

ORDINANCE NO. 5 -71

By David H. Mahan

TO ENACT AN ORDINANCE, RELATIVE TO
COMMUNITY ANTENNA TELEVISION SYSTEMS

BE IT ORDAINED by the Council of the City of Bexley, Ohio:

SECTION 1 DEFINITIONS.

(A) The term, "community antenna system" (more commonly referred to as a "CATV System", but occasionally referred to as a "Wired City"), means any facility which originates or transmits or distributes electronic signals to subscribers for a fee or fees, including video and/or audio signals from operating television stations and AM and FM radio stations, but not limited to such signals. Specifically included as permissible are services and/or programming originated by the system.

(B) The term, "community antenna system", shall not be applied to the following facilities:

(1) A facility servicing fewer than fifty (50) subscribers.

(2) A facility serving one or more rental complexes, including apartments and/or townhouses and/or single dwellings, under the same ownership, control or management, and including commercial establishments located on the premises of such a rental complex or complexes.

(3) A facility serving individual hotels or motels, or more than one hotel and/or motel under the same ownership, control or management.

(4) A facility owned and operated by a non-profit organization, with service limited to the premises of said non-profit organization.

(C) The term, "operator", shall mean any person, persons, partnership, firm, company, corporation or association operating a community antenna system and holding a permit granted by an ordinance of Council to operate same within the corporate limits of the City.

(D) The terms, "transmission and distribution", "carriage and/or utilization", and "origination", refer to methods, techniques and procedures in the operation of a community antenna system as authorized by the Federal Communications Commission, either by virtue of enabling rules and regulations or in the absence of prohibiting rules and regulations.

SECTION 2 TRANSMISSION AND DISTRIBUTION OF SIGNALS

The transmission and distribution of electronic signals may be made at the option of the operator as follows; and in addition to being as authorized by the Federal Communications Commission will, if applicable, be in accordance with rules, regulations and tariffs of the Ohio Public Utilities Commission.

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- (A) Through coaxial cable and/or other electrical conductors installed and maintained by the operator, and attached to poles and/or in underground conduit owned and maintained by the operator.
- (1) Even though the operator is authorized to install his own poles and conduit, it is the stated intention of the Council that wherever possible, the operator shall obtain the cooperation of all other holders of public licenses and franchises within the City to allow joint usage of their poles and/or conduit wherever such usage does not interfere with their own normal usage of said poles and/or conduit, so that the number of new or additional poles erected in the City by the operator may be minimized. Such cooperation shall include the rights of joint usage at realistic rates with reasonable terms.
 - (2) Approval for the locating of new poles and/or new underground conduit will be granted by the Mayor when such locations have been approved by the City Engineer.
 - (3) Notwithstanding the provisions of Paragraphs (A), (A) (1) and (A) (2), the operator shall utilize underground conduit in lieu of installing new poles, and shall, whenever telephone and electrical lines are or hereafter may be installed underground, utilize underground conduits in lieu of overhead installations. Exceptions to this rule will be granted by the Mayor only in cases in which its literal enforcement would work a serious and demonstrable hardship on the operator.
 - (4) The operator shall grant to the City, free of expense, joint use of all his poles and all his underground conduit, assuming adequate windload and weight factors for poles and capacity for conduit, for any proper municipal purposes, insofar as it may be done without interfering with the free use and enjoyment of the operator's own coaxial cable, wire and fixtures.
 - (a) If the City does make any use of either poles or conduit owned and maintained by the operator, the City shall hold the operator harmless from any and all actions, causes of action, or damages caused by the City's wires or appurtenances upon the poles or in the conduit of the operator.
 - (b) Any construction and utilization by the City, as regards poles and conduit of the operator, shall conform to the same requirements set forth for the operator in the general areas of safety, quality, maintenance and RF (radio frequency) interference.
 - (5) The right of construction, including easements, is not implied, except in locations where the City has the authority to grant such rights and easements. All other rights of construction, including easements, shall be the responsibility of the operator.
 - (6) No construction of either poles or underground conduit shall begin without prior written approval of the Mayor.

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- (B) Through coaxial cable or other electrical conductors installed and maintained by the operator, but attached to poles and/or in underground conduit owned by the Ohio Bell Telephone Company; and/or attached to poles owned by the Columbus & Southern Ohio Electric Company; and/or attached to poles owned by any other public or quasi-public utility.
- (C) Through the common carrier facilities, including coaxial cable and/or other electrical conductors and/or radiowave transmission, owned by the Ohio Bell Telephone Company.
- (D) Through the common carrier facilities of the Ohio Bell Telephone Company for main and lateral cable service, with the operator installing and maintaining his own service, through coaxial cable and/or other electrical conductors, between terminating units of the Ohio Bell Telephone Company and the dwellings and business establishments of subscribers.
- (E) Through the air by means of radiowave transmission facilities of the operator, either totally or in part in combination with (A), (B), (C) and (D) of Section 2.
- (F) Through the air by means of radiowaves transmitted by some other common carrier source, including satellite, either totally or in part in combination with (A), (B), (C), (D) and (E) of Section 2.
- (G) Through any combination of the alternatives for transmission and distribution of electronic signals as set forth in (A), (B), (C), (D), (E) and (F) of Section 2.

SECTION 3 CONDITIONS OF SYSTEM CONSTRUCTION, MAINTENANCE AND OPERATION.

The operator shall comply with the following conditions, and the Mayor shall be charged specifically with the duty of enforcing the provisions of this section.

- (A) Construction and maintenance of the transmission and distribution system shall be in accordance with the National Electrical Safety Code (also referred to as the Code of the Board of Underwriters), and such applicable ordinances and regulations of the State of Ohio and the City of Bexley, as may be presently in effect or may become effective in the future.
- (B) The operator shall, at his cost and expense, install and maintain during the life of the permit granted by ordinance, and/or cause to be installed and maintained by the Ohio Bell Telephone Company, adequate shielding, filtering and grounding as to prevent interference with television and radio reception of non-subscribers to the operator's service or services.
- (C) All Federal Communication Commission rules and regulations governing RF (radio frequency) interference presently in effect, and as may become effective in the future, will be observed.
- (D) Additional emphasis is supplied to Paragraph (C) of Section 3 as follows:
 - (1) The operator shall not transmit between 152 and 172 megacycles, or on any frequency now or hereafter used by the City of Bexley in its official radio communication activities.

- (2) Any significant interference with the City's radio communication activities, as determined by the Mayor, shall be immediately eliminated by the operator.
- (E) All installations of equipment shall be of a permanent nature and durable, installed in accordance with accepted good engineering practices; sufficient to comply with all existing State of Ohio and City of Bexley rules, regulations and ordinances, so as not to interfere in any manner with the right of the public or individual property owners; and shall not interfere with the travel and use of public places; and during construction, repair and removal thereof, shall not obstruct or impede traffic or unnecessarily or unreasonably interfere with the use or enjoyment of public or private property adjacent thereto.
- (F) In operating his system, the operator shall meet the following minimum requirements:
- (1) The system will produce a picture, whether in black and white or in color, that is undistorted, free from ghost images and accompanied by proper sound on typical, standard production television sets in good repair, and equal in all aspects to what the state of the art permits.
 - (2) The system will transmit signals of adequate strength to produce good sound and/or good pictures with good sound at all subscriber outlets without causing cross-modulation in the cable or interfering with other electrical or electronic systems.
 - (3) The operator will be able to demonstrate by instruments or otherwise to subscribers, upon request, that a signal of adequate strength and quality as described in Paragraphs (F) (1) and (2) of Section 3, is being delivered by the system.
 - (4) The operator will render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible.
 - (5) The operator will strive, insofar as is practical, for the betterment of his system, taking advantage of all reasonable improvements as they become available to him.
- (G) The operator shall maintain a business office in Franklin County, Ohio, which will be open at least 9:00 A.M., to 5:00 P.M., Monday through Friday; and at least 9:00 A.M., to noon, Saturdays, excluding legal holidays. This office will have a listed telephone, with an adequate number of lines to handle typical traffic, and will be so operated that complaints and requests for repairs and adjustments may be received and processed with a minimum of delay.
- (H) The operator shall provide the Mayor with the name of his chief management employee, so that complaints or comments made to any City office may be referred to the operator for proper actions.

- (I) In the case of any emergency or disaster, the operator shall, upon request of the Mayor, or the official performing the duties of the Mayor, make available, without charge, any or all of his facilities for use by the City during the emergency or disaster.
- (J) The operator shall make his basic service available without charge, upon written request, to all public, private and parochial schools located within the City.
- (1) Installation and service will be subject only to a school being contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized by the operator for the transmission and distribution of signals.
 - (2) This requirement is for a single connection per school.
 - (3) There will be no limit as to the number of television receivers a school may operate from this connection, but the expense of installing and maintaining an internal distribution system will be the responsibility of the school.
 - (4) Any internal distribution system installed by a school must conform to all applicable Federal, State and City rules, regulations and ordinances, and must be operated in such a manner as not to interfere with the operator's system.
- (K) The operator shall provide his basic monthly service without charge to the City Hall and each Recreation Center operated by the City (including Police Station).
- (1) Installation and service will be subject only to the City Hall and Recreation Center being contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized by the operator for the transmission and each distribution of signals.
 - (2) This requirement is for up to and including three (3) connections per City Hall and Recreation Center.
- (L) The operator shall provide one (1) video channel for exclusive use by the City as it deems fit, without restriction, and shall not knowingly compete with any program presented by the City, through duplication thereof, in whole or in part. Remote pickups for such service shall be provided at the City Hall and Recreation Centers.
- (M) The operator shall provide without charge complete monitoring facilities, including installation, necessary equipment and maintenance of said equipment, to up to and including three (3) City offices, to be designated by Council.
- (1) The monitoring equipment will permit sampling of all services offered by the operator.
 - (2) Monitoring facilities will be provided whether the City offices are located contiguous to main or lateral cables or not, and even if special construction is required for their activation.

(N) Excluding the programming originated by licensed broadcast stations and/or by closed circuit networks, all programming offered by the operator as part of his basic service to the general public, shall conform to the provisions of the TV Code and/or the Radio Code of the National Association of Broadcasters; provided two (2) or more Columbus service area commercial television stations (for the TV Code), are code subscribers thereof.

(1) If the operator sells advertising, per Section 6 (B), all such advertising material, if transmitted visually and/or orally in connection with locally originated programming which is offered to the general public as part of the operator's basic service, shall also be subject to the applicable provisions of the NAB codes, mentioned above, and qualified therein as to the practice of Columbus service area commercial broadcast stations.

SECTION 4 PROHIBITIONS.

- (A) The operator may neither directly nor indirectly engage in the sale, servicing or repair of television receivers, nor may he engage directly or indirectly in the rental or leasing of television receivers; nor may he or any of his employees require of any subscriber the purchase of servicing of a television receiver from or by any designated company.
- (B) The operator may neither directly or indirectly engage in the installation or repair of distribution systems, other than his own, within apartment houses, hotels, motels, or other commercial establishments, or in schools and other non-profit organizations.
- (C) The operator is prohibited from allowing his facilities to be utilized for political or other partisan purposes unless, as a matter of publicly stated policy, he has adopted guidelines calling for strict adherence to existing rules and regulations of the Federal Communications Commission governing political broadcasts and telecasts, and including the "Fairness Doctrine". Excluded from this provision is programming originated by a licensed radio or television station, said station being subject to the aforementioned rules and regulations of the FCC.

SECTION 5 INDEMNIFICATION, INSURANCE AND BONDS.

- (A) The operator shall indemnify and save harmless the City of Bexley and all agents, officers, employees and representatives thereof from all claims, demands, causes of action, copyright action, liability, judgments, costs and expenses or losses for injury or death to persons or damage to property owned by, and Workmen's Compensation claims against any parties indemnified herein, arising out of, caused by, or as a result of the operator's construction, erection, maintenance, use or presence of, or removal of any poles, wires, lines, cable, conduit, appurtenances thereto, or equipment or attachments thereto.
- (1) The operator shall carry good and sufficient public liability and property damage insurance to fulfill the terms of Paragraph (A) of Section 5, which insurance shall be in the amounts of not less than \$500,000 for property damage in any one occurrence, nor less than \$1,000,000 aggregate in any single policy year; and not less than \$500,000 bodily injury or death of any one person, with a minimum of \$1,000,000 as to any one occurrence.

Such policy shall be subject to the approval of the City Attorney as to its form and extent of coverage (as distinguished from dollar amount of coverage). Such policy shall specifically insure against claims arising as the result of underground excavation.

- (2) The City of Bexley shall be named as an additional insured in any such policy or policies.
 - (3) The policy shall provide by endorsement that it may only be cancelled or amended by the insurance company after sixty (60) days notice, in writing, to the Mayor.
 - (4) Said policy (or policies) must be in force before the operator commences any construction or installations.
 - (5) Either the original policy (or policies) or certified copies must be on file with the Mayor
 - (6) The policy shall provide that the naming of the City as an additional insured shall not exempt the insurer from liability to the City for damage to property owned by it or in which it has an interest.
- (B) Upon termination or revocation of his permit or upon cessation of operations by the operator, said operator is under obligation to remove all of his equipment and installations over and under City streets, at the request of Council; over and under private property at the request of the property owners; and from the homes or business establishments of subscribers, at their request.
- (1) The operator shall post bond in the sum of \$100,000 guaranteeing the removal of all his equipment and installations, if his operation ceases, whatever the cause or reason, if requested to do so by the Council, individual private property owners or subscribers.
 - (2) Such bonding as called for in Paragraph (B) (1) of Section 5, shall be subject to these requirements:
 - (a) Such bond shall be executed by the operator and one or more sureties approved by the City Attorney.
 - (b) Either the bond (or bonds) or certified copies must be on file with the Mayor.
 - (c) The bond (or bonds) must provide by endorsement that it cannot be cancelled or amended by the bonding company prior to ten (10) days notice to the Mayor.
 - (d) Said bond (or bonds) must be effective before the operator commences any construction or installations.
- (C) Within thirty (30) days from the effective date of the granting of a permit by ordinance, the operator shall furnish a bond to the City in the amount of \$25,000 guaranteeing the faithful performance of the obligations of the operator under the terms of this ordinance, specifically including the obligations of payment set out in Section 12 hereof, said bond being in addition to that required under Paragraph (B) (1), and subject to these requirements:

- (1) Such bond shall be executed by the operator and one or more sureties approved by the City Attorney.
- (2) Either the bond (or bonds) or certified copies must be on file with the Mayor.
- (3) The bond (or bonds) must provide by endorsement that it cannot be cancelled or amended by the bonding company prior to ~~ten~~ ^{thirty} (30) days notice to the Mayor.

SECTION 6 SCOPE OF OPERATIONS

In addition to conventional services currently being offered by operating community antenna systems, including the signals of TV, AM and FM stations and also programming originated by the operators, this ordinance, anticipating the future of a "Wired City", specifically covers the following:

- (A) Pay television (programming for which a special or extra fee is charged), if not prohibited by the Federal Communications Commission, and if such service is offered by the operator.
- (B) The sale of advertising in connection with locally originated programming, if such sales are authorized by the Federal Communications Commission, and if such sales are made by the operator.
- (C) Any other service or services involving the use of electronic signals if authorized by the Federal Communications Commission and if such additional services are offered by the operator.

SECTION 7 RATES FOR SERVICE TO SUBSCRIBERS

Unless superseded by Federal or State regulations, the City of Bexley retains jurisdiction to establish rates for subscriber service. All such rates shall be fair, just and reasonable. The operator shall be subject to all authority now or hereinafter possessed by the City of Bexley or any other regulatory body having jurisdiction to fix rates for services offered by the operator.

- (A) Before any service is offered to any subscriber the operator shall file with the Mayor, for approval of the Council, a schedule of proposed rates.
 - (1) A filing for the first service to be offered by the operator shall be no less than ninety (90) days in advance of the approximate date the system is to become operational.
 - (2) A filing for new or additional service, after the system is once operational, shall be made no less than sixty (60) days in advance of the effective date specified by the operator for the new or additional service.
 - (3) A filing for changes in previously approved schedules shall be made no less than sixty (60) days in advance of the effective date requested by the operator.
- (B) No action shall be taken with respect to rate reduction and/or modifications in rate structure by the Council unless the operator has been given a written notice at least ninety (90) days in advance of the effective date contemplated by Council; and not until the operator has been given every opportunity to be heard by the Council will final action be taken.

- (C) The operator shall be limited in his charges to individual dwelling units as follows:
- (1) A maximum installation charge of \$15.00 for the first television set or radio tuner; and a maximum of \$7.50 for each additional television set or radio tuner on the same premises.
 - (2) A maximum monthly charge for basic service of \$5.00 for the first television set or radio tuner; and a maximum of \$1.50 for each additional television set or radio tuner on the same premises.
 - (3) The maximum disconnection-reconnection charge related to the temporary suspension of service requested by a subscriber shall be no more than the monthly service charge.
 - (4) The maximum reconnection charge, if service has been terminated by the operator, for non-payment of fees, shall be no more than \$10.00.
 - (5) The installation charge shall be personal to the individual subscriber; and upon removal to another location within the City of Bexley, the maximum reconnection charge shall be no more than the monthly charge for service.
 - (6) If a sales or use tax is ever imposed on CATV charges, said tax may, at the option of the operator, be added to the maximums listed above.
- (D) The maximums listed above apply to basic service to individual dwelling units, and consisting of up to and including twelve (12) television channels.
- (1) It is not the intent of this ordinance to retard the growth of CATV service beyond the conventional 12 channels offered by most systems (a limitation imposed by the VHF tuner generally utilized by the industry). If and when expanded service (that is, service beyond twelve (12) television channels) is offered by the operator, the operator shall have the right to apply to Council for a second rate structure; and an increase in the maximums covered herein will be favorably considered by Council, assuming an additional investment in equipment and an increase in operating costs.
- (E) Although no effort is made by this ordinance to establish maximum rates for commercial establishments nor for buildings requiring special arrangements for service, including apartment buildings, hotels and motels already possessing their own master distribution systems, the operator shall, before offering any such service, submit his proposed rate structure to Council for approval.
- (F) Additionally, if and when the services outlined in Paragraphs (A), (B), and (C) of Section 6 as possibilities for the future, are to be offered to subscribers, the operator shall, before offering said service or services, submit detailed proposals of all applicable rate structures to Council for approval.
- (G) A current, up-to-date copy of all the operator's rules, regulations and policies having to do with subscriber service will be kept on file with the Mayor. No rule, regulation or policy shall be contrary to provisions of this ordinance.

SECTION 8 SPECIAL REQUIREMENTS

- (A) The operator, in compliance with current rules and regulations of the Federal Communications Commission, shall afford full time, non-duplicated carriage to WBNS-TV, WLW-C, WOSU-TV and WTVN-TV and to any other television station licensed to the City of Columbus by the FCC and which goes on the air.
- (B) It is the intent of this section to require the carriage outlined in Paragraph (A) above, which shall be without the degrading of signals and without deletion of advertising or any material contained in such telecasts, even though the Federal Communications Commission at some future date might amend or even eliminate rules and regulations applicable to carriage and protection of local stations. Therefore, this particular provision shall remain in force so long as there are no laws, rules or regulations prohibiting such carriage, and so long as the operator is not forbidden to do so by the stations involved.

SECTION 9 SPECIAL PROVISIONS

Taking into account certain additional services which, to be successful, necessarily would have to cross corporate lines of many Greater Columbus municipalities, and considering these services to be in the public interest, and not wanting to curtail their development, the following services are specifically exempted from licensing requirements and excluded from fee payments to the City, so long as said services are offered by an operator holding a permit under ordinance.

- (A) Services created primarily for area hotels and motels, and utilized as a promotional-informational vehicle for Greater Columbus, reaching only guests in participating hotels and motels.
- (B) Services created for special and/or occasional closed circuit presentations, not for the viewing and/or listening of the general public.
 - (1) This particular exclusion/exemption is not applicable to any regular, continuing service or services which the operator may offer pursuant to Paragraph (C) of Section 7.
- (C) Services created for non-profit organizations.
- (D) The exemptions and exclusions detailed herein shall apply to both originations by the operator and to signals merely re-transmitted and/or distributed by the operator.

SECTION 10 PERMITS TO OPERATE COMMUNITY ANTENNA SYSTEMS IN THE CITY

- (A) No operator shall offer service to subscribers by means of a community antenna system within the City unless he holds a permit granted by ordinance of Council, and authorizing such a system within the City, and in, under and over the streets, highways and other public grounds of the City.
- (B) All permits granted by ordinances pursuant to this section shall be non-exclusive and non-assignable; and Council reserves the right to issue as many such permits as it deems advisable in the public interest.

- (C) Any permit granted under the terms of this ordinance shall be declared null and void one year from the date it is granted, and such permit shall be revoked unless the operator (or operators) who received said permit satisfactorily demonstrate to the Mayor compliance with the time-table set forth in Paragraph (D) below.
- (D) The operator, not later than six (6) months from the effective date of the ordinance granting him a permit, shall furnish to the Council, for approval, complete plans and specifications for the construction and operation of his system, including transmission and distribution, which insofar as is technically and economically practical shall call for service to all the incorporated area of the City, as of that date. Within thirty (30) days after receiving approval from Council, the operator must begin all the procedures to obtain whatever agreements, if any, are required from utility companies; and approvals from the various City departments required herein. After obtaining all these necessary agreements and approvals the operator shall begin construction of the system within ninety (90) days thereafter and shall continue at such a rate as to make the service contemplated by this chapter available to at least one-half of all residences in the City within one year after commencement of construction, and available to all residences, business establishments and other potential users in the City within two years after commencement of construction.
- (E) The permit shall take effect and will be in force from and after the earliest period allowed by law, and upon the filing by the operator with the Mayor of his acceptance, in writing, of each and all of the terms and provisions of this ordinance; provided, however, if the operator shall fail to file such written acceptance within thirty (30) days from the passage of the ordinance by Council, then the ordinance granting his permit shall be null and void.
- (F) If any section, sub-section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, or in conflict with rules and regulations of the Federal Communications Commission, then such portion shall be deemed a separate, distinct and independent provision of this ordinance, and such holding shall not affect the validity of the remaining portions hereof.
- (G) Any permit granted pursuant to this ordinance may be revoked by a simple majority vote of the Council upon the recommendation of the Mayor, for violation of provisions of said ordinance, by giving the operator ninety (90) days notice in writing of intention to revoke such permit unless such violation is corrected during the period of notice.
- (H) (1) The term of each permit shall be for a period of no more than ten (10) years, the effective date to be pursuant to Paragraph (E), above; with the right of renewal at the option of Council for succeeding periods, each to correspond to the original period of permit years, the request for such renewal to be filed by the operator with the Mayor at least six months before the expiration of the permit.
- (2) The operator shall be advised in writing, no less than ninety (90) days prior to the end of the period covered by his permit, whether his permit is to be renewed for another like period. And while it is not the intention of this ordinance

to provide for automatic renewals, no existing operation will be terminated without due and just cause.

SECTION 11 CONDITION OF SERVICE

- (A) No less than ninety (90) days after the initial offering of service to subscribers, the operator shall make available his basic monthly service to all applicants whose residences or commercial establishments are contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized for the transmission and distribution of signals.
- (B) In anticipation of ultimately making all services available to every dwelling unit and commercial establishment within the corporate limits, regardless of location, in accordance with Section 10 (D), above, the operator is to strive to achieve this goal as rapidly as possible, and is to keep the Council advised of all extensions of service beyond that contemplated in his original plans and specifications as approved.
- (C) All expanded service, once offered by the operator, shall be made available to all applicants whose residences or commercial establishments are contiguous to a main or lateral cable, or within range of radiowaves if radiowaves are utilized for transmission and distribution.
- (D) Service to multiple-unit buildings (including apartment houses and office buildings) will be subject to the permission of the owner or operator of each building.
- (E) The operator shall not, as to rates, charges, service, service facilities, repairs, maintenance, rules, regulations, or in any other respect, make or grant undue preference or advantage to any person or business, nor subject any person or business to any prejudice or disfavor.

SECTION 12 PERMIT FEES, AND PAYMENT THEREOF

- (A) The operator, for the privilege of holding a permit to operate a community antenna system in the City of Bexley, which entitles him to offer his service or services, and to install his distribution and transmission facilities in, under and over the streets, highways and other public grounds of the City, subject to the overall provisions of this ordinance, which have been conceived for the protection of the City and its citizens, shall make payments to the City as follows:
 - (1) The operator, each year, shall pay six (6) percent of all gross receipts to the City.
 - (2) The operator will be permitted no deduction from gross receipts with the exception of any direct sales or use taxes which may be imposed in the future on a portion or all of his receipts. Such direct sales or use taxes, whether the result of legislation passed by appropriate authorities creating new taxes or as the result of legislation expanding existing taxes, may be deducted by the operator from his gross receipts.

- (3) The operator shall pay a minimum fee of \$1,000 annually for the period of his permit.
 - (a) The first payment of \$1,000 shall accompany the operator's acceptance of his permit, as required by Paragraph (E) of Section 10.
 - (b) The operator shall have the option of operating under a calendar year or fiscal year plan; and the minimum fee may be prorated during his first year to correspond to his books, with a like, balancing adjustment during the final year of the period covered by his initial permit. Once the operating year has been established, payment of the minimum fee will be made within thirty (30) days following the start of each new year.
 - (c) The minimum fee shall be credited to the required six (6) percent of gross receipts payable annually to the City.
- (B) All payments to the City under this ordinance shall be made quarter-annually within the year as determined by the operator pursuant to Paragraph (3) (b) above.
 - (1) The first three quarterly payments may be on the basis of unaudited total gross receipts, and shall be due and payable within thirty (30) days of the end of each quarter.
 - (2) The year-end payment shall be due and payable within ninety (90) days after the close of the operator's operating year. The operator, at the time of this payment, shall submit complete accounting information to substantiate the amount of payments made; certified verification will be provided to the Finance Director, attested to by an independent audit of the operator's books made and certified to by a Certified Public Accountant.
- (C) All payments to the City shall be by check made payable to the City and either hand-delivered or sent by first class mail.
- (D) Council and the Mayor and their delegates shall have the right to reasonable inspection of the books, records, maps, plans and other like material of the operator at the office of the operator during normal business hours.

SECTION 13 BASIS OF SERVICE

The service to be offered by the operator shall be on a solely voluntary basis on the part of the subscriber, who, if his residence or commercial establishment is contiguous to main or lateral cables or within range of radiowaves if radiowaves are utilized for transmission and distribution, may subscribe to the aforementioned service at will. Under no circumstances will the operator require a subscriber to pay for service longer than the service is desired.

SECTION 14 DELAYS

Provisions of this section notwithstanding, delays in the performance of the operator's obligations under the ordinance which are caused by, equipment shortages, a state of war or national emergency, acts of God, or any circumstances beyond the control of the operator, as determined by the Council, shall not be construed to be in violation of the requirements set forth herein, and reasonable extensions of time shall be granted therefor.

SECTION 15 SCOPE OF ORDINANCE

- (A) This is an enabling ordinance authorizing the operation of a CATV system(s) in the City of Bexley, but it does not take the place of any franchise, license or permit which may be additionally required by law of the operator, either currently or at some later date.
- (B) It shall be the responsibility of the operator to obtain any and all such franchises, licenses or permits necessary to the operation and conduct of his business activities.
- (C) Failure of the operator to obtain and conform to the provisions of any and all such franchises, licenses or permits, and to make prescribed payments if required as a condition of their issuance, shall be considered in violation of this ordinance, and subject to the penalties set forth in Section 10 (G) and Section 17.

SECTION 16 STATEMENT OF INTENT

- (A) Considering the concept of the "wired city" to be valid and believing that it will not only become a reality in the foreseeable future but will require a combination of cable and off-the-air transmission for the ultimate in services, the philosophy of Council is as follows:
 - (1) In setting forth the guidelines for the operation of CATV (this, for all practical purposes, being the beginning of a "wired city"), insofar as Council may do so without being in conflict with rules and regulations of the Federal Communications Commission, it is the intent to make possible the offering of a variety of services, while at the same time affording the City and its citizens maximum protection.
 - (2) In these guidelines is recognition of the right of the operator (or operators) to have a profitable enterprise, and to return invested capital to stockholders with a gain.
 - (3) In summation, the philosophy might be stated as one based on mutual good faith, as involving the City, its citizens and the operator.
- (B) Underscoring certain pertinent facts having to do with communication ventures, primarily radio and television type services, which are considered relevant to the enabling legislation for CATV, and which are detailed below in sub-paragraphs (1), (2), (3), and (4), it is the stated intention of Council not to impose unreasonable ceilings on rates to subscribers (which in the final analysis, under the free enterprise system, will be dictated by the subscriber, and not by the operator or some regulatory body); nor to specify unrealistic fees to be paid by the operator to the City.
 - (1) The speculative nature of a CATV system required to compete in and to meet the demands of a "wired city" without the benefits (or protection) of an exclusive operator's permit, is noted, together with a need for substantial risk capital on a long term basis.

- (2) Restricted broadcast competition for radio and television station, a monopolistic condition created by FCC allocation tables or spectrum limitations, is noted.
 - (3) That broadcast stations pay no fees to anyone for using the public's air space for the transmission of their signals, is noted.
 - (4) And that broadcast stations are subject to no rules or regulations of the Federal government, where the right of regulation is solely vested, establishing maximum charges for advertising nor imposing a pre-determined rate of return on investment, are also noted.
- (C) Conversely, but as another facet of the mutual good faith philosophy introduced in part in Paragraphs (A) and (B) above, it is the stated intention of this ordinance to require maximum value service for subscribers in the City; therefore, Council retains the option, to be exercised upon recommendation of the Mayor, for a thorough annual review to ascertain (1) the fairness of the operator's rates; and/or (2) whether the fees paid to the City in previous years by the operator were adequate and/or justifiable, each as measured against the service or services being rendered subscribers; (3) whether the operations authorized hereunder continue to be in the public interest.
- (D) In order for the operator to meet the prerequisites of "maximum value service" to subscribers, his system necessarily must be viable, and a worthwhile investment for ownership; otherwise, operating funds for optimum service and sufficient additional capital for expansion and extension of service in the future, as both anticipated and desired by Council, will not be available.
- (1) It is to be emphasized that Council, with such an understanding as expressed in Paragraph (D), above, will never act capriciously or arbitrarily with its right of review as set forth in Paragraph (C) above; and no review will be undertaken, and no action detrimental to the operator proposed as a result of such a review, which are motivated by the operator's profit and loss record alone, the overwhelming issue in any and all reviews being the propriety of charges for service versus the service itself, this being of far greater import to Council than payments to the City.
- (E) Additionally (as initially set forth in Section 7 (B) re rates), no action with respect to rates and/or fees paid to the City will be taken without the operator being given opportunity to be heard by Council.

SECTION 17 PENALTY

In addition to the provisions of Paragraph (G) of Section 10, having to do with revocation of permits, this penalty shall apply:

Whoever violates any provision of this ordinance, shall be deemed guilty of a misdemeanor and fined not exceeding Fifty Dollars (\$50.00).

Any such violation shall constitute a separate offense of each successive day continued.

SECTION 18 This ordinance shall take effect at the earliest date allowed by law.

Passed: _____ 1971

President of the Council

Attest:

Clerk

Approved: _____ 1971

Mayor

1st Reading 1-19-71
2nd Reading 2-9-71
3rd Reading 2-23-71

Vote 3 no
2 yes
1 abst.

Failed
2/23/71

ORDINANCE NO. 5 -71

By: *Donald H. Wilson*

To authorize the Mayor to purchase a replacement police cruiser without formal bidding and advertising, and to declare an emergency.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BEXLEY, OHIO:

Section 1. That the Mayor be and he hereby is authorized to enter into a contract for the purchase of a new police cruiser without formal bidding and advertising, because of the real and present emergency which has arisen in connection with the operation of the Police Department, due to the fact that one of the police cruisers was demolished in an automobile accident and cannot be used.

Section 2. That this ordinance is an emergency ordinance necessary for the immediate preservation of the public peace, health and safety, said emergency being that the city is without the necessary number of operating police cruisers, and this ordinance shall go into immediate force and effect upon its passage and approval by the Mayor.

Passed: March 23rd, 1971

J. Ruth Crable
President of Council

Attest:

C. J. Karty
Clerk of Council

Approved: March 23rd, 1971

R. D. McClure
MAYOR

*Printed
3.24.71*