

RESOLUTION NO. 3575

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMAN Leonard Stelbs
ON THE 7TH DAY OF JULY, 1975.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER OF THE CITY OF CENTERVILLE, OHIO TO ENTER INTO AN AGREEMENT FOR THE CITY'S PARTICIPATION IN A REGIONAL COUNCIL OF GOVERNMENTS.

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 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 Agreement and for the purpose of such administration on behalf of each such municipal corporation; 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 cities of Moraine, Miamisburg, Centerville, Oakwood, Kettering, and West Carrollton have heretofore duly enacted ordinances granting a franchise to Continental Cablevision of Miami Valley, Inc., to provide cablevision service 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;

NOW, THEREFORE,


THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager be and he is hereby authorized and directed to execute a 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 Television Council, but hereinafter known as Cablevision Franchise Administration Agency, and to share the cost thereof, in the manner set forth in the Agreement for establishment of the Regional Council of Governments, and does hereby approve and authorize the powers and functions of the Ward of Trustees of the Cablevision Franchise Administration Agency 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 7th day of July, 1975.



Mayor of the City of Centerville, Ohio


ATTEST:



Clerk of the Council of the
City of Centerville, Ohio

C E R T I F I C A T E

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 No. 5875, passed by the Council of the City of Centerville, Ohio, on the 7th day of July, 1975.



Clerk of the Council

Approved as to form, consistency
with existing laws and
charter & ...

Robert H. ...
Municipal Attorney

EXHIBIT "A"

AN AGREEMENT FOR REGULATION OF
A REGIONAL COUNCIL OF GOVERNMENTS

THIS AGREEMENT is made and entered into by and among municipal corporations in Montgomery County, Ohio, which have become parties to this Agreement by causing either this Agreement or an identical copy hereof to be signed by an officer duly authorized by the legislative authority of such municipal corporation to execute the same on its behalf.

WITNESSETH:

The parties to this Agreement (hereinafter called "municipal corporations"), initially consisting of the municipal corporations of Moreau, Kettering, West Carrollton, Centerville, Oakwood and Miamisburg, 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 Revised Code, agree as follows:

I. NAME. The name of the said Regional Council of Governments is Miami Valley Cable Television 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 to Continental Cablevision of Miami Valley, Inc., or its lawful successors or assigns; and for the purpose of administering cablevision facilities on behalf of each municipal corporation, doing all things allowed by 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 which is a party to this Agreement shall have at least one (1) representative to the Cable Council, who shall be appointed by the legislative authority of such 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.

B. Each municipal corporation which is a party to this Agreement shall be entitled to appoint one additional representative for each twenty thousand (20,000) persons or a fraction thereof, above the first twenty thousand (20,000) persons residing within the corporate limits of said City. The population shall be determined with reference to the most recent Federal Census.

C. Each representative to the Cable Council shall be entitled to one (1) 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. The Cable Council shall adopt by-laws by a majority vote which by-laws shall provide for the appointment of a chairman and fiscal officer.

E. No employee or person with commercial interest in

a cable television franchise granted by a municipal corporation shall be eligible to be a representative or alternate representative to the Cable Council or of the Cablevision Franchise Administration Agency hereinafter established.

F. The Cable Council may appoint an Advisory Committee ("Advisory Committee") separate and apart from the said Cablevision Franchise Administration Agency to make recommendations to the Cable Council with respect to changes in cablevision and telecommunications technology and other matters of administrative policies and functions.

G. The Cable Council will conduct public hearings for renewals of franchises as required or permitted by law or by ordinances of the municipal corporations.

H. The Cable Council will hear and decide appeals from decisions of the Board of Trustees of said Cablevision Franchise Administration Agency.

I. The Cable Council may review from time to time general policies established by the Board of Trustees of said Cablevision Franchise Administration Agency, and may approve, modify or disapprove the same.

J. The Cable Council hereby accepts the designation of any powers which may be delegated to it pursuant to a 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 Cablevision Franchise Administration Agency.

K. 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.

L. 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.

IV. CABLEVISION FRANCHISES ADMINISTRATION. There is hereby established a Cablevision Franchise Administration Agency (hereinafter called "Agency") for the administration of cablevision franchises granted by the municipal corporations.

A. The Agency shall be administered by a Board of Trustees (hereinafter called "Board") composed of six (6) persons appointed in accordance with IV. A. hereof by the Cable Council on the effective date of this Agreement. These six (6) persons shall be divided into three (3) groups of two (2) persons each who shall serve overlapping terms. Two (2) members shall be selected for a term ending January 1, 1976; two (2) members shall be selected for a term ending January 1, 1977; and two (2) members shall be selected for a term ending January 1, 1978. Allocation of terms among the original six (6) persons shall be decided by lot. Thereafter, as the terms of each group expire, such Trustees shall be elected for succeeding terms of two (2) years each. Trustees

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

- (1) The Board shall establish its own by-laws which shall include the following:
 - (a) Provision for regular and special meetings;
 - (b) Provision for minutes of all Board meetings to be mailed to all Cable Council representatives and to its Advisory Committee; and
 - (c) Provision for the preparation of an agenda for meetings of the Board.
- (2) The Board shall have such of the following functions as may be delegated to it from time to time by the Cable Council:
 - (a) Advise the Cable Council on applications for franchises;
 - (b) Advise the Cable Council on matters which might constitute grounds for revocation of any franchise in accordance with the ordinance granting the same;
 - (c) Advise the Cable Council on the regulation of rates in accordance with the ordinances granting the franchises;
 - (d) Resolve disagreements among the franchisees, subscribers and public and private users of a system in a manner consistent with the respective franchises;
 - (e) Coordinate the franchisees' consultant services for best use of public facilities and channels of the system, and collect franchise fees, on behalf of the municipal corporations, from the franchisee;
 - (f) 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;
 - (g) 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. Each annual report to the Cable Council shall be by such categories, defined as follows:
 - (1) Local educational use including libraries, schools and other educational institutions;

- (3) Public agency access (including fire, police, burglar alarms and public announcements);
 - (4) Off-the-air network and independent entertainment programs;
 - (5) Off-the-air educational programs;
 - (6) Availability of channel time for lease for pay-cable;
 - (7) Availability of channel time for lease for business uses, including telemetry of information;
 - (8) Information retrieval and professional communication;
 - (9) Promote telecommunications activities.
- (h) 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 subtotals for various programming categories, a review of any plans submitted during the year by the franchisees for development of new services, and any other matters specified by the Cable Council;
- (i) Cooperate with other systems, and supervise inter-connection of systems;
- (j) Review all franchise 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
- (k) Conduct evaluations of the system at least every five (5) years with the franchisees and pursuant thereto, make recommendations to the Cable Council for amendments to ordinances granting the franchises.

B. Any Trustee may be removed from office by the affirmative vote of two-thirds (2/3) of all the members of the Cable Council at any regular or special meeting. In the event of the removal or resignation of any Trustee from office, the Cable Council shall proceed immediately to elect his successor for the balance of his term.

C. Said Board shall employ an Administrator and such assistants as it deems necessary to fulfill its duties, and, with the approval of the Cable Council, the Board may delegate such of its duties, responsibilities and authority as it deems advisable to the Administrator, including matters set forth in A. above.

V. PERSONNEL AND USE OF YES MUNICIPAL CORPORATIONS.

A. Each of the municipal corporations agrees to cooperate in so far as it is practicable to do so with the Cable Council,

the Board by the employees, and with each other on the following matters:

- (1) The adoption and amendment of cablevision franchise ordinances and rules and regulations for subscribers.
- (2) The granting of full faith and credit to the provisions of the ordinances of other municipal corporations and the implementation of such provisions where possible.
- (3) Furnishing of information or assistance which may be necessary to the successful operation of the Cable Council and the Agency.
- (4) Sponsoring legal action necessary and desirable for the enforcement of the cablevision franchises, including legal action necessitated due to audit procedures or other circumstances.

VI. ALLOCATION OF COSTS.

A. Each municipal corporation agrees to share the costs of establishing and operating the Cable Council and the Agency by contributing two-fifths of the amount of money derived from fees paid to such municipal corporation by the franchisee in accordance with B. below. At the initial meeting of the Cable Council, the Cable Council shall determine the estimated cost of such establishment and each municipal corporation agrees to contribute its share from said fees.

B. After deduction of direct charges made to municipal corporations which request special information or extraordinary services, the remaining actual costs of administration shall be shared by the municipal corporations according to the following formula:

- (1) Based on Federal Census as applicable to each participating City.

VII. DISTRIBUTION OF MONEY.

A. The fiscal officer appointed pursuant to the by-laws 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 Agency without regard to any allocation 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 limited in the by-laws of the Cable Council.

B. On or before the tenth business day after the end of each calendar quarter, the fiscal officer shall settle with the municipal corporations for all franchise fees collected on each municipal corporation's behalf. The Board shall retain two-fifths of all such fees to apply toward each municipal corporation's respective share of the cost of the operation of

to adjust the withholding percentage to reflect any changes in the cost of the Administration of the Agency as revealed by the annual audit hereinafter required.

C. At the end of each calendar year, if the cumulative amount withheld from each monthly distribution of any municipal corporation shall exceed such municipal corporation's share of the annual cost of the operation of the Agency, such excess shall be refunded to the respective municipal corporation.

VIII. ANNUAL AUDIT. The Cable Council shall cause an annual audit to be made of the operations of the Agency by an independent certified public accounting firm of its choice for the purposes of verifying the correctness of all accounting procedures employed, all distributions of funds made, allocation of all costs and all reports submitted to the municipal corporations. The expenses of such audit shall be part of costs of the administration of the Agency. Copies of the audit in its entirety shall be furnished to all municipal corporations.

IX. BROADCAST POLICY. The Agency shall adopt and promulgate specific rules and regulations governing broadcast policy for the cablevision franchises not inconsistent with the applicable regulations of the Federal Communication Commission or of any franchise. Said rules and regulations shall be reviewed, approved, modified or disapproved by the Cable Council and published if required by law.

X. 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 relative to auditing and distribution of funds 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.

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 the assets of the Agency and the Cable Council, pay all outstanding debts, and distribute the remaining funds to the municipal corporations in the proportion that they share costs as provided in Article VI hereof.

XI. ADDITIONAL MEMBERS OF THE COUNCIL. Any municipality which desires to become a member of the Cable Council may be such 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 as may be established by amendment of this Agreement.

XII. ADDITIONAL ACTIVITIES. To the extent 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.

XIII. AMENDMENTS. Except as provided in Article XII above, this Agreement may be amended by concurrent action by the legislative authorities of all municipal corporations which are parties hereto.

XIV. 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 duly executed on the date indicated by signing this Agreement on identical copies of same and shall become effective upon the execution by the last of the six municipal corporations executing the same.

ATTEST:

Date: _____

CITY OF REVERING, OHIO

By _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF SPRING, OHIO

By _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF CAINWOOD, OHIO

By _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF WEST CARROLLTON, OHIO

By _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF CHESTERVILLE, OHIO

By _____
Chief Executive Officer

Date: _____

ATTEST:

CITY OF MARIETTA, OHIO

By _____
Chief Executive Officer

APPROVED AS TO FORM:

Law Director, City of Kettering, Ohio

APPROVED AS TO FORM:

Director of Law, City of Moraine, Ohio

APPROVED AS TO FORM:

Director of Law, City of Oakwood, Ohio

APPROVED AS TO FORM:

Director of Law, City of West Carrollton, Ohio

APPROVED AS TO FORM:

Director of Law, City of Centerville, Ohio

APPROVED AS TO FORM:

Director of Law, City of Marietta, Ohio