

RESOLUTION NUMBER 24-85
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Jeffrey Silver ON THE 4th
DAY OF September, 1985.

A RESOLUTION AUTHORIZING THE EXECUTION OF A COG AGREEMENT

WHEREAS, Chapter 167 of the Ohio Revised Code provides that governing bodies of two or more municipal corporations or other political subdivisions may enter into an amended agreement with each other for the establishment of a regional council consisting of such subdivisions, which council shall have the powers and duties as from time-to-time set forth in said Chapter; and

WHEREAS, the purpose of the Council of Governments is to foster cooperation between municipalities through sharing of facilities for their common benefit, including a centrally located administration facility for the purpose of administering cablevision franchises of the various municipal corporations which are parties to said Amended Agreement; for the purpose of such administration on behalf of each of such municipal corporations and for such other purposes as may be authorized by said municipal corporations; and

WHEREAS, this City desires to join with other cities and villages in the joint participation in a central facility for the administration of cablevision franchises of the various municipalities, operated by such Regional Council of Governments; and

WHEREAS, the municipalities of Bellbrook, Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood and West Carrollton have heretofore duly enacted ordinances granting a franchise to Continental Cablevision of Miami Valley, Inc., to provide cablevision services by subscription to the inhabitants of said municipalities and desire to form a Regional Council of Governments to collectively administer said franchises which are virtually identical and for such other purposes as said municipalities may authorize;

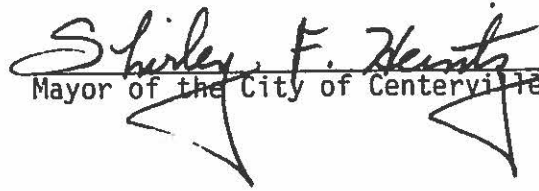
NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

SECTION 1. That the City Manager be and he is hereby authorized and directed to execute an amended membership agreement of the Regional Council of Governments in the form and content presented to this Council, attached to this Resolution, made a part hereof and marked "Exhibit A".

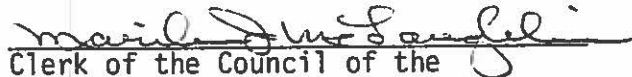
SECTION 2. That the Council hereby declares its intent to participate with other municipalities which are members of the Regional Council of Governments in the cablevision franchise administration known in the franchise as Miami Valley Cable Council and to share the costs thereof, in the manner set forth in the Amended Agreement for establishment of the Regional Council of Governments, and does hereby approve and authorize the powers and functions of the Board of Trustees of the Miami Valley Cable Council as set forth in said Agreement.

SECTION 3. That the Clerk of the Council is hereby directed to deliver a certified copy of this Resolution to the elected Secretary of the Regional Council of Governments or other officer designated by it.

PASSED this 9th day of September, 1985.


Mayor of the City of Centerville, Ohio

ATTEST:


Clerk of the Council of the
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution Number 24-85, passed by the Council of the City of Centerville, Ohio, on the 9th day of September, 1985.


Clerk of Council

Approved as to form, consistency
with existing ordinances, the
charter and constitutional provisions.
Department of Law
Robert N. Farquhar
Municipal Attorney

AMENDED AGREEMENT FOR PARTICIPATION
IN A REGIONAL COUNCIL OF GOVERNMENTS.

This Agreement is made and entered into by and among municipal corporations in Montgomery, Greene and Warren Counties, Ohio, which have become parties to this Amended Agreement upon an identical copy thereof to be signed by an officer duly authorized by the legislative authority or charter of such municipal corporation to execute the same on its behalf.

W I T N E S S E T H:

The parties to this Agreement (hereinafter called "Municipal Corporations"), initially consisting of the Municipal Corporations of Bellbrook, Centerville, Germantown, Kettering, Miamisburg, Moraine, Oakwood, Springboro and West Carrollton, wishing to participate in a Regional Council of Governments pursuant to the Constitution and laws of Ohio, including but not limited to Chapter 167 of the Ohio Revised Code, agree as follows:

I. Name. The name of said Council of Governments is Miami Valley Cable Council (hereinafter called "Cable Council").

II. Purpose. The purpose of the Cable Council hereby established is to foster cooperation among the Municipal Corporations through the establishment of a central administration for the purpose of administering the cablevision franchises granted by the Municipal Corporations, or its lawful successors or assigns, and for the purpose of administering cablevision facilities on behalf of each Municipal Corporation; the doing of all things allowed by law and doing all things allowed by a law to accomplish such purposes.

III. Administrative Authority. The Cable Council is established and is to be administered in the following manner:

A. Each Municipal Corporation party to this Agreement shall have at least one (1) representative to the Cable Council, who shall be appointed by the legislative authority of each Municipal Corporation. Each Municipal Corporation shall similarly designate an alternate for each representative or representatives who may act in place of the representative or representatives in his or their absence. Any representative or alternate so appointed shall serve at the pleasure of the legislative authority making the appointment.

B. Each Municipal Corporation which is a party to this Agreement shall be entitled to appoint one additional representative for each 20,000 persons or a fraction thereof, above the first 20,000 persons residing within the corporation limits of said Municipal Corporation. The population shall be determined based upon the most recent United States Census.

C. Each representative to the Cable Council shall be entitled to one vote on each item under consideration. Voting shall be by members or alternates personally present and no proxy or in absentia voting shall be allowed.

D. By a majority vote the Cable Council shall adopt bylaws which shall provide for the appointment of a chairman and fiscal officer.

E. The Cable Council, as hereinafter provided, shall appoint an advisory committee (hereinafter "Government Technology Committee") to make recommendations to the Cable Council on any intergovernmental activities and issues, on telecommunications technology, and on other matters of administrative policies and functions.

F. The Cable Council shall conduct public hearings for renewals of franchises as required or permitted by law or by ordinances of the Municipal Corporations.

G. The Cable Council may hear and decide appeals from the decisions of the Cable Operations Board.

H. The Cable Council may review from time to time general policies established by the Cable Operations Board, and may approve, modify or disapprove the same.

I. The Cable Council hereby accepts the designation of any powers which may be delegated to it pursuant to a Cable franchise ordinance by a Municipal Corporation or any duly authorized officer of a Municipal Corporation, and may direct the exercise of such powers to said Cable Operations Board.

J. The Cable Council, not less often than annually, shall report to the Municipal Corporations its recommendations with respect to administration of cablevision under this Agreement and its actions hereunder.

K. The Cable Council shall exercise such other powers as are authorized by law and directed by the Municipal Corporations not inconsistent with applicable laws or regulations of the State of Ohio or the United States of America.

L. The Cable Council shall employ an Executive Director for the day to day administration of cablevision franchises granted by the Municipal Corporations and the affairs of the organization. With the prior approval of the Cable Council, the Executive Director may hire such assistants as are deemed necessary to fulfill the responsibilities.

The Executive Director shall be the chief executive and administrative officer of the Cable Council. The Executive Director shall be responsible to the Cable Council for the administration of all Cable Council affairs placed in the Executive Director's charge by or under this Agreement or by resolution of the Cable Council.

IV. Cable Operations Board. There is hereby established a Cable Operations Board to advise and assist the Cable Council in planning and policy development for the administration of cablevision franchises granted by the Municipal Corporations and to serve as a day to day liaison between the Executive Director and the Municipal Corporations.

The Cable Operations Board shall be composed of one representative from each of the Municipal Corporations. Each Municipal Corporation shall similarly designate an alternate for each representative, who may act in place of the representative in his/her absence. A Cable Operations Board member need not be a representative to the Cable Council nor an employee of a Municipal Corporation. All of said representatives and alternates shall serve at the pleasure of the Municipal Corporation making the appointment of said member.

A majority of the Board members shall constitute a quorum and affirmative action may be taken only by a majority of all the members appointed to the Cable Operations Board. The Board shall select annually one of its members to serve as Chairman, one to serve as Vice-Chairman and one to serve as Secretary-Treasurer. Board members shall serve without compensation.

A. The Cable Operations Board shall establish its own bylaws, subject to the approval of the Cable Council, which shall include the following:

- (1) Provision for regular and special meetings;
- (2) Provision for minutes of all Cable Operations Board meetings to be mailed to all Cable Council representatives and all Cable Operations Board members; and

(3) Provision for the preparation of an agenda for meetings of the Cable Operations Board.

B. The Cable Operations Board shall undertake the following functions as may be delegated to it from time to time by the Cable Council:

(1) Advise the Cable Council on applications for franchises;

(2) Advise the Cable Council on matters which might constitute grounds for revocation of any franchise in accordance with the ordinance granting the same;

(3) Advise the Cable Council on the regulation of rates in accordance with the ordinances granting the franchises;

(4) Resolve disagreements among the franchisee, subscribers and public and private users of a system in a manner consistent with the respective franchises;

(5) Coordinate the franchisee's consultant services for best use of public facilities and channels of the system, and collect franchise fees, upon behalf of the Municipal Corporations, from the franchisee;

(6) Determine general policy relating to the service provided subscribers and the operations and use of public channels, with a view to maximizing the diversity of programs and services to subscribers. The use of public channels shall be allocated on a first come, first serve basis, subject to limitations on and monopolization of system time, or prime times;

(7) Encourage use of public channels among the widest feasible range of institutions, groups and individuals within the Municipal Corporations. This endeavor shall be conducted with a view toward establishing different categories of use, including:

(a) Local educational uses including libraries, schools and other educational institutions;

(b) Public access for local programming under public control;

(c) Public agency access (including fire, police, burglar alarms and public announcements);

(d) Information retrieval and professional communication; and

(f) Telecommunications activities.

(8) Make an annual report to the Cable Council including an account of franchise fees received and distributed, the total number of hours of utilization of public channels, hourly sub-totals for various programming categories, and any other matters specified by the Cable Council;

(9) Cooperate with other systems, and supervise interconnection of systems;

(10) Review all franchisee records required by the ordinances granting the franchises, and in the Cable Council's discretion, require the preparation and filing of information additional to that required therein; and

(11) Conduct evaluations of the system at least every five (5) years with or without the franchisee, as directed by the Cable Council, and pursuant thereto, make recommendations to the Cable Council for an amendment to ordinances granting the franchises.

V. Responsibilities of the Municipal Corporations.

Each of the Municipal Corporations agrees to cooperate, in so far as it is practicable to do so, with the Cable Council, the Cable Operations Board or its employees, and with each other, in the following matters:

A. The adoption and amendment of Cablevision franchise ordinances and rules and regulations for subscribers.

B. The furnishing of information or assistance which may be necessary to the successful operation of the Cable Council and the Board.

VI. Funding. In order to fund the operations of the Cable Council, each Municipal Corporation, by the execution of this Agreement, hereby assigns to the Cable Council the cable franchise fees otherwise payable to it for so long as it is a party to this Agreement and the Cable Council is hereby authorized to collect said fees. The fiscal officer appointed pursuant to the bylaws of the Cable Council shall keep all monies collected hereunder in the manner provided by law in a segregated and separate bank account. He shall keep records showing the amount of all fees paid by the Franchisee together with all increments, additions and investment interest thereto or thereon. He shall invest, so far as practicable, all monies received by him and the interest received on account thereof shall be applied to reduce the total cost of operation of the Cable Council

without regard to any application of such interest to participating Municipal Corporations. The investments as made by the fiscal officer shall be subject to the approval of the Cable Council and as may be limited in the bylaws or in any resolution of the Cable Council.

VII. Audit. The Cable Council shall cause a periodic audit to be made of the operations of the Cable Council for the purpose of verifying the correctness of all costs and all reports submitted to the Municipal Corporation. Such audit shall be conducted regularly, consistent with the practice of any fiscal agency appointed by the Cable Council. The expenses of such audit shall be a part of the cost of the administration of the Cable Council. Copies of the audit shall be furnished to all parties to this Agreement. Anything herein contained to the contrary notwithstanding, said audit shall not constitute a duplication of audits required by the State of Ohio.

VIII. Cancellation of the Agreement.

A. Any Municipal Corporation may withdraw from this Agreement, provided, however, that any such withdrawal shall be effective only on December 31st of any given year, and shall be preceded by written notice of withdrawal delivered to the Cable Council by registered or certified mail not later than July 1 of such year. In the event that any Municipal Corporation shall withdraw from this Agreement, the provisions of this Agreement relating to auditing and funding shall continue in effect until final settlement has been made for all monies collected for the withdrawing Municipal Corporation, prior to the effective date of such withdrawal. A withdrawal shall have the effect of cancelling the assignment provided for in Article VI.

B. The Cable Council may be dissolved by two-thirds of the parties to this Agreement, and in such event, the Cable Council shall liquidate all of its assets, pay all outstanding debts, and distribute the remaining funds to the Municipal Corporations in the proportion that they contributed franchise fees.

IX. Additional Members of the Council. Any municipality which desires to become a member of the Cable Council may become a member upon the terms and conditions prescribed by the Cable Council. Political subdivisions other than municipalities may become members of the Cable Council upon such terms and conditions as may be established by amendment of this Agreement. A favorable vote of two-thirds of the member municipalities acting by their representatives to the Cable Council shall be required to allow a new municipality to become a member of the Cable Council.

X. Additional Activities. In the event that the Cable Council shall determine at any time to undertake cooperative activities other than the administration of cablevision franchises, no Municipal Corporation shall be required to participate in the administration or cost of such activity without its prior consent. This section may be amended only through unanimous consent of the legislative bodies of all Municipal Corporations which are parties to this Agreement.

XI. Amendments. Except as provided in Article X above, this Agreement may be amended by concurrent action by the legislative authorities of all Municipal Corporations which are parties hereto.

XII. Severability. In the event any part or portion of this Agreement shall be found to be contrary to law and thereby held to be null and void, all other provisions of this Agreement shall remain in full force and effect, and shall not be otherwise affected by any such ruling, finding or decision.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date indicated by signing this Agreement or identical copies of same and shall become effective on the execution by the last of the nine Municipal Corporations executing the same.

AG8@MC