

Resolution 22-99
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER J. V. Stone ON
THE 21st DAY OF June, 1999.

A RESOLUTION ACTING ON THE REQUEST OF MEDIA ONE TO
TRANSFER ITS CABLE TELEVISION FRANCHISE TO TIME WARNER
ENTERTAINMENT CO., L.P.

WHEREAS, Continental Cablevision of Miami Valley, Inc. (the "Franchisee") currently owns and operates the cable television system (the "System") in the City of Centerville (the "City") under the authority of a franchise granted pursuant to Ordinance No. 56-75 (the "Franchise"); and

WHEREAS, Media One owns and controls the Franchisee; and

WHEREAS, Media One informed the City that it has entered into an Asset Exchange Agreement with Time Warner Entertainment Company, L.P. ("Time Warner"), pursuant to which Media One would transfer the assets of the Franchisee, including the Franchise, to Time Warner (the "Proposed Transaction"); and

WHEREAS, the Cable Council has recommended that the City consent to the Proposed Transaction.

NOW THEREFORE

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City's consent to, and approval of, the Proposed Transaction is hereby GRANTED in accordance with Section 56 of the Franchise, subject to the following conditions:


- (a) that on or before Jun 28, 1999, Media One and Time Warner enter into and execute a Transfer Agreement, substantially in the form of Exhibit A attached hereto;
- (b) that the Proposed Transaction is consummated on or before Oct 3, 1999; and
- (c) that the Proposed Transaction is consummated on terms and conditions identical in all material respects to those described in the Transfer Application and the Transfer Agreement.

Section 2. If any of the conditions specified in Section 1 or in Exhibit A are not satisfied, then the City's consent to, and approval of, the Proposed Transaction is hereby DENIED as of the date hereof.

Section 3. If any representations made to the City by Media One or Time Warner prove to be incomplete, untrue or inaccurate in any material respect, it shall be deemed a material breach of the Franchise and the City shall have available to it all remedies provided under the Franchise and applicable law including, without limitation, revocation or termination of the Franchise.

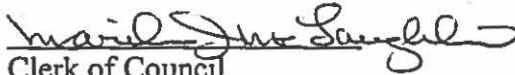
Section 4. The terms of the Transfer Agreement are hereby ratified, and the execution of the Transfer Agreement by the Cable Council shall be deemed to constitute execution by the City.

PASSED THIS 21st DAY OF June, 1999.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio hereby certifies the foregoing to be a true and correct copy of Resolution No. 22-99, passed by the Council of the City of Centerville, Ohio on the 21st day of June, 1999.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions.

Department of Law
Robert N. Farquhar
Municipal Attorney

TRANSFER AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 1999, by and between:

1.1.1. Miami Valley Cable Council ("MVCC");

1.1.2. MediaOne of Ohio, Inc. ("Franchisee");

1.1.3. MediaOne Group, ("MediaOne"); and

1.1.4. Time Warner Cable, a division of Time Warner Entertainment Company, L. P. a Delaware limited partnership ("Time Warner").

1.1.5. Time Warner, MediaOne, and the Franchisee may be referred to jointly herein as "Companies".

RECITALS

WHEREAS, the Franchisee owns and controls cable television systems located in Centerville, Kettering, Miamisburg, Moraine, Oakwood, Springboro, and West Carrollton, Ohio (the "Member Communities"); and

WHEREAS, the Franchisee operates the cable system in each of the MVCC Communities (the "Systems") under the terms and conditions of cable franchises granted by each of the Member Communities (the "Franchises"); and

WHEREAS, MediaOne has agreed to transfer to Time Warner the cable systems located within the Member Communities pursuant to an Asset Exchange Agreement dated [____], 1999 (the "Proposed Transaction"); and

WHEREAS, MediaOne currently owns and controls the Franchisee; and

WHEREAS, each of the Member Communities has enacted an Ordinance granting the Franchise (the "Parallel Ordinances") and a companion ordinance (the "Companion

each Member Community ratifying this Agreement and granting conditional consent to the Proposed Transaction ("Transfer Resolutions"), THE PARTIES DO HEREBY AGREE as follows:

1. TRANSFER OF FRANCHISE

1.1. In consideration for the promises and performances of MediaOne and Time Warner, as expressed elsewhere in this Transfer Agreement, MVCC recommends that each Member Community consent to the transfer of the cable systems specified in the Application. Upon adoption of a Transfer Resolution, each Member Community shall be deemed a party to this Agreement and to have consented to the transfer in consideration for the promises and performances of MediaOne and Time Warner in this Agreement.

1.2. MVCC and each Member Community reserve all rights not expressly granted in this Transfer Agreement. In particular, and without limitation:

1.2.1. Neither this Transfer Agreement, nor any other action or omission by MVCC or a Member Community at or before the execution of this Transfer Agreement, shall be construed to grant the consent of MVCC or any Member Community to any future transfer of the Franchises and/or any of the Systems, and/or change in ownership and/or control of the Franchises and/or any of the Systems, or to mean that the consent of MVCC or any Member Community to any future transaction is not required.

1.2.2. The consent given by MVCC or any Member Community to the Proposed Transaction is made without prejudice to, or waiver of, MVCC's or the Member Community's right to fully investigate and consider Time Warner's financial, technical, and legal

2.4. The Companies agree that neither the Proposed Transaction nor a Member Community's approval of the Proposed Transaction shall in any respect relieve the Franchisee or any of its successors in interest of responsibility for past acts or omissions, known or unknown; and Time Warner hereby affirms that it shall be liable for and accepts the consequences of, any such acts and omissions, known and unknown, including liability for any and all previously accrued but unfulfilled obligations to the Member Community under the Franchise Documents and applicable law. Time Warner agrees that all acts and omissions of Franchisee occurring prior to this Agreement shall be deemed to be those of Time Warner.

2.5. Time Warner acknowledges and agrees that, by ratifying this Agreement, each Member Community reserves all of its rights with respect to Time Warner's future compliance with the terms, conditions, requirements and obligations set forth in the Franchise, and MVCC likewise reserves all of such rights by executing this Agreement. No delay or failure to enforce any provision of the Franchise shall operate against MVCC or a Member Community as an estoppel or waiver.

3. ADDITIONAL CONDITIONS

3.1. It is expressly recognized by the parties that the Proposed Transaction requires the approval of the local legislative body of each Member Community in accordance with applicable law. Such approval is a condition precedent to this Transfer Agreement as to each Member Community. The execution of this Transfer Agreement by MVCC in no way binds any Member Community to approve the Proposed Transaction, and this Transfer Agreement will automatically become null and void as to any Member Community if the Member Community does not ratify this Agreement and approve the Proposed Transaction.

acquiescence to the carriage of ONN under this Section 3.5 is a waiver or release of any right that Time Warner may have under the Franchises or any provision of state or federal law. MVCC's agreement pursuant to this Section 3.5 shall not be deemed a waiver or release of any rights or an acknowledgement of the validity of any argument for purposes of any dispute or proceeding related to any matter other than MVCC's carriage of ONN. Time Warner expressly reserves the right to challenge any use of an access channel by MVCC which Time Warner believes to be contrary to the Franchise or applicable law including, but not limited to, MVCC's carriage of ONN if such carriage is not terminated by April 16, 2000. In return, Time Warner acknowledges that the decision to carry ONN predated Time Warner's involvement with the subject systems, and agrees that it shall not challenge on any grounds the enforceability of MVCC's contract with ONN, or assert that the existence or terms of such contract violate the Franchise Documents or any provision of applicable law, so long as MVCC ceases carriage of ONN by April 16, 2000.

4. RATES

4.1. The Companies represent and warrant that the transfer of the Franchises shall not result in any increase in subscriber rates.

4.2. The Companies shall ensure that any information requested by MVCC for its review of Franchisee's rate filings, whether such filings are made before or after the execution of this agreement, shall continue to be available in response to any lawful request by MVCC, whether such information is in the possession of the Companies or of any other entity, to the extent MVCC is entitled to such information under the terms of the Franchise Documents and

5.3. The Companies acknowledge and agree that: consent to the Proposed Transaction is made in reliance upon the representations, documents, and information provided by the Companies in connection with the Transfer Application; each of the Companies is jointly and severally liable for the representations and warranties; and that the representations and warranties include, without limitation the following:

5.3.1 Time Warner shall honor all the Institutional Network obligations of the current Franchises, including but not limited to, adherence to the current build-out schedule commitments made by MediaOne and the Franchisee. Time Warner specifically acknowledges and agrees to abide by the terms of the supplemental agreement between MediaOne and MVCC dated July 3, 1996, and the detailed plan incorporated in MVCC's memorandum of December 30, 1996 (the "MVCC Memo"), copies of which are attached hereto and incorporated herein by reference, with the following two exceptions: (a) MVCC agrees not to allege that Time Warner is in default because the original timetable in the MVCC Memo has not been completed on schedule; and (b) Time Warner agrees to complete installation of the Institutional Network in the Cities of Miamisburg and Centerville by the end of 1999, and complete the West Carrollton installation by the end of the first calendar quarter of the year 2000.

5.3.2 Time Warner shall complete all construction necessary to interconnect its cable system with the cable system operated by Time Warner in Germantown, Ohio, as required by Section 23 of the Parallel Ordinances, no later than completion of any rebuild or upgrade of the Germantown system.

5.3.3 To the extent Time Warner provides Internet access services over the cable system, revenues from those services shall be deemed part of "gross revenues" as defined in Section 10 of the Parallel Ordinances, and shall be subject to the franchise fee. Internet access

counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement.

6.5. **Severability:** If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

6.6. **Counterparts:** This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

6.7. **Governing Law:** This Transfer Agreement shall be governed in all respects by the law of the State of Ohio.

6.8. **Time of Essence:** In determining whether a party has substantially complied with this Transfer Agreement, the parties agree that time is of the essence.

6.9. **Captions and References:** The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

EXHIBIT IACCEPTANCE OF FRANCHISE BY THE FRANCHISEE

Time Warner Cable ("Franchisee") hereby accepts the franchise to erect, construct, maintain, and operate a cable system offered by [implementing ordinance] of the [Community Full Name] ("[Community]"), as amended ("Franchise Ordinance"). By this acceptance, Franchisee agrees that, as set forth in the Franchise Ordinance, it shall be bound by the terms and conditions of the Franchise Ordinance, and any amendments thereto (collectively, the "Franchise Documents").

By accepting the franchise, the Franchisee further: (1) acknowledges and accepts the [Community]'s legal right to issue and enforce the franchise; (2) agrees that it will not oppose the [Community]'s intervention in any proceeding affecting its franchise or obligations thereunder; (3) accepts and agrees to comply with each and every provision of the Franchise Documents; and (4) agrees that the franchise was granted pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary.

The Franchisee declares that it has carefully read all of the terms and conditions of the Franchise Documents, and accepts and agrees to abide by same.

The Franchisee is bound to maintain and operate a cable system under the terms, conditions and limitations set forth in the Franchise Documents and other applicable law, as of the time and date it files this written acceptance with [designated person].

STATE OF OHIO:

I HEREBY CERTIFY, that on this ___ day of _____, _____, before me, the subscriber, a Notary Public of the State of Ohio, in and for _____ County, Ohio, aforesaid personally appeared _____ of _____ and acknowledged the foregoing Acceptance of Franchise by Franchisee in _____ County, Ohio, to be the act and deed of said company.

_____ County, Ohio

AS WITNESS my hand and Notary Seal

Notary Public

My Commission Expires: _____

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MEMORANDUM

To: Gilbert Moncivaiz, Continental Cablevision

From: Kent Bristol, Miami Valley Cable Council

Re: Institutional Network, aka B Cable

Date: 3 July, 1996

Below is the outline of a set of conditions applying to the B cable or institutional network that would be acceptable to us if you agreed and implemented them:

- a. The original list of locations to be served "initially" contained 29 sites.
- b. Eighteen of those sites are now connected in one way or another to the B cable.
- c. B cable will be made available to a total of 58 sites (including new and existing locations) at no cost to MVCC or its member cities subject to sections (f), (g), (h), and (i).
- d. Additional sites (beyond the 58 cited above) could be served on the same basis, with MVCC or its member cities reimbursing Continental Cablevision for actual time and material costs, and subject to Continental having resources available.
- e. Eleven sites are to be added as soon as possible - no later than May 31, 1997, subject to section (f).
- f. Other sites will only be served as needed and within 90 days of issuance of a purchase order for the terminal device.
- g. Service will only be provided for public buildings and parochial schools.
- h. All sites served must be within the political boundaries of MVCC member cities.
- i. Buildings to be served must be within 300 feet of an existing cable. Extensions beyond that limit will be at Continental's actual time and materials cost, reimbursed by MVCC or a member city.
- j. To provide a baseline for (d) and (h) above, Continental will provide current costs for building new cable.
- k. All signals from served sites will be capable of being routed to MVCC.
- l. Continental Cablevision will maintain the technical integrity of the B cable for connected sites.
- m. When all the listed 58 sites have B cable made available, MVCC will provide written confirmation that the work is completed and Continental has met its franchise obligations in regards to the B Cable.

Agreed, by the parties, Continental Cablevision and any successor organization (U S West Media Group, e.g.) and Miami Valley Cable Council (MVCC), that the terms outlined above, together with the underlying franchise agreement, define their understanding of how the B cable or Institutional network is to be implemented within the MVCC service area, and that execution on this basis is acceptable to both parties.

For Continental Cablevision:

For Miami Valley Cable Council:



Title: John Ridall, Senior Vice President



Title:

Date: 7/15/96

Date:

9 July, 1996

MIAMI VALLEY CABLE COUNCIL - CONTINENTAL CABLEVISION

INSTITUTIONAL NETWORK OR B CABLE

LISTING OF SITES ALREADY CONNECTED AND TO BE CONNECTED

BELLBROOK

Already connected: A. City Hall, 15 East Franklin Street
B. City Garage/Fire Station #1, 29 and 35 North West Street
C. Fire Station #2, 4254 West Franklin Street
D. Sugarcreek High School, 3941 Upper Bellbrook Road

To be connected: 1. Well field, 105 West South Street

CENTERVILLE

Already connected: E. City Hall, 100 West Spring Valley Road
F. Centerville High School, 500 East Franklin Street

To be connected: 2. Public Works Garage, 7970 South Suburban
3. Benham's Grove, 166 North Main Street
4. Yankee Trace Golf Course, 10000 Yankee Street

KETTERING

Already connected: G. City Hall, 3600 Shroyer Road
H. Kettering Fairmont High School, 3301 Shroyer Road
I. Barnes School/School Administration, 3750 Far Hills Avenue

To be connected: 5. Recreation Complex, 2900 Glengarry Drive (a)
6. Service Center, 2800 Acom Drive (a)
7. Parks Maintenance Center, 3170 Valleywood Drive (a)
8. Frazee Pavilion, 695 Lincoln Park Drive (a)
9. Fire Station #30, 2861 Bobbie Place (b)
10. Fire Station #32, 4121 Shroyer Road (b)
11. Moraine Meadows Elementary School, 2600 Holman Ave., Moraine (b)
12. Southdale Elementary School, 1200 West Dorothy Lane (b)
13. Orchard Park Elementary School, 600 East Dorothy Lane (b)
14. Beavertown Elementary School, 2700 Wilmington Avenue (b)
15. Greenmont Elementary School, 1 East Wren Circle (b)
16. Kettering Junior High School, 3000 Glengarry Drive (b)
17. J. E. Prass Elementary School, 2601 Parklawn Drive (b)
18. J. F. Kennedy Elementary School, 5030 Polen Drive (b)
19. Oakview Elementary School, 4001 Ackerman Boulevard (b)

Note: Sites 5 through 10 are City of Kettering; sites 11 through 19 are Kettering Schools - two separate hubs (city and school) may be better than one.

MIAMISBURG

Already connected: J. City Hall, 10 North First Street
K. Miamisburg High School, 1860 Belvo Road

To be connected: 20. Service Center, 600 North Main Street (c)
21. Fire Station #2, 2135 East Central Avenue (c)
22. Water Treatment Plant, 302 South Riverview Avenue (c)
23. Mound Golf Course, 610 Mound Avenue (c)
24. Pipestone Golf Course, 4344 Benner Road (c)