fees, the duly authorized agent of the county shall have the right to examine Grantee's receipt records at Grantee's place of business, upon reasonable notice. The records of Grantee shall be closed to the County three (3) years after the anniversary date thereof and after an examination of such records has been made by the County.

### SECTION XXIII

#### UNAUTHORIZED CONNECTIONS OR MODIFICATIONS

- A) It shall be unlawful for any person, without the expressed consent of the Grantee to make any connection, extension, or division whether physically, acoustically, inductively, electronically or otherwise with or to any segment of the System for any purpose whatsoever.
- B) It shall be unlawful for any person to willfully interfere, tamper, remove, obstruct, or damage any part, segment, or content of the system for any purpose whatsoever.
- C) It shall be unlawful for any person to construct, operate, or maintain a system without having first applied for and received a franchise from the County.

### SECTION XXIV

#### EFFECTIVE COMPETITION

If (i) any other person or entity becomes authorized to provide and/or does provide broadband cable television services within the county and utilizes any public rights-of-way within the county or other property or facilities of the county, or (ii) the Grantee's Cable Communications system becomes subject to "effective competition" as defined by the regulations of the Federal Communications Commission, then in either such event, the terms of this franchise shall be modified such that they are not more onerous on the Grantee than the terms under which such other enterprise(s) operate. The Grantor, to the

extent it may lawfully do so, will require all such other providers of broadband cable television services to obtain a franchise or similar authorization from the Grantor.

#### SECTION XXV

##### SEVERABILITY

If any term, condition, or section of this Franchise Agreement or the application thereof to any person or circumstance shall, to any extent, be held to be invalid and unenforceable, the remainder hereof and the application of such term, condition, or section to persons or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Franchise and all the terms, conditions, and Sections hereof shall, in all other respects, continue to be effective and to be complied with. Nothing contained in this Franchise Agreement shall require Grantee to violate or waive its First Amendment rights or any statute, regulation, rule, or decision of any federal, state, or local governmental entity, agency, or court having jurisdiction.

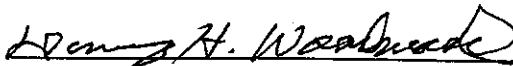
#### SECTION XXVI

##### PASSAGE AND EFFECTIVE DATE

This Franchise Agreement, having been published as required, shall take effect and be in force as of October 1, 1998, following its final passage and approval.

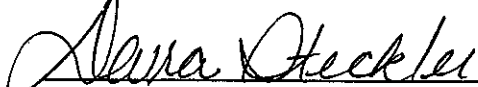
UPON MOTION by Magistrate Hawkins, seconded by Magistrate Pharris, first

reading was held and approved on the 11th day of May, 1998.



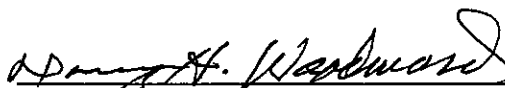
Danny H. Woodward  
Hopkins County Judge/Executive

Attest:



Devra Steckler, Clerk

ON MOTION of Magistrate Pharris and Seconded by Magistrate Purdy,  
second reading held on the 4th day of June, 1998, and passed on the 4th day of June,  
1998.



Danny H. Woodward  
Hopkins County Judge/Executive

Attest:



Devra Steckler, Clerk

January Through December 1997 Gross revenues for Hopkins County.  
 \$733,856.74

Actual 3.0%  
 \$22,015.70

\$733,856.74    \$733,856.74    \$733,856.74    \$733,856.74

If we change to:	<u>3.5%</u>	<u>4.0%</u>	<u>4.5%</u>	<u>5.0%</u>
Increase to:	\$25,684.99	\$29,354.27	\$33,023.55	\$36,692.84
Fr. Fees increase to County:	\$3,669.28	\$7,338.57	\$11,007.85	\$14,677.13