

# ALLEN COUNTY CODE TITLE 14 CABLE TELEVISION

## ARTICLE 6 CONTRACT WITH MW 1 CABLE SYSTEMS, INC

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### **14-6-1 Chapter 1: Heading**

This AGREEMENT, made and entered into by and between the COUNTY OF ALLEN, INDIANA, (hereinafter called the "County") and MW 1 CABLESYSTEMS, INC., a Delaware corporation, having its principal office at Martinsville, Indiana, hereinafter referred to as the "Company", this 22<sup>nd</sup> day of May, 1989.

### **14-6-2 Chapter 2: History**

The County has conducted public proceedings, after prior public notice, and has afforded full due process of law to all persons interested in the matters contained herein, and in accordance with said proceedings has agreed to award to the company a non-exclusive franchise to provide certain cable television services, in exchange for which the Company has agreed that it will undertake to provide such cable television services to certain areas of the County, all pursuant to the terms and conditions herein set forth.

### **14-6-3 Chapter 3: Agreement**

In consideration of the mutual agreements hereinafter set forth, the parties do hereby agree as follows:

### **14-6-4 Chapter 4: Definitions**

For purposes of this Franchise Grant and Contract, the following terms, phrases, words, abbreviations and derivations shall have the same 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; words in the singular number include the plural.

#### **14-6-4-1 "County"**

**County** shall mean Allen County, Indiana.

#### **14-6-4-2 “County Commissioners”**

“County Commissioners” shall mean the Board of Commissioners of Allen County, Indiana.

#### **14-6-4-3 “County Council”**

“County Council” shall mean the County Council of Allen County, Indiana.

#### **14-6-4-4 “Federal Communications Commission” And “FCC”**

**Federal Communications Commission** and **FCC** shall mean that federal agency as present constituted by the Communication Act of 1934 as amended or any successor agency.

#### **14-6-4-5 The “Company” and “Management Company”**

The **Company** and **Management Company** shall mean MW 1 Cablesystems, Inc.

#### **14-6-4-6 “Public Way”**

**Public Way** shall mean the surface, the air space above the surface, and the area below the surface of any public street highway, lane, path, alley, sidewalk, boulevard, drive or other public right-of-way now or hereafter held by the County which shall entitle the County and the Company to use thereof for the purpose of installing and maintaining cable television and broadband communications systems.

#### **14-6-4-7 “Cable Television System”**

**Cable Television System** shall mean any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service. Such definition shall not include:

- a. Any similar facility that serves fewer than 50 subscribers, or
- b. Any similar facility that serves only the resident of one or more apartment dwellings under common ownership, control, management, and commercial establishments located on the premises of such an apartment house.

#### **14-6-4-8 “Broadband Communication System”**

**Broadband Communication System** means a Coaxial Cable and/or microwave system for use as a Cable Television System and for the distribution of other audio, visual,

digital and other forms of electronic communications along and across Public Ways for the purpose of distributing said communications to subscribers.

#### **14-6-4-9 “Subscribers”**

**Subscribers** shall mean any person who contracts to purchase, orally or in writing, the regular subscriber service and/or any one or more of such other services as may be provided by the Company’s television system.

#### **14-6-4-10 “Regular Subscribers”**

**Regular Subscribers** shall mean the distribution to subscribers of signals over the cable television system on all channels except leased channels, channels for which a per-program or per-channel charge is made, channels utilizing two-way services, and channels intended for reception by equipment other than a television broadcast receiver.

#### **14-6-4-11 “Converter”**

**Converter** shall mean an interface device which may be furnished to subscribers in order that non-standard television channels carried on the cable television system may be received on a conventional home television receiver, or to prevent interference from strong broadcast signals. The device may be used on top of the TV set (“set-top”) or attached to the back of the TV set, or installed at a remote location.

#### **14-6-4-12 “Gross Subscriber Revenues”**

**Gross Subscriber Revenues** shall mean all revenues derived from the supplying of regular subscriber service but not including charges for premium channels, installations, and other auxiliary services.

### **14-6-5 Chapter 5: Grant of Franchise**

The County hereby grants to the Company the non-exclusive right, authority, power and franchise to establish, construct, acquire, maintain and operate a cable television and broadband communications system within certain areas of the County, to use and occupy the utility poles, streets, alleys, highways, public utility easements and any other public ways within the County to construct, operate, maintain, relocate and rebuild all towers, poles, cables, amplifiers, conduits, and other facilities owned, leased or otherwise used by the Company for furnishing cable television and broadband communications services within the County.

## **14-6-6 Chapter 6: Term of Franchise**

The term of this franchise grant and contract shall be for fifteen (15) years beginning with the date this Franchise Grant and Contract is adopted by ordinance of the County Commissioners.

## **14-6-7 Chapter 7: Franchise Area**

Having considered the geography, demography, history, culture, transportation patterns, and school districts of the County, and recognizing that there are no unique boundaries, separate communities or governmental units which define the unincorporated areas of Allen County, the County Commissioners do now determine, after a public proceeding that the franchise area and community to be serviced by the cable television system shall consist of the entire area of the County and that the main post office serving the entire franchise area is the main post office in Fort Wayne, Indiana.

## **14-6-8 Chapter 8: System Description and Service**

### **14-6-8-1 Complying with FCC Rules And Regulations**

The cable television and broadband communications system shall comply in all respects with the capacity, capability, and technical performance requirements set forth in the FCC's Rules and Regulations for cable television as amended and published as of the date of this franchise including public education, government and leased access channels.

### **14-6-8-2 Service to Schools and Public Agencies**

The Company shall provide, without charge, at the request of the County, one service outlet to each public and private school within its service area as designated by the County Commissioners and shall provide the facility for every police station, fire station and other County owned buildings to transmit emergency information over the Cable Television system; provided, however, that if it is necessary to extend the Company's trunk or feeder lines more than 200 feet solely to provide such service, the County shall have the option of either paying the Company's direct cost of such extension, in excess of 200 feet, or of releasing the Company from the obligation to provide service to such building.

### **14-6-8-3 Signals**

The Company shall exercise its best efforts to design, construct, operate, and maintain the system at all times so that signals carried are delivered without significant degradation in quality.

#### **14-6-8-4 Failures**

The Company shall limit failures to a reasonable minimum and locate and correct all malfunctions of the distribution system within twenty-four (24) hours following notice by a subscriber.

#### **14-6-8-5 Activities Prohibited**

The Company shall not during the term of this franchise engage in the business of leasing, selling or servicing of television sets nor shall it, in any way, tamper with or remove an existing television antenna.

#### **14-6-8-6 Service Interruptions**

The Company shall keep service interruptions involving the production and distribution systems as practical and insofar as possible schedule such interruptions during periods of minimum use of the system and precede them by notice.

### **14-6-9 Chapter 9: Street Occupancy**

#### **14-6-9-1 Poles for Distribution System**

- a. The poles used for the Company's distribution system shall be those erected and maintained by the power and light company or telephone company serving the County, when and where practicable.
- b. Where use of existing poles is impractical or where mutually satisfactory agreements cannot be reached, the Company shall have the right to erect and maintain its own poles as may be necessary for the proper construction, maintenance and continuity of the distribution system in such situations, subject to the following conditions:
  - 1) Plans for the erection of poles which are not in locations already occupied by other poles, but which are necessary for the operation of the system, shall be filed in detail with the County Plan Commission, who shall approve such erection of poles after consideration of any special factors involved.
  - 2) The Company shall, in placing such poles, consider the desires of person residing at the location of any proposed poles and of persons who are to receive electronic services provided by said poles.
  - 3) The County Commissioners may order such poles removed by the Company at the Company's cost after due notice and the opportunity for a hearing.

### **14-6-9-2 Underground Wiring Requirements**

- a. Wherever all electrical and telephone utility wiring is located underground, either at the time of initial construction or subsequently, at the direction of the County, the television cable shall also be located underground, at the Company's own expense.
- b. If the facilities of either the electric or telephone utility are aerial, the television facilities may be located underground by the request of a property owner, provided that the excess cost over aerial location shall be borne by the property owner making the request.

### **14-6-9-3 Restoration of Pavement, Sidewalks, Curbs and Land**

- a. Any pavement, sidewalk, or curbing taken up or any and all excavations made by the Company shall be done under the supervision and direction of the County Plan Commission and shall be made and done in such a manner as to give the least inconvenience to the inhabitants of the County and the public generally.
- b. All such pavements, sidewalks, curbing and excavations shall be restored to their approximate original condition with all possible speed by and at the expense of the Company, and the Company shall guarantee such restoration for one year against defective materials and workmanship.

### **14-6-9-4 Maps and Records**

The Company shall make and keep full and complete maps and records showing the exact locations of its facilities located with the public utility poles, streets, alleys and other public places within the County, which maps and records shall be available to the County Commissioners and the public at all reasonable times.

### **14-6-9-5 Necessary Removal or Relocation**

In the event that at any time during the period of this Agreement, the County shall lawfully elect to alter any street, alley, utility poles, or other public way, the Company, upon reasonable notice by the County, shall remove, relay, or relocate its poles, wires, cable, conduits, or other fixtures at its own expense.

### **14-6-9-6 Disaster Damage**

Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the Chief of the Fire Department or the Sheriff's Department to remove or damage any of the Company's facilities, no charge shall be made against the County for restoration and repair.

### **14-6-9-7 Temporary Changes**

- a. At the request of any person holding a valid building moving permit issued by the County, and upon at least 96 hours notice, the Company shall temporarily raise, lower, or cut its wires as may be necessary to facilitate such move.
- b. The direct expense of such temporary changes, including standby time, shall be paid by the permit holder, and the Company shall have the authority to require payment in advance.

### **14-6-9-8 Trimming Trees**

The Company shall have the authority to trim trees at its own expense as may be necessary to protect its wires and facilities, subject to the supervision and direction of the County, and after notification to the affected property owner or resident.

### **14-6-10 Chapter 10: Subscriber Fees**

Unless altered pursuant to Chapter 11 herein, the Company's maximum fees for service shall be as set forth in the attached Exhibit "A".

#### **14-6-10-1 Fee Discrimination Prohibited**

The Company shall not, with regard to fees, discriminate or grant any preference or advantage to any person; provided, however, that lower fees may be negotiated between the Company and the owner or owners, or committee acting on their behalf, for regular subscriber service, provided there are ten or more dwelling units within an apartment building, condominium, garden apartment or townhouse complex under common ownership; or ten or more room units within hotels and motels; and that the Company may provide free connection in certain public places for promotional purposes.

#### **14-6-10-2 Addition of Taxes and Fees**

The Company shall have the authority and the right to add to its service or installation fees any Federal, State or City taxes or fees directly imposed on subscribers, such as sales taxes, and any copyright fees that may be imposed as a result of legislative or judicial action at the Federal, State or local level.

#### **14-6-10-3 Discontinuance**

The Company agrees that any subscriber may discontinue service at the end of any month without penalty by reason of such discontinuance, and that the Company may discontinue service for non-payment for such services and after due notice, peaceably remove its property from the premises of said subscriber.

## **14-6-11 Chapter 11: Procedure for Changing Subscriber Fees**

The procedure for a change in the Company's basic subscriber rates shall be as follows:

### **14-6-11-1 Written Notice**

The Company shall advise the Board of Commissioners of the County of Allen (the "Board") in writing of any proposed change.

### **14-6-11-2 Time Of Institution**

The Company may institute the proposed change after it delivers notice of its proposal to the Board.

## **14-6-12 Chapter 12: Franchise Fee**

The Company shall pay to the County a franchise or license fee equal to three percent (3%) of the gross subscriber revenue received by the Company pursuant to this Franchise. Said fee shall be paid annually by March 31 of each calendar year. The Company shall furnish its financial statements to the County within 90 days after the close of its fiscal year in order to verify the franchise fee. Detailed statements of gross subscriber revenues shall accompany each payment.

## **14-6-13 Chapter 13: Service Adjustment and Complaint Procedures**

### **14-6-13-1 Maintenance Service**

Except in circumstances beyond the Company's control, such as acts of God, wars, riots and civil disturbances, the Company shall establish a maintenance service capable of locating and correcting major system malfunctions promptly. Said maintenance service shall be available, in addition to normal business hours, to correct such major system malfunctions affecting a number of subscribers which occur from the time the Company's main, local office closes until 12:30 A.M. Monday through Friday and from 8:00 until 12:30 A.M. on Saturdays, Sundays and holidays.

### **14-6-13-2 Local Maintenance Service**

The Company makes available a listed telephone number for service calls at any time of day or night.

- a. Investigative action shall be initiated in response to all service calls, other than major outages, not later than the next business day after the call is received.
- b. Corrective action shall be completed as promptly as practicable.



- c. Appropriate records shall be made of service calls, showing when and what corrective action was completed. Such records shall be retained in the Company's files for not less than three (3) years and shall be open to reasonable public inspection.

### **14-6-13-3 Written Instructions to Subscriber**

The Company shall furnish each subscriber at the time service is installed, written instructions clearly setting forth procedures for placing a service call, or requesting an adjustment. Said instructions shall also include the name, address and telephone number of the office having primary responsibility from the continuing administration of the franchise and implementation of complaint procedures, and a reminder that the subscriber can call or write that Officer or the County Commissioners for information regarding terms and conditions of the company's franchise if the Company fails to respond to the subscriber's request for installation, service or adjustment within a reasonable period of time.

### **14-6-13-4 Subscriber Complaints**

In the event a subscriber does not obtain a satisfactory response or resolution to his request for service or an adjustment within a reasonable period of time, he may advise the matter, keep records with respect to all such complaints for the remaining life of the franchise or three (3) years, whichever is more, and if possible, bring such complaints to a satisfactory resolution.

### **14-6-13-5 Interruption of Service**

The Company shall interrupt system service after 7:00 A.M. and before 1: A.M. only with good cause and for the shortest time possible and except in emergency situations, only after publishing notice of service interruption at least twenty-four (24) hours in advance. Service may be interrupted between 1:00 A.M. and 7:00 A.M. for routine testing, maintenance and repair, without notification, for not more than two (2) nights in any week.

## **14-6-14 Chapter 14: Records and Reports**

### **14-6-14-1 Copies of Petitions and Reports**

Copies of petitions, reports, applications and other documents filed by the Company with Federal or State agencies having appropriate jurisdiction in matters affecting cable television system operation shall be simultaneously furnished to the County Commissioners.

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### **14-6-14-2 Copies of Financial Statements**

Within 90 days after the close of each fiscal year, the Company shall submit, upon request, copies of its financial statements to the County Commissioners, which statements shall be prepared by independent certified public accountants.

### **14-6-14-3 Copies of Subscriber Documents**

Copies of the Company's schedule of charges, contract or application forms for regular subscriber service, policy regarding the processing of subscriber complaints, delinquent subscriber disconnect and reconnect procedures and any other terms and conditions adopted as the Company's policy in connection with its subscribers shall be filed with the County Commissioners.

### **14-6-14-4 Statement of Ownership and Compliance**

The Company shall keep on file with the County Commissioners an up-to-date statement of financial ownership and control and evidence of compliance with all applicable State and Federal securities laws.

## **14-6-15 Chapter 15: Franchise Renewal**

### **14-6-15-1 Special Meeting for Performance Review**

The County Commissioners shall adopt a resolution setting forth the time and place of a special meeting to be held not less than eighteen (18) months prior to the franchise expiration date, the purpose of which will be to review the Company's performance during the entire term of its franchise, to consider the adequacy of the franchise from the standpoint of the County and the Company and Federal Rules for Cable Television and/or broadband communications systems and to determine the advisability of renewing the Company's Franchiser for a period not inconsistent with all applicable laws and regulations.

### **14-6-15-2 Hearing**

The County Commissioners shall hear any interested persons during said special meeting and shall determine whether or not the Company did reasonably comply with the terms and conditions imposed by this ordinance and the franchise.

### **14-6-15-3 Conditions of Renewal**

If the County Commissioners determine that the Company has been in reasonable compliance with the terms and conditions imposed by this ordinance and the franchise, the County Commissioners may renew the Company's franchise for a period of time not inconsistent with all applicable laws and regulations and shall modify this ordinance and the franchise to bring them into compliance with then current laws and regulations.

### **14-6-15-4 Purchase of Company's Assets**

Notwithstanding the fact that the County Commissioners may determine that the Company has been in reasonable compliance with the terms and conditions imposed by this franchise, it shall have the right to renew the franchise in which event the County shall, on the expiration date of the franchise, either purchase the assets of the Company's television system at its then fair market value or, consistent with the provisions of Chapter 20 herein, assign its purchase rights to another.

## **14-6-16 Chapter 16: Franchise Revocation Procedure**

### **14-6-16-1 Written Notification of Non-Compliance**

Whenever the Company shall materially breach the terms of this franchise, the County Commissioners may notify the Company in writing, setting forth the nature and facts of such non-compliance they believe has occurred. If within thirty (30) days following such written notification by the County Commissioners, the Company has not furnished proof that corrective action has been taken or is being actively and expeditiously pursued, or evidence that the alleged violations did not occur, the County Commissioners shall place a request for termination of the franchise on the agenda of the next County Council meeting.

### **14-6-16-2 Non-Compliance with Just Cause**

If, after considering the County Commissioners' request for termination of the franchise and hearing all interested parties, the County Council determines that the non-compliance of the Company was with just cause, it shall direct the Company to comply within such time and manner and on such terms and conditions as are reasonable.

### **14-6-16-3 Non-Compliance without Just Cause**

If the County Council determines that such non-compliance was without just cause, then the County Council may adopt a resolution that either

- a. Forthwith terminates the franchise and instructs the company to promptly remove from the public way all of its cable television system facilities within one (1) year from the date the Company receives a written copy of said resolution; or

- b. Invoke the County's right to purchase the assets of the Company's cable television system at a price not to exceed its fair market value or remaining lease amount, unless there be compliance by the Company within such period as the County Council may fix.

#### **14-6-16-4 Additional Rights of the County**

In addition to all the other rights reserved to the County by virtue of this franchise or otherwise, the County may invoke the rights as defined in Chapter 16, Section (3) above in the event:

- a. The Company is adjudged bankrupt, or is place in receivership.
- b. The Company attempts to or does practice any fraud upon the County or subscribers.

#### **14-6-16-5 County Council Resolution Required**

No revocation or termination shall be effected unless the County Council, at any regular or special meeting at which all interested parties have been heard, shall have adopted a resolution setting forth the reasons for the termination, and in the event the termination of this contract depends upon a finding of fact as made by the County Council after said hearing, shall be deemed to be conclusive unless modified as a result of arbitration provided for in Chapter 23.

#### **14-6-16-6 Reasons Beyond Company's Control**

The Company shall not be declared at fault or be subject to any sanction under any provision of this Contract in any case in which performance of any such provision is prevented for reasons beyond the Company's control.

#### **14-6-16-7 Right of the County**

The termination of the franchise shall in no way affect any of the rights the County may have under the franchise or any provision of law.

#### **14-6-17 Arbitrary and Capricious Action by the Company**

If, as a result of a dispute between the Company and the County and prior to a settlement of that dispute as provided for herein, the Company arbitrarily or capriciously discontinues service to its subscribers, the Company shall forfeit its rights of notice and a hearing as provided herein, and the County Council may, by resolution, declare the Company franchise immediately terminated and the County shall, forthwith, seek appropriate judicial injunctive relief and shall proceed to exercise its rights and powers as provided for herein.

## **14-6-18 Chapter 18: Provision for Arbitration**

In the event the County elects to purchase the Company's television system and the value cannot be agreed upon, the final price shall be determined by arbitration as described in Chapter 28 hereof.

## **14-6-19 Chapter 19: Transfer of Ownership to County**

Upon payment of the purchase price, the Company shall immediately transfer to the County possession and title to all facilities and property, real and personal, related to its cable television system free from any and all liens and encumbrances not agreed to be assumed by the County in lieu of some portion of the purchase price. The Company shall execute such warranty deeds or other instruments of conveyance to the County as shall be necessary.

## **14-6-20 Chapter 20: County's Right to Assign**

The County shall have the right and power to assign its purchase rights to a successor grantee selected by the County in a manner not inconsistent with the provisions of this franchise.

## **14-6-21 Chapter 21: The Company's Obligation as Trustee**

Until such time as the Company transfers to the County or to anew grantee possession and title to all assets, real and personal, related to its cable television system, the company shall, as trustee for its successor in interest, continue to operate the cable television system under the terms and conditions of this franchise and to provide the regular subscriber service and any and all of the services that may be provided at that time. During such interim period, the Company shall not make any material, administrative or operational change that would tend to:

1. Degrade the quality of service to the subscribers;
2. Decrease income; or
3. Materially increase expenses

without the express permission, in writing, of the County or its assignee.

## **14-6-22 Chapter 22: Management Fee**

For its management services during this period of trusteeship, the Company shall be entitled to receive as compensation, the net profit, generated during the period between the day the Company received written notice from the County of its intent to purchase the cable television system or the expiration date of the franchise, whichever is earlier, and the payment of the purchase price. Such management services shall not be continued without the Company's consent for more than twelve (12) months.

## **14-6-23 Chapter 23: Indemnification and Insurance**

### **14-6-23-1 Indemnity Against Liability**

The Company shall indemnify and save the County free and harmless from any and all liability, loss, cost, damage or other expense, accident or damage, either to itself or to the person or property of others which may occur by reason of the exercise of the rights and privileges herein granted.

### **14-6-23-2 Insurance by Company**

The Company shall, for the purpose of carrying out the provisions of this Chapter and prior to the commencement of construction of any kind, have in full force and effect and file evidence thereof with the County, either:

- a. A good and sufficient policy (or policies) covering \$1,000,000.00 Personal Injury, each person; \$1,000,000.00 Personal Injury, each accident; and \$1,000,000.00 Property Damage; said policy (or policies) to be executed by an insurance company (or companies) authorized and qualified to do business in the State of Indiana; or
- b. In lieu thereof, a good and sufficient indemnity bond conditioned to indemnify and save harmless the County from and against any and all claims, actions, suits, liability, loss, costs, attorney fees, expense or damage of any kind or description which may accrue to or be suffered by anyone by reason of the erection, construction, reconstruction, location, replacing, readjustment, repair, maintenance thereto, or by reason of anything that has been done by the Company hereunder which may in any way cause liability by reason thereof.

## **14-6-24 Chapter 24: Rights Reserved to the County**

The County hereby expressly reserves the following rights:

### **14-6-24-1 Government Powers**

To exercise its governmental powers, now or hereafter to the full extent that such powers may be vested in or granted to the County.

### **14-6-24-2 Additional Regulations**

To adopt, in addition to the provisions contained herein and in any existing applicable ordinances, such additional lawful regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

## **14-6-25 Chapter 25: Assignments**

The company shall not assign or transfer this franchise or any part thereof, except to an affiliated company, without the written consent of the County Commissioners, which consent shall not be unreasonably withheld.

### **14-6-25-1 Securing Loan or Lease**

This restriction of assignment shall not apply to an assignment of the assets and franchise of the Company for the sole purpose of securing a loan or lease from any financing institution.

## **14-6-26 Chapter 26: Equal Employment Opportunities**

Equal opportunity employment shall be afforded by the Company to all qualified persons, and no persons shall be discriminated against in employment because of race, color, religion, national origin or sex. The Company shall comply with the equal employment opportunity requirements as set forth in Section 76.311 of the Rules and Regulations of the FCC.

## **14-6-27 Chapter 27: Special Relief**

If it is subsequently determined that full compliance with the provisions of the agreement would cause an unusual economic burden to the Company or would result in inferior service or, with the passage of time, would result in substantial rate increases for a significant number of subscribers, the Company may petition the Commissioners for special relief.

### **14-6-27-1 Petition to be Specific and Inclusive**

Said petition shall specify the specific relief requested and shall include all reasonable and necessary supporting documentation.

### **14-6-27-2 Public Hearing**

Within 60 days after the receipt of said petition, the County Commissioners shall hold a public hearing affording the public and other interested parties the opportunity to support or oppose the petition.

### **14-6-27-3 Petition Opposed**

If the petition is opposed, the Commissioners may request additional reasonable information and may hold further hearings within 30 days after the date of the first hearing.

#### **14-6-27-4 Decision Rendered**

Within 30 days after the first hearing the County Commissioners shall render a decision either granting or denying said petition.

#### **14-6-27-5 Arbitration**

If the petition is denied and the relief requested pertains to Chapters 7, 8, 9, 11, 13, or 22 of this agreement, the Company may, within 30 days, request that the matter be submitted to arbitration in accordance with Chapter 28 of this agreement.

#### **14-6-28 Chapter 28: Arbitration**

Any controversy, claim, or dispute arising under this agreement, which the parties are unable to resolve between themselves, shall be settled by arbitration to be held in the County of Allen, State of Indiana, subject to and in accordance with the rules of the American Arbitration Association and/or the laws of the State of Indiana in effect at the time said controversy, claim or dispute is presented for arbitration.

#### **14-6-28-1 Arbitrators**

Said controversy, claim, or dispute shall be submitted to a board of five (5) arbitrators, two to be chosen by the Company, two to be chosen by the County Commissioners and the fifth by the four so-chosen. Each of the arbitrators so chosen shall be recognized in the cable television industry as qualified individuals with reasonable experience in the matter to be arbitrated, if the matter is of a technical nature.

#### **14-6-28-1 Decision of Arbitrators**

The decision of the arbitrators shall be final and binding on the parties, both as to law and to fact, subject to appeals to courts of competent jurisdiction allowed by the rules of procedure of the American Arbitration Association then obtaining.

#### **14-6-28-1 Expenses**

The expenses of the arbitration shall be borne by the party against whom the arbitration decision is rendered.

#### **14-6-29 Chapter 29: Modification of FCC Rules**

Any modification of Section 76.31 of the Federal Communication Commission Rules resulting from amendment thereof by said Commission shall be incorporated into this franchise agreement within one (1) year of the adoption of the modification by the FCC or at the time of the franchise renewal, whichever occurs first.



## **14-6-30 Chapter 30: Individual Rights**

### **14-6-30-1 Cable Monitoring Prohibited**

Neither the Company nor other persons, agency, or entity shall monitor, or arrange for the monitoring, of cable, line, signal input device, or subscriber outlet or receiver for any purpose whatsoever, without prior consent of the subscriber.

### **14-6-30-2 Privacy**

The Company and the County shall maintain constant vigilance with regard to possible abuses of the right of privacy or other human rights of any subscriber, programmer, or general citizen resulting from any device or signal associated with this cable communications system. Devices such as electronic locks, scramblers, warning lights and others shall be provided, of possible, by the Company as problems are identified and the technology becomes available, and reasonable financial arrangements can be made.

### **14-6-30-3 Sale of Subscriber Lists Prohibited**

The Company shall not sell or otherwise make available, lists of the names and addresses of its subscribers, or any list which identifies by name, subscriber viewing habits, to any person, agency or entity, for any purpose whatsoever, without the specific authorization of the County.

### **14-6-30-4 Censorship**

Nothing in this ordinance shall be understood or construed to give the County or any agency or office acting on its behalf, the powers of censorship over cable communications or signals transmitted over the Cable Communications system, and no regulation or condition shall be promulgated or fixed by the County or any agency or office acting on its behalf which shall interfere with the right of free speech by means of cable communications.

## **14-6-31 Chapter 31: Approval of Company's Qualifications**

The County having conducted a full public proceeding affording due process, herewith approves the legal, character, financial, technical and other qualifications of the Company, as well as the adequacy and feasibility of its construction arrangements.

## **14-6-32 Chapter 32: More Favorable Franchise Terms**

The County agrees that if it awards a franchise to any other company or if any other government entity grants a franchise to any other company to serve any and all of the franchise area upon more favorable terms than those set forth herein, the County agrees that it shall also amend this agreement to reflect any more favorable terms.

**14-6-33 Chapter 33: Severability**

Should any part of the terms and provisions of this agreement be ruled invalid by any authority having jurisdiction over same, such invalidity shall not affect the remainder of this agreement and the remaining terms hereof shall continue in full force and effect.

**14-6-34 Chapter 34: Effective Date**

This Franchise Grant and Contract shall be in full force and effect from and after it is dully adopted by ordinance of the Board of County Commissioners as provided by Law.

Entered into this 22nd day of May, 1989.

MW 1 CABLE SYSTEMS, INC.

BOARD OF COMMISSIONERS  
OF ALLEN COUNTY, INDIANA

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Linda K. Bloom,  
Allen County Auditor

**14-6-35 Chapter 35**

**EXHIBIT "A" – INITIAL SUBSCRIBER FEES**

**SERVICE:**

SuperBasic Service	\$	24.95
Additional Outlet	\$	3.00
Set Top Converter (non-remote) *		no charge
Set Top Converter (remote)*	\$	3.00

**INSTALLATION:**

First Outlet	\$	50.00
Additional Outlet	\$	10.00
Reconnection	\$	20.00

\*Per Outlet