

99-5

ORDINANCE OF THE CITY OF ROCKPORT**AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO
OHIO VALLEY CABLE, AN INDIANA CORPORATION**

WHEREAS, the council of the city of Rockport (the "Council"), at a regularly scheduled meeting pursuant to a full and public hearing at which Council gave consideration to a proposal presented concerning a cable television system, and at which the testimony of all interested parties was taken and fully considered, hereby state their full approval of the legal character, financial, technical and other qualifications of Ohio Valley Wireless, Ltd., d/b/a Ohio Valley Cable, an Indiana Corporation and on the basis thereof:

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROCKPORT, AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF THE SAME, AS FOLLOWS:

SECTION 1. To the extent that the same may be lawfully given, and subject to the conditions herein set forth, the non-exclusive right be and the same is hereby granted by the City of Rockport, County of Spencer, of the State of Indiana, to Ohio Valley Wireless, Ltd., d/b/a Ohio Valley Cable, an Indiana Corporation (the "Company"), to construct, operate and maintain cable television system transmission and distribution facilities, including, but not limited to, the erection of poles, cables, wires and other appurtenances and additions thereto, in, over, under, along, across and upon the streets, lanes, alleys, avenues, sidewalks, bridges, tunnels, highways, parking lots and other places in the City, and subsequent additions thereto, for the purpose of transmission by cable and distribution of radio and television impulses and energy and other information or matter for sale to the inhabitants of the City and other purposes, under the terms and conditions hereinafter set forth (the "CATV System").

SECTION 2. The Company shall procure any and all easements, rights of way, covenants, grants, certificates of approval and permits which may be required from any private persons or corporations or from any Federal, State, municipal or other governmental authority and from the utility companies operating in the City for or in connection with the placing, maintaining or using of the attachments and the television cable herein referred to or the granting of this right.

SECTION 3. (A) The Company agrees to maintain and keep in full force and effect at all times during the term of the Ordinance sufficient liability insurance coverage to protect the City against any such claims, suits, judgements, executions, or demands in a sum not less than \$250,000 per person in any one claim; \$250,000 as to any one accident or occurrence; and not less than \$250,000 for property damage as to any one accident or occurrence provided, however, that the City shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by lawsuit or otherwise, made against the City on account of or arising out of any act or omission connected with the

operation of this Ordinance.

(B) The Company shall also maintain in full force and effect through the duration of this Ordinance sufficient Workmen's Compensation insurance coverage to adequately and fully protect its' agents and employees as required by law.

SECTION 4. All the Company's attachments and installations shall be made and maintained at the Company's sole expense, in safe condition and thorough repair and in such place and manner as shall be approved by the City. Upon receipt of written notice at any time from the City that said attachments interfere with the primary use and purpose of said City property or highways, the Company shall, at it's own expense, remove, alter, rearrange, improve or repair such attachments in such manner as the city may reasonably direct.

SECTION 5. The Company shall indemnify and save harmless the City at all times during the term of this Ordinance from and against any and all losses resulting from injuries or damage to persons or property including injuries to the employees of then City or damage to the property of the City arising out of negligence of agents from or in any manner by actions or omissions of the Company or its agents while engaged in the work of construction, operating or maintaining the CATV System; and such loss shall include all payments made by the City to any of its injured employees or to their relatives or representatives, pursuant ton any statute or resolution, whether based on negligence on the part of the employer or not. Further, the Company agrees to defend, fully indemnify and save harmless the City from and against any and all claims and demands whatsoever, including any claims or demands from any source whatsoever on account of license or copyright infringements or violations of any transmittal rules and regulations of the Federal Communications Commission (the "FCC") or other governmental regulatory bodies, provided, however, that the City shall notify the Company in writing within thirty (30) days after notice or presentation of any claim or demand, either by suit or otherwise, made against the City on account of or arising out of any act or omission connected with the operation of this Ordinance.

SECTION 6. (A) Upon the written request of the Council, the Company shall furnish free installation and free basic service for one (1) outlet in the City Hall, City Firehouse and City Garage, provided, however, that nothing herein shall require the Company to construct additional distribution facilities to service the City Hall, City Firehouse and/or City Garage.

(B) Upon written request of any school in the South Spencer County School System, the Company shall furnish free installation and free highspeed internet service of one (1) outlet for one (1) user in each school in the South Spencer County School System, provided, however, that nothing herein shall require the

Company to construct additional distribution facilities to service such school.

(C) The Company shall provide one channel for use by the City of Rockport and any of its authorized governmental units and agencies as may be designated by the City of Rockport within three (3) months upon passage of this franchise.

(D) The Company shall provide one channel for use by the South Spencer County School Corporation within three (3) months upon passage of this franchise.

SECTION 7. (A) The Company is hereby authorized to extend the distribution facilities within the franchise area to the extent that such extension is or may become economically feasible.

(B) In the event additional adjacent territory is incorporated within the City limits, by annexation or otherwise, the City's rights and duties under this Ordinance shall be deemed to include such additional territory. The Company shall make cable service available to such annexed area as long as it is economically feasible to do so. As used herein, "economically feasible" shall mean that there are at least 40 homes per mile adjacent to the existing cable television system distribution plant.

SECTION 8. The Company shall pay to the City a franchise fee of five percent (5%) of Gross Annual Receipts, provided that the franchise fee shall commence at three percent (3%) for the first year of the franchise and increase by one percent (1%) each time Company has a rate increase until such fee reaches the maximum allowed by law, which is presently five percent (5%). "Gross Annual Receipts" shall mean any and all compensation in the form of gross monies, received directly from subscribers in payment for monthly basic and monthly premium cable television subscription services received within the City. Gross annual receipts shall not include convertor, remote control fees or installation charges nor shall gross annual receipts include any taxes on services furnished by the Grantee imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Grantee for such governmental unit. All franchise fees to be paid by the Company shall be paid within ninety (90) days after the close of its fiscal year. The Company shall make its books and records pertaining to Gross Annual Receipts available for inspection at all reasonable times for Council.

SECTION 9. In consideration for the foregoing rights and privileges, the Company agrees to the following terms and conditions:

(A) Neither the Company nor any of its agents or employees shall at any time repair, attempt to repair, sell or

attempt to sell television or radio sets or parts thereto; nor shall they recommend or solicit business for any television or radio dealers or repairmen, provided, however, that this provision shall not apply to the routine operation and maintenance of the CATV System and service connected therewith.

(B) The Company shall expeditiously investigate and resolve all subscriber complaints concerning the operation of the CATV System, normally within twenty-four (24) hours but not later than forty-eight (48) hours, except in cases of emergencies. A record shall be made of all complaints received showing the name of the complaining party, the complaint and the action taken to rectify the complaint. Said record shall be kept for a minimum of two (2) years.

(C) After having reasonable notice of at least seventy-two (72) hours prior to the move, the Company shall comply with all moving permits issued by the City by temporarily raising or lowering its wires to permit the moving of structures or high loads. The cost to the Company of complying with the moving permit shall be borne by the entity that obtained the moving permit, the Company shall have the right to request payment in advance.

(D) The Company shall abide by all provisions set forth in local city Ordinances and shall abide by all regulations of the FCC and other governmental regulatory bodies, as now enacted or as subsequently amended, and the same are incorporated herein by reference.

(E) Subscribers to the Company's services shall not be required to assure the Company that they will subscribe to the Company's service for any length of time and subscribers may terminate service at any time.

(F) All poles, ducts and other facilities of the Company shall be erected, constructed and maintained so as not to interfere with the traffic over public highways and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any public highway. The Company shall have reasonable authority to trim trees upon, abutting and overhanging all streets, alleys, easements, sidewalks, and other public areas where the CATV System may from time to time be located in public places of the City so as to prevent the branches of such trees from coming into contact with or otherwise interfering with the facilities and service of the Company.

(G) The City shall have the right to approve the location of any poles or underground cable lines required to be erected or installed by the Company.

(H) If, at any time, the City shall elect to alter or change the grade of any street, sidewalk, alley or other public

way, the Company shall remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at the Company's sole cost and expense, upon receiving adequate notice from the City.

(I) The Company shall grant to the City, free of charge, the joint use of any and all poles owned by the Company for any proper City use so long as such use by the City does not interfere with the operation and maintenance of the CATV System.

(J) The Company, during installation, maintenance and operation of its television transmission and distribution system, must guard and protect any opening or obstruction in the streets or other public places by placing adequate barriers, fences or boardings, the bounds of which shall be clearly designated by warning lights during periods of dusk and darkness.

(K) The Company agrees to restore to as good a condition as before entry, any pavement, sidewalk or other improvement of any street, avenue, alley or other public place disturbed by the Company.

SECTION 10. The City shall give written notice to the Company of any alleged violation of any covenant in this Ordinance specifying the nature of the violation and the specific section or sections of this Ordinance which have allegedly been violated. The City shall allow the Company at least ninety (90) days to remedy the condition complained of prior to cancellation by the City of this franchise for breach of any covenant hereunder, provided that such cancellation or forfeiture shall first be declared by a court of competent jurisdiction after a hearing and upon appropriate full and final findings of fact pursuant to law.

SECTION 11. The City shall not permit any individual or company to provide services similar to those of the Company without first having secured a franchise from the City. The City shall not grant a franchise to individuals or companies offering or furnishing services similar to those of the Company on terms and conditions more favorable to such individuals or companies than those contained herein, unless this Ordinance is amended to provide for such favorable terms and conditions. The Company acknowledges that, contemporaneously with the adoption of this Ordinance by the City, the City is adopting an Ordinance and granting a non-exclusive franchise to Tele-Media Company of Green River, a Kentucky Limited Partnership ("Green River")' the Company represents that the Company has reviewed and fully familiarized itself with the terms of the ordinance granting a non-exclusive franchise to Green River, and the Company represents and acknowledges that the terms and conditions of such ordinance granting a non-exclusive franchise to Green River are not more favorable to Green River than the terms and conditions contained in this ordinance granting a non-exclusive franchise to the Company.

SECTION 12. Upon continuing full and complete performance by the Company of each and every term of this Resolution, the right herein granted shall continue for a term of ten (10) years from the date of this Ordinance was adopted.

SECTION 13. All right, title and interest of the Company in this Resolution shall be freely assignable without the consent of the City. The Company hereby agrees to give the City written notice of any assignment within forty-five (45) days of the effective date of the assignment.

SECTION 14. All notices and other communications hereunder shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage prepaid to the following respective addresses:

To the City:	To the Company:
City of Rockport	Ohio Valley Cable
Rockport, IN	1420 N. Cullen Avenue
	Evansville, IN 47715

Any party to this Ordinance may change the address to which all communications and notices may be sent by addressing notices of such change in the manner provided hereunder.

SECTION 15. Any and all ordinances or parts of ordinances conflicting with the provisions of this Ordinance are hereby repealed.

SECTION 16. The Company shall assume the cost of publication of this Ordinance, if such publication is required by law.

SECTION 17. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not effect the validity of the remaining portions hereof. The Council hereby declare that they would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Company.

SECTION 18. This Ordinance is hereby declared to be a measure in the interest of public peace, health, welfare and safety, and shall therefore go into immediate effect upon passage and adoption of this Ordinance, and within ninety (90) days from an effective date the Company shall file its written acceptance, at which time

this Ordinance shall constitute a contract between the Company and the City.

This Ordinance has passed by the City of Rockport on the ___ day of _____, 199__.

YES

NO

Clerk of Council

Mayor
Presiding Officer

This resolution was presented by me to the Mayor of the City of Rockport, Indiana on the ___ day of _____, 19__ at ___ o'clock.

Clerk of Council

This resolution was approved by me, the Mayor of the City of Rockport, Indiana on the ___ day of _____, 199__, at ___ o'clock.

Mayor
Presiding Officer

Accepted:

OHIO VALLEY WIRELESS, LTD.

By: _____

Title: _____

Dated: _____

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