ORDINANCE NO. 1736

AN ORDINANCE of the City of Kent, Washington, granting to Clearview T.V. of Enumclaw, Inc., a franchise to construct, operate and maintain a community antenna television system for television signal distribution within the City limits of the City of Kent, Washington for a period of twelve (12) years.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The City of Kent, hereinafter referred to as the "City", hereby grants to Clearview T.V. of Enumclaw, Inc., a corporation organized under the Laws of the State of Washington, and having its principal place of business in the City of Enumclaw, Washington, County of King, State of Washington, hereinafter referred to as the "Grantee", under the conditions and limitations herein prescribed, the right, privilege and authority, and franchise to install, lay down, maintain, and operate underground pipes and conduits with the necessary manholes and other appliances therefor and to erect, to the extent permitted under Kent Ordinance No. 1695 (Underground Wiring Ordinance), standard utility poles with or without crossarms, stretch wires and cables and antennas or other appurtenances thereof, in, over, upon and under the streets, alleys and public highways of the City of Kent, Washington, and to maintain and use the same for the purpose of operating a coaxial cable subscription system for community antenna television signal distribution to subscribers' homes and to such business and other establishments, apartments, hotels and other premises as may also desire such service, hereinafter called "CATV", and for no other uses or purposes whatsoever.

Section 2. The construction of new facilities or the extension of existing facilities within Grantee's service area
shall be done only in accordance with a plan or design first submitted to and approved by the City Engineer and pursuant to a permit issued by said Engineer authorizing such construction of new facilities or extension of existing facilities within all or a portion of such service area. All poles, cables, wires, antennas or conduits or appurtenances shall be constructed and erected in a neat, workmanlike manner and shall be of such height and occupy such position as the City Engineer shall direct. Whenever it is practicable to make use of poles already in said streets, Grantee shall make use of such poles; provided, that in any district in the City which has telephone, telegraph and electric power wires and cables laid underground, Grantee shall not be permitted to erect poles and run or suspend wires, cables, or other conductors thereon, but shall lay such wires, cables or conductors in underground pipes or conduits; and if prior to the passage of any such ordinance designating any such district in said City, Grantee shall have erected poles in such districts and suspended wires, cables, and other conductors thereon, Grantee shall, upon the passage of such ordinance and within such period of time thereafter as may be designated in such ordinance, at its own cost and expense, remove its poles, cables, and wires from the surface of the streets within such district, and shall place the same in underground pipes or conduits in conformity with the requirements of the City Engineer and shall not thereafter erect or maintain any poles whatever therein. Where telephone and lighting utilities are compensated by property owners for part or all of the cost of relocating facilities underground by the local improvement district method or otherwise, Grantee shall be entitled to receive a comparable portion of its undergrounding cost, that is, the same consideration as a utility, as a condition to relocating its facilities underground.

Section 3. Nothing in this ordinance shall be construed to prevent the City from sewering, paving, grading, altering, or otherwise improving or re-improving any of the streets of the City including the installation of City owned utilities; and the City shall not be liable for any damage resulting to the Grantee by reason of the performance of such work or by exercise of such
rights of the City. This ordinance shall not be so construed as
to deprive the City of any rights or privileges which it now has
or which may hereafter be conferred upon it, to regulate and con-
troll the use of streets. Whenever and to whatever extent any
street shall be improved or the grade thereof changed, modified,
raised or lowered, or the size, position, or location of any City-
owned public utilities changed, modified or altered, and of the in-
stallations belonging to the Grantee which may be affected by or
shall conflict with any such changes, alterations, or modification,
shall be promptly adjusted, removed, altered, raised, lowered, or
otherwise modified to conform to the improvements or changes made,
by and at the cost and expense of Grantee and in conformity with
the requirements of the City Engineer. The City shall at all times
have the right to make free use of any or all of the poles of said
Grantee for wires, cables and conductors to carry any City-owned
systems or facilities requiring such use.

Section 4. Whenever it shall be necessary to the erec-
tion of poles or in the construction of underground pipes or con-
duits, to excavate in any portion of any street, the Grantee shall
file with the City Engineer a petition therefor together with
plans, designs and drawings on a reasonable scale, setting forth
the streets to be disturbed and obtain a permit from and approval
of the City Engineer for so doing before beginning such work.
After any poles are erected, or such pipes or conduits constructed,
Grantee shall promptly replace any portion of the street disturbed
by such work, in a neat and workmanlike manner to its original con-
dition and as required and approved by the City Engineer.

At all times during the period of this grant, the Grantee
shall keep on deposit in the City Treasury to the credit of the
City Engineering Department, the sum of ONE THOUSAND (1,000.00)
DOLLARS in cash to be used by said City Engineering Department for
the purpose of restoring streets in the manner prescribed by said
City Engineer, to pay the reasonable cost of any city inspection
necessitated by Grantee's actions pursuant to this franchise and
to pay the cost of raising or removing of any wires, cables, or
conductors as provided in Section 9 hereof.
Section 5. Construction, maintenance and operation of Grantee's CATV system, including house connections, shall be in accordance with the provisions of this franchise and in accordance with the provisions of all applicable codes and ordinances, including the City Electrical Code, if any, as the same may hereafter be amended, and Grantee shall comply with all applicable state and federal laws and rules and regulations of the Federal Communications Commission relating to CATV systems.

Section 6. Grantee will provide television signals to all public and private, non-profit educational institutions within Grantee's service area at no cost for use in the teaching facilities of such institutions and will also provide television signals at no cost to such municipal buildings in Grantee's service area as may be designated by the City Council. The point of connection for such service will be at the distribution cable as it is constructed along the street and said education institutions or the City in the case of municipal buildings shall install or pay the cost of installing the drop for such distance as is necessary from the point of cable connection to the building to be served and any distribution cables within such building, and shall maintain the same from the point of connection. No guarantee need be made by Grantee as to the quality or strength of television signals transmitted beyond the point of cable connection.

Section 7. Neither Grantee nor any of its officers, agents, or employees shall engage in the business locally of selling, servicing or repairing television sets of other receivers or parts therefor which make use of standard broadcast entertainment signals transmitted by its system; provided, however, that nothing herein shall prevent Grantee from making necessary modifications and adjustments to subscribers' television receivers to insure proper operation under conditions of cable connection at the time of installation or in response to subscribers' complaints, or from selling, servicing or repairing receivers and other equipment used by other CATV system operators in the conduct of their business.
Section 8. The Grantee agrees that it will diligently pursue the construction of its facilities to the end that all persons residing within an area for which Grantee has been granted a permit for the construction of new facilities or the extension of existing facilities will be offered such service within 180 days after the issuance of said permit by the City Engineer in accordance with Section 2. hereof. Grantee further agrees to commence actual construction of the necessary facilities in any such area within ninety (90) days after issuance of such permit. Unless the City Engineer has upon cause shown extended the time within which to substantially complete construction of CATV facilities in an area for which a permit has been granted, service shall be commenced within the time specified herein or the applicable permit may be cancelled and revoked, in which latter case any facilities installed shall be removed by Grantee and at Grantee's cost and expense.

Section 9. Whenever permission is obtained from the City Engineer for use of any streets of the City for the purpose of; moving any building or structure, Grantee, upon forty-eight (48) hours notice from the City Engineer shall raise or remove any wires, cables, or conductors which may obstruct the removal of such building or structure; and in case of Grantee's refusal or failure to comply with such notice, the City Engineer may raise or remove such wires, cables, or conductors at the expense of Grantee for the purpose aforesaid.

Section 10. That the rights and privileges herein granted shall not be deemed exclusive, and the right is hereby reserved to the City to grant to any other person, company, corporation, or association, or by itself to exercise the rights and privileges herein granted; and the franchise, rights and privileges granted by this ordinance shall be subject to the right of the City Council, at any time subsequent hereto, to repeal, amend, or modify this ordinance and grant with due regard for the rights of the Grantee and the interest of the public; and to cancel, forfeit, and abrogate the rights and privileges granted by this Ordinance if the same are not exercised in full accordance with the pro-
visions hereof, or at all; and at any time during the life of such
grant to acquire, by purchase or condemnation, for the use of the
City itself, all the property of the Grantee within the limits of
the public streets, at a fair and just value, which shall not in-
clude any valuation for the franchise itself, or of any of the
rights and privileges hereby granted, and the grant shall there-
on terminate.

Section 11. The rights, privileges and franchise herein
granted shall cease and terminate twelve (12) years from the ef-
effective date of this ordinance. However, in the event that Grantee
has fully and faithfully complied with all the terms and conditions
of this franchise, then Grantee has the option to renew the same
for two successive five-year periods upon the termination of the
original twelve-year period, provided, however, that the City re-
serves the right to alter, modify and change the fees and method
of payment provided for in paragraph 12. Within ninety (90) days
after termination, the Grantee, if required by the City Engineer,
shall at its own cost and expense remove all of its CATV facili-
ties and installations from the city streets and shall place all
portions of said streets that may have been disturbed in as good
condition for public use as the abutting portions thereof.

The CATV system of the Grantee installed hereunder shall
not be abandoned, either in whole or in part, without the consent
of the City Engineer.

Section 12. The Grantee shall pay to the City of Kent
on the 10th day of February, the 10th day of May, the 10th day of
August, and the 10th day of November, each year, an amount equal
to four per cent (4%) of the gross income received for such ser-
vices rendered in the City of Kent for which any part of the rights
exercised under this franchise are used. Such quarterly payments
shall be based on the gross income from such business for the
three-month period preceding these dates and ending respectively
on December 31, March 31, June 30, and September 30, each year.
Said quarterly payments shall become delinquent if not paid on or
before thirty (3) days after the date due, and shall thereafter
bear interest at the rate of ten per cent (10%) per annum of the
amount due until paid.
Section 13. The Grantee shall forfeit and shall be deemed to have forfeited and abandoned all rights and privileges conferred by this ordinance, and this ordinance shall be null and void and of no force or effect unless Grantee shall within thirty (30) days after the effective date of this ordinance file with the City Clerk its written acceptance of the rights and privileges hereby conferred and the terms, conditions and restrictions hereby imposed.

Section 14. That the Grantee by its acceptance of this ordinance and the rights, privileges and franchise hereby granted, does covenant and agree for itself, its successors and assigns, with the City of Kent to at all times protect and save harmless the said City from all claims, actions, suits, liability, loss, costs, expenses, or damages of every kind or description which may accrue to, or be suffered by, any person or persons or property, and to appear and to defend at its own cost and expense any action or suit instituted or begun against the City for damages by reason of the construction, reconstruction, readjustment, repair, maintenance, operation, or use of said streets or anything that has been done or may at any time be done by said Grantee, its successors or assigns, by virtue of this ordinance, and in case judgment shall be rendered against said City in any such suit or action, said Grantee shall fully satisfy the judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to the City.

Section 15. So long as the Grantee shall exercise any right or privilege granted by this ordinance, it shall provide and maintain in full force and effect public liability insurance, with the City as an additional insured, providing for a limit of not less than ONE HUNDRED THOUSAND (100,000.00) DOLLARS for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of not less than FIVE HUNDRED THOUSAND (500,000.00) DOLLARS for all damages arising out of bodily injuries to or death of two or more persons in any one occurrence; and property damage liability insurance providing for a limit of not less than FIFTY THOUSAND (50,000.00) DOLLARS
for all damage arising out of injury to or destruction of property in any one occurrence. A copy of such policy or certificate evidencing the same shall be filed in the office of the City Clerk prior to issuance of any permit for construction and shall provide for ten (10) days notice to the City of any change, cancellation or lapse thereof.

Section 16. Grantee shall have the right to charge and collect reasonable compensation from anyone to whom it shall furnish CATV service except as otherwise provided in this ordinance; provided, the rates charged must be uniform for the same class of customers or service. No extra or special charges may be imposed or collected for programs or presentations not available generally to off-the-air television receivers. Except as may be now or hereafter otherwise provided by law, the legislative authority of the City shall have supervisory jurisdiction and control over the services authorized by this franchise and all rates and charges therefor, to the same extent as the Utilities and Transportation Commission of the State of Washington now has over the rates, charges and services of utilities which are subject to the jurisdiction of such Commission; provided, that the legislative authority of the City shall never prescribe rates other than such as shall be just, reasonable, adequate and sufficient, and that its jurisdiction and control shall at all times be subject to review by Courts.

Section 17. The rights and privileges hereby granted shall not be assignable or transferable by operation of law, nor shall said Grantee assign, transfer, mortgage or encumber the same without the consent of the City Council of the City given by resolution.

Section 18. This Ordinance shall not be voted upon until at least one week shall have elapsed after its introduction; that it shall require the affirmative vote of at least five (5) members of the Council, and the approval of the Mayor.

Section 19. This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication, as provided by law.

ISABEL HOGAN, MAYOR
ATTEST:

MARIE JENSEN, City Clerk

APPROVED AS TO FORM:

DONALD E. MIRK, City Attorney

Passed the 7th day of Sept., 1971.

Approved the 8th day of Aug., 1971.

Published the 12th day of Aug., 1971.

I hereby certify that this is a true copy of Ordinance No. 1936, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as here- on indicated.

MARIE JENSEN, City Clerk (SEAL)