

ATTACHMENT A

ORDINANCE No. 4-82

AN ORDINANCE AMENDING ORDINANCE NO. 23-78 ENTITLED "AN ORDINANCE GRANTING TO TELEPROMPTER CORPORATION A NON-EXCLUSIVE FRANCHISE FOR THE OPERATION OF A CABLE COMMUNICATIONS SYSTEM"; AND DECLARING AN EMERGENCY.

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY DOES ORDAIN AS FOLLOWS:

Section 1. As presented in this ordinance only the portions of Ordinance No. 23-78 adopted October 4, 1978, which are hereby amended are reproduced. All other provisions of Ordinance No. 23-78 are hereby affirmed.

Section 2. Section 3 of the Ordinance No. 23-78 is hereby amended to read as follows:

"Access Center" means the studio, facilities and equipment provided by grantee under the terms of this franchise and used for cablecasting non-commercial public, educational and local government programming.

"Access Channels" means those channels required by this ordinance to be kept available by the grantee for partial or total dedication to public access, educational access, local government access, and leased access.

"Basic Service" means those services provided by the grantee for standard installation charge and a regular monthly charge paid by all subscribers.

"Cable Communications System" or "system" means a system of antennas, cable, amplifiers, towers, microwave links, waveguides, laser beams, satellites, earth stations, or any other conductors, converters, equipment, or facilities, designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic or electrical signals.

"Commission" means the Metropolitan Area Cable TV/Translator Commission established by Lane County, the City of Eugene, and the City of Springfield.

"Converter" means an electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, and increases the number of channels the subscriber may select.

(Eugene-Springfield) "Franchise territory" means the area within the legal boundaries of the grantor and including any areas annexed during the term of the franchise.

(Lane County) "Franchise territory" means the unincorporated area of the grantor within the Urban Service Boundary existing at the date of the franchise as those boundaries are designated by the Metropolitan Area General Plan adopted by Lane County, the City of Eugene, and the City of Springfield; and any other areas mutually agreed to by the grantee and the commission.

"Gross annual revenues" means any and all compensation in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by grantee.

"Monitoring" means observing a one-way communication signal, or the absence of a signal, where the observer is neither the subscriber nor the programmer, where the signal is observed by visual or electronic means for any purpose whatsoever.

"Pay Television" means television signals for which the grantee must pay a fee or charge other than statutory copyright fees, on a per program, per channel, per subscriber or similar basis. Provided, however, "pay television" does not include television signals which are broadcast anywhere and received at any place without the use of special reception devices, nor does it include television signals which are included in the services described in Section 5 of this franchise.

"Rate Schedule" means the charges for subscriber service approved by the grantor.

"Standard Installation Charge" means the cost to the subscriber for connection to the cable communication system in the amount specified in the current rate schedule.

"Streets" means the surface of and the space above and below any public street, sidewalk, alley easement, or other dedicated public way of any type whatsoever, now or hereafter existing as such within the jurisdiction of the grantor.

"Subscriber" means any person, firm, corporation, or other entity receiving electronic signals by means of the grantee's cable communications system.

"Plan submitted to grantee" means the service development plan submitted by grantee to grantor as part of the negotiations between grantor and grantee which preceded the adoption of the ordinance as appendix A and is incorporated by reference herein.

Section 3. Section 5 of the Ordinance No. 18284 is hereby amended to read as follows:

Section 5 Services Provided.

(1) Channel Capacity. The cable communication system operated by grantee at the time this franchise was adopted provided 10 channels and was increased to 27-channel capacity in accordance with the plan submitted by grantee which is appendix A to this ordinance. Before grantee further increases the channel capacity of its cable system, it shall submit to the Commission reports containing relevant information identified in Section 13 of this Ordinance no later than 60 days before undertaking installation of equipment to allow the Commission to review and comment on the proposal. The obligations of the grantee and the Commission as provided in Section 13 of this Ordinance shall apply to these reports and the grantee's submissions under Section 13 of this Ordinance may be in lieu of this requirement if submitted more than 60 days before grantee undertakes installation of equipment.

(2) Basic Service. (a) Basic service shall include all the telecast signals carried by the system on channels 3 through 13 as of January 1, 1982. Commencing with the broadcasting of television signals by a third local station with national network affiliation, but in any event before January 1, 1983, basic service shall include the following television signals on channels 2 through 13:

KEZI	The third local station w/network affiliation
KOAC	One access channel
KOZY	ESPN
KPTV	Westinghouse 24-hour new network
KVAL	CBS cable
Time-Weather	

As a substitute for interrupted signals and duplicate programming grantee may substitute programming from other broadcasts of cablecast signals. If new signals become available which grantee believes will be more marketable, or, if grantee is unable to provide the listed television signals because of circumstances reasonably beyond its control, equivalent, superior or required signals will be substituted, subject to the Commission's approval. In no event shall subscribers be required to subscribe to any other service as a condition for obtaining basic service.

(b) When a channel in Basic Service is dedicated for access programming, the provisions of this paragraph shall be of no force and affect. At least until the number of activated channels is increased, public, educational, and governmental

access use of one channel shall have priority over local origination programming of the grantee, subject to giving grantee not less than 48 hours' prior written notice if a specific time period is requested for access programming. Upon a showing of grantee that an individual or group has requested a specific time for public, educational and governmental access programming and has failed to provide programming for that time, grantee may deny future requests for specific times from that individual or group; such individual or group whose future requests(s) is denied shall have the right to appeal to the Commission, whose decision shall be final.

(3) Control Keys. Pay television subscribers shall, upon request, be supplied with control keys at a reasonable monthly charge to limit viewing of pay television on individual television sets.

(4) Additional Tiered Service. (a) Upon completion of the plan submitted by grantee (appendix A), grantee will immediately offer an optional service package, using converters, consisting of at least the following broadcast, satellite, and automated channels:

CHEK	Victoria, BC
KSTW	Tacoma, Washington
KATU	Portland, Oregon (all programming permitted by FCC rules)
CBN	24-hour religious programming (from satellite)
WTBS	Atlanta, Georgia

ESPN Sports
SPN Independent

Two access channels

When ESPN is included in basic service KTVU, Oakland, California, shall become part of this tiered service. Except for channels allocated for access channels, if any of these services are not available or if new signals become available which grantee believes will be more marketable, equivalent programming will be substituted, subject to the Commission's approval.

(b) Except as provided in this paragraph there will be no charge for this additional service. Subscribers may purchase a converter from grantee at grantee's cost or elsewhere, or may rent a converter from grantee at a monthly charge not to exceed \$2.00 which shall include maintenance service by grantee. If grantee delivers and installs a converter at a subscriber's request, grantee may charge an installation fee as approved by the Commission.

(c) In addition, at the time of any rate review and on the franchise review dates referred to in Section 16(2), the subject of converters and additional channels may be re-opened by grantee or the Commission for determination of whether converters should be made mandatory throughout the system or should continue on an optional basis, and whether or how additional channels are to be made available within the system. The procedure set forth in Section 16(2)(c) shall apply to this Paragraph 5(4)[(d)](c).

Any determinations under this subsection 5(4) shall be based upon consideration of at least the following factors:

(i) The need for additional channels and availability of additional programming, including access channels and programming as defined in Section 3;

(ii) The availability of devices and technology for increasing the number of activated channels, including various types of converters, built-in capacity of television receivers, and any other relevant technology developments; and

(iii) The probable costs and benefits to subscribers.

(5) Service to Institutions. Upon request, the grantee shall make single installations of its cable communication system facilities to each fire and police station, public school, City Hall, County Courthouse and all public libraries within the franchise territory on the terms provided in Section 7(2) of this Ordinance except no standard installation fee shall be imposed for such installations. No monthly service charge shall be made for distribution of the services described in this section to these locations.

(6) Access Facilities and Equipment. (a) Grantee shall maintain a studio within the franchise territory with facilities and equipment for access program origination. Grantee shall by December 31, 1982, make available to the Commission a premises for the access center under terms and conditions mutually agreed to by grantee and the Commission and purchase equipment for the access center as directed by the Commission for a cost to grantee

of no less than \$140,000. Grantee shall purchase additional equipment as directed by the Commission for a cost to grantee of no less than \$60,000 by December 31, 1983. In addition, for calendar years 1982, 1983 and 1984, grantee shall provide: one full-time technician employed by grantee to maintain the access center equipment and shall pay the Commission or its designee for operation of the access center \$50,000 per year on or before January 31 of each year, except in 1982 payment shall be made within 30 days of grantee's acceptance of this amendment to the franchise ordinance. No later than September 30, 1983, grantee and Commission shall review the use and financial support for the access center, the potential for increasing community use and financial participation and the possibility of adjusting grantee's and grantor's financial support.

(b) Grantee shall maintain studio, facilities, and equipment in satisfactory condition both electronically and mechanically without charge.

(c) Until the access center is cablecasting programs on the dedicated channel within basic service, grantee shall continue to operate a studio and equipment for access programming as provided in subsections (6) and (7) of Section 6 of the franchise ordinance before adoption of this amending ordinance.

(7) Access Channels. Grantee shall provide one channel dedicated for public, educational and local government access programming within the basic services as provided in subsection (2) of this section. Grantee shall also provide two additional

access channels one of which shall be capable of being viewed on channel 4 with a decoding device. There shall be no monthly charges or rental for the device which grantee shall sell to subscribers at grantee's cost. Grantee's charge for installation of the device shall be an amount approved by the Commission. Within 120 days of written notice to the grantee by the Commission, grantee shall provide a fourth access channel when the other three channels are scheduled with new programming 80% of prime time (daily 6:00 p.m. to 11:00 p.m.) and when the balance of the cablecast day (daily 8:00 a.m. to 6:00 p.m.) is scheduled 60% of the time. The percentages will be measured over a 90-day period.

(8) Emergency Use. In the case of any emergency or disaster, the grantee shall, upon request of the grantor, make available its facilities for emergency use during the emergency or disaster period at no cost to the grantor. The system shall be designed so that viewers on all channels can receive immediate notice of the emergency cablecast.

Section 4. Section 6 of the Ordinance No. 18284 is hereby amended to read as follows:

Section 6. Rates for Installation and Services.

(6) Rate Change Procedures.

(c) In all rate review proceedings, the issue shall be whether the rate(s) under review produce a fair rate of return on grantee's investment in the system serving the franchise area and whether grantee is in compliance with the terms of this

Ordinance. The rate of return shall be calculated by dividing the following numerator by the denominator:

NUMERATOR shall be the sum of the net income after federal taxes for each of the past three calendar years.

DENOMINATOR shall be the sum of the average assets for each of the past three calendar years. Each year's "average assets" will be determined by adding the net property, plant and equipment plus working capital allowance at the beginning of the year to the net property, plant and equipment plus working capital allowance at the end of the year and then dividing that sum by two. "Working capital allowance" is calculated by subtracting from annual operating costs the sum of annual depreciation and interest and then multiplying the result by .12329.

The burden of establishing the reasonableness of a rate change shall be upon the party requesting the rate change.

Section 5. Section 16 of the Ordinance No. 18284 is hereby amended to read as follows:

Section 16. Duration, Renewal and Renegotiation.

(1) Duration and Renewal. This franchise and the rights and privileges granted herein shall take effect thirty (30) days after the date this ordinance is passed by the grantor and remain in effect for fifteen (15) years from that date unless terminated sooner under provisions of subsection (4) of this section; provided, however, that the terms of the franchise must be unconditionally accepted by the grantee in writing, signed by

an officer of the corporation within thirty (30) days after the date this ordinance is passed by the grantor. At the end of the initial 15-year term, at the discretion of grantor this franchise may be renewed for an additional ten (10) year term upon a showing by grantee that it is in substantial compliance with the terms and conditions of the franchise and is rendering services and implementing the written programs and policies in effect resulting from the franchise review process established in subsection (2) of this section.

(2) Franchise Review. (a) As need arises, and at least at the end of the 3rd, 6th, 9th and 12th years of the term of the franchise, the Commission shall meet to review the franchise performance, generally, and in particular, the following matters:

(i) Use of channel space, including public access channels and programming, and the need for activation of additional channels as set forth in Section 5(4);

(ii) Service extension policies set forth in Section 7, including, but not limited to, changes in urban service boundaries affecting areas to be served by grantee;

(iii) Technical adequacy of the system, including, but not limited to, picture quality, two-way transmission capacity, and compliance with standards set forth in Section 8;

(iv) New technological, regulatory, or legal developments affecting the franchise, grantee's operation, or grantor's

regulatory authority hereunder, and including changes in FCC authority, rules, or regulations; and

(v) The franchise fee set forth in Section 10.

(vi) Cable services and programming available in comparable systems to grantee's. "Comparable systems" shall mean those systems with similar facilities, equipment, channel capacity, age of franchise and system and number of subscribers and population served.

(b) The grantee shall be represented at these meetings by a representative of the corporation authorized to speak on behalf of the head office of the corporation on questions of corporate practice, policy, plans, or other matters concerning the cable communications system in the franchise territory.

(c) Any matters within the categories enumerated in Subsection (2) (a) above, on which agreement is not reached after good faith negotiation in the course of these review proceedings, shall be submitted to binding arbitration pursuant to Section 15 herein, without need of further agreement to arbitrate, as otherwise required in Section 15(4). Upon decisions of the arbitrator(s), this ordinance shall be amended to the extent necessary to implement said decision.

Section 6. Section 23 of the Ordinance No. 18284 is hereby amended to read as follows:

Section 23. Access Programming.

(1) When a channel in basic service is dedicated for access programming, the provisions of this subsection shall be of no

force and effect. Grantee will provide all available time on KOZY-TV up to 18 hours per broadcast day, with the exception of the 24-hours per week of religious programming currently provided, for general public-access programming. When the hours available for public-access programming are not being used for that purpose, grantee will continue to program the channel for those unused hours.

(2) The Commission shall operate and control the access center and the four access channels provided by grantee in Subsection 6(7) of this Ordinance when used for non-commercial purposes. The Commission's use of the access channels shall have priority over other uses except upon prior approval by the Commission. The Commission shall adopt rules and regulations for the operation and control of the access center and use of the access channels, none of which shall be contrary to grantee's obligations under the law. The rules and regulations shall (a) prohibit the presentation of any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of political candidates for office), lottery information and obscene or indecent matter; (b) require non-discriminatory access and rates; (c) require the maintenance of records regarding request for and use of the access center and access channels; and (d) provide for public inspection of the records and further provide grantee with copies thereof weekly.

Section 7. This ordinance shall take effect 30 days after the date this ordinance is passed by the grantor; provided

however, that the terms of these amendments to Ordinance No. 23-78 must be unconditionally accepted by grantee in writing, signed by an officer of the corporation within 30 days after the date this ordinance is passed by the Board of County Commissioners of Lane County.

Section 8. To provide for the orderly administration of the television cable system franchise and to provide the citizens with reliable television cable service, it is hereby declared that an emergency exists and that it is necessary for the immediate preservation of the peace, health and safety of the citizens of Lane County that this ordinance shall be in full force and effect from and after passage and approval by the Board of County Commissioners of Lane County.