

37-R-96

A RESOLUTION

APPROVING A SETTLEMENT WITH CONTINENTAL CABLEVISION
ACQUISITIONS OF NORTHERN ILLINOIS, INC. REGARDING
ISSUES RELATED TO PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS

WHEREAS, the City of Evanston, Illinois ("City") has been certified by the Federal Communications Commission to regulate the basic Service Tier and associated equipment of Continental Cablevision Acquisitions of Northern Illinois, Inc. ("Continental") in the City; and

WHEREAS, Continental's current rate for basic cable service is \$7.95 per subscriber per month, plus the franchise fee paid to the City; and

WHEREAS, the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996 ("Cable Act"), provides at 47 U.S.C. Section 542(b): "For any twelve-month period, the franchise fees paid by a cable operator with respect to any cable system shall not exceed 5 percent of such cable operator's gross revenues derived in such period from the operation of the cable system to provide cable services...", and

WHEREAS, the Cable Act provides that the term "franchise fee" as used in section 542 does not include "in the case of any franchise in effect on the date of the enactment of this title [October 30, 1984], payments which are required by the franchise to be made by the cable operator during the term of such franchise for, or in support of the use of, public, educational, or governmental access facilities" (47 U.S.C. Section 542(g)(2)(B)) and does not include "in the case of any franchise granted after such date of enactment, capital costs

which are required by the franchise to be incurred by the cable operator for public, educational, or governmental access facilities", and

WHEREAS, the City places a high priority on the value of public, educational, and governmental ("PEG") access to the community; and

WHEREAS, Continental and the City find it in the best interest of PEG access that the current access studio under Continental's lease be available for up to six months after April 20, 1996, with the cost shared equally by them; and

WHEREAS, Continental contends that payments for PEG access that have been placed in escrow by the City are the property of Continental because they were paid pursuant to the terms of Franchise Agreement with a stated expiration date of April 19, 1996 and were to be utilized for a specific purpose during the term of such Franchise Agreement; and

WHEREAS, Continental and the City have negotiated the terms of a Cable Communications Franchise ("1996 Franchise") to replace the Cable Communications Franchise Agreement that was assigned to Continental pursuant to Resolution 55-R-95, approved July 10, 1995; and

WHEREAS, in consideration of the agreements embodied in this Resolution, Continental is willing to release any right to, and terminate its claim to, the payments for PEG access that were placed in escrow by the City; and

WHEREAS, both Continental and the City find that it is in their mutual best interest to agree to the 1996 Franchise Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON:

SECTION 1: Continental and the City will share equally the costs of the current PEG access studio under Continental's lease for six months after April 20, 1996.

SECTION 2: The City shall pay to Continental the amounts due pursuant to Section 1 of this Resolution on a monthly basis and Continental will add \$0.40 per month per subscriber to its basic rate for six (6) months for its share set forth in Section 1 after appropriate notice to subscribers.

SECTION 3: Continental will add \$1.00 per month per subscriber to its basic rate for twenty-four (24) months and pay the proceeds to the City to be utilized for PEG access after appropriate notice to subscribers.

SECTION 4: Continental will add \$0.77 per month per subscriber to its basic rate for thirty-six (36) months after appropriate notice to subscribers or the PEG Access capital payments to the City set forth in Sections 8.13 C 1, 2 and 3 of the Franchise Agreement.

SECTION 5: Continental will add up to \$1.92 per subscriber per month to its basic rate for twelve (12) months commencing on the third anniversary of the effective date of the Franchise Agreement for the PEG Access capital payments to the City set forth in Section 8.13 C 4 of the Franchise Agreement.

SECTION 6: Beginning with the effective date of this Resolution, the current \$7.95 rate for basic cable service shall be deemed to contain no amounts for PEG access, and any amounts paid by Continental for PEG access pursuant to Sections 1, 2, 3, 4, and 5 of this Resolution and Section 8.13C of the 1996 Franchise may be treated by Continental as external costs.

SECTION 7: Continental shall be permitted to reflect on its bills to subscribers as a

separate item as external costs all amounts charged to subscribers and which are paid by Continental to the City for PEG access pursuant to Section 1, 2, 3, 4 and 5 of this Resolution and Section 8.13C of the 1996 Franchise Agreement.

SECTION 8: Any amounts collected by Continental from subscribers pursuant to this Resolution shall not be included as gross revenues for purposes of calculating franchise fee payments.

SECTION 9: The City agrees that any charges to subscribers by Continental pursuant to the terms of this Resolution are authorized and would not be precluded by any rate orders of the City.

SECTION 10: This Resolution shall not become effective unless (a) Continental releases any right to, and terminates its claim to, the payments for PEG access that have been placed in escrow and (b) Continental accepts the 1996 Franchise in its entirety.

SECTION 11: The terms of this Resolution shall be applicable to any successor to or assignee of, Continental to the 1996 Franchise Agreement.

SECTION 12: That this Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Lorraine H. Norton

Mayor

ATTEST:
Kristen Davis

City Clerk

Adopted: *Adopted June 24, 1996*
