



Town of New Durham New Hampshire

Incorporated in 1762

RESOLUTION OF THE NEW DURHAM BOARD OF SELECTMEN

Pursuant to the terms and conditions of the Franchise Agreement between the Town of **New Durham** and Community TV Corporation (Franchisee), it is moved that Community TV Corporation is hereby authorized to **transfer** its cable television franchise within the Town of New Durham to Metrocast Cablevision of New Hampshire subject to the following:

- A) Metrocast agrees to, and is financially and technically able to abide by all of the terms and conditions contained in said Agreement.
- B) Specifically, MetroCast acknowledges the pertinent sections of the Franchise Agreement addressing Cable System Design and Signal Delivery requirements and limitations.
- C) MetroCast shall not increase its rates beyond customarily adjustments associated with the cost of doing business in the cable industry. Specifically, MetroCast shall not implement additional rate increases or inflate customary rate adjustments resulting from the structure and size of its debt.

IN WITNESS WHEREOF, the New Durham Board of Selectmen voted to adopt this resolution at its meeting on August 19, 1998:

TOWN OF NEW DURHAM, NEW HAMPSHIRE
by its Board of Selectmen:

Frederic W March
Frederic W. March, Chairman

Brenda L Fontaine
Brenda L. Fontaine, Selectman

Paul R. Gelin
Paul R. Gelin, Jr., Selectman

Date: August 19, 1998

COMMUNITY TV CORP.

408 UNION AVE.
LACONIA, N. H. 03246

603-524-4425

July 27, 1989

Mr. Robert P. Ambrose
Deputy Secretary of State
Department of State
Concord, NH 03301

Re: Franchise Filings
Chap. 338, NH 1989

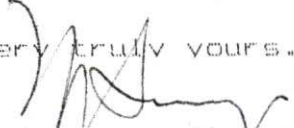
Dear Mr. Ambrose:

The cable television franchise attached hereto is held currently by Community TV Corp., but was originally issued to the entity whose name appears therein. The original corporation has been merged into Community TV Corp. with the consent and approval of the municipality involved.

The filing fee of \$50.00 is included in our check #15199, dated July 27, 1989, transmitted with our letter to you of even date.

Please feel free to call me at 524-9413 if there are any questions. Thank you for your assistance.

Very truly yours,


William A. Schmalberger
Controller

Enclosure: Cable television franchise-

NEW DURHAM, NH

WAS/w

*6/9/89
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2002*

*Merged into:
'Community'*

COPY

CABLE TELEVISION FRANCHISE

Upon careful consideration of the qualifications of LAKES CABLEVISION CORP. (LAKES), a New Hampshire corporation having a place of business in Laconia, County of Belknap and State of New Hampshire, including its legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, the TOWN OF NEW DURHAM (TOWN), a municipal corporation situated in said County and State, and a franchising authority as defined by Chapter 53-C, New Hampshire Revised Statutes Annotated, as amended, hereby grants to LAKES and LAKES hereby accepts, a nonexclusive franchise to construct, maintain and operate in said TOWN any facility that, in whole or in part, receives, directly or indirectly, over the air, and amplifies or modifies the signals transmitting programs being broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service (Cable Television System), and to do all things necessary, beneficial or incidental thereto, upon the following terms:

- I. Franchise Administration The Board of Selectmen shall administer this franchise on behalf of the TOWN to assure the reasonable implementation by LAKES of its obligations hereunder. To assist the Board in this regard, LAKES shall keep the Board fully informed of any changes in its rules, regulations, service arrangements, areas served, and rates insofar as such matters pertain to the installation and removal of equipment and to regular subscriber service, defined by the Federal Communications Commission (FCC) as that service regularly provided to all subscribers. Notice of such changes will be given to the Board thirty (30) days in advance.

In addition to the above, LAKES shall maintain a business office relatively proximate to TOWN, shall provide a toll-free telephone number for New Durham subscribers to call for information, service, or to register complaints, shall advise each new subscriber of these arrangements, and shall maintain personnel to act upon subscriber calls. As expeditiously as possible after receipt of subscriber complaints regarding television operation, LAKES shall investigate such complaints and resolve them to the extent reasonably possible.

II. Facilities and Areas Served.

- A. It is agreed that LAKES will do any and all things reasonably necessary forthwith to procure easements, licenses to use poles, engage contractors or take any and all reasonable actions necessary to complete construction of plant and provide service as contemplated under this franchise at the earliest possible date.

LAKES shall inform TOWN monthly by letter on progress. The parties understand that work on preparing space on utility poles for LAKES' cable and equipment must be performed by the utility companies that own the poles and such work is not under the control of LAKES. LAKES agrees to complete the facilities shown in Appendix A within six (6) months of receipt of permission to use all the utility poles required for said facilities.

- B. The TOWN recognizes that Lakes will construct facilities within the TOWN to provide cable television service to certain areas of the TOWN, which facilities and service shall be subject to the provisions of this franchise. By virtue of this franchise, LAKES may construct over, upon and

under the public streets and public ways of the TOWN its facilities, including the trimming of trees where required. In the event of excavation, LAKES shall reasonably restore the affected area of the public way to its condition immediately prior to the excavation.

- C. A plan of the TOWN is attached hereto (Appendix "A") showing the location of the cable television facilities to be constructed as soon after the grant of this Franchise as permission to use the necessary utility poles is received. LAKES agrees to seek the necessary licenses and file the necessary applications in a timely and diligent manner.

LAKES shall maintain performance bond running to the TOWN, with a corporate surety licensed to do business in the State of New Hampshire or equivalent surety, as approved by the TOWN, in the penal sum of One Hundred Thousand Dollars (\$100,000) conditioned upon the faithful performance by LAKES of its obligations to construct the initial cable system as set forth in this paragraph 2.C. The bond or other documentation shall be effective and shall be filed with the Selectmen thirty (30) days after the execution of this Agreement. In the event that LAKES shall fail to complete the initial construction required by this Agreement, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the TOWN as a result, including the full amount of any compensation, indemnification, or cost of removal or abandonment of any property of LAKES, plus a reasonable allowance for attorneys' fees and costs, up to the full amount of the bond. The bond or equivalent surety shall contain endorsements requiring thirty (30) days' notice of cancellation to the TOWN. When LAKES has

completed the installation and energizing of the cable on the streets designated on Appendix A, and filed with the TOWN the registered engineer's certification of such completion, the performance bond shall be terminated by the Selectmen.

- D. From time to time LAKES may extend its services to other areas of the TOWN in accordance with its own construction and development plans, but it shall be required to construct plant facilities and to extend regular subscriber service to those areas of the TOWN abutting areas being serviced by LAKES where at least fifty per cent (50%) of the year round residences agree to subscribe to the service if such extension of service will not result in LAKES being required to make service available for an average of less than one (1) year-round residence per ninety feet (90') of strand. For purposes of determining compliance with this section, a year-round residence is a single family home, a condominium unit, an apartment in a multiple-dwelling unit, or a mobile home or trailer, which is occupied for domicile for eight (8) or more months per year, and each such residence shall count as one (1). All other residences or dwelling units shall be deemed seasonal residences. Seasonal residences and commercial accounts (i.e., accounts which utilize all or part of their premises for business purposes or for economic gain) shall not be included in the calculation.
- E. As an alternative to the extension requirements provided for in paragraph II D. hereof, LAKES may be required by TOWN to construct facilities in those non-cabled areas of the Town abutting areas being served by LAKES where the number of year-round households (as defined in paragraph II D. hereof) agreeing to subscribe to the service are sufficient to

provide annual basic service revenues of an amount not less than fifteen per cent (15%) of the cost of constructing said facilities.

III. Rates

- A. LAKES shall at all times maintain cable subscription rates (i.e. rates for the installation and removal of equipment and for regular subscriber service as defined by the FCC) which, consistent with its financial requirements for performing its obligations under this franchise and having special regard for the rapidity of obsolescence of electronic equipment, will assure its ability to provide proper cable television service to the TOWN.
- B. All rates and charges for cable television installation and service shall be fair reasonable and uniform. Rates and procedures are set forth in "Appendix E" attached hereto and made a part hereof. LAKES shall notify the TOWN of any change in said rates not less than thirty days before the effective date of the change.

- IV. The Franchisee shall indemnify, protect and save harmless the Town, its officers, agents, and employees from and against all claims, damages, losses and expenses, including attorneys' fees, due to any suit, judgment, execution, claim or demand whatsoever, arising from losses or physical damage to property, and bodily injury or death to persons, including payments made under any workers' compensation law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of the cable television system, or by any act of the Franchisee, its agents or employees. The Franchisee shall carry insurance to protect the parties hereto from and against all claims, demands, actions,

judgments, cost expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. All insurance policies under this section shall name the Town as an additional insured and require at least thirty (30) days advance notice to the Board of any cancellation thereof. The amount of insurance against liability due to physical damage to property shall be not less than Five Hundred Thousand Dollars (\$500,000) as to any one person's property, and not less than Five Hundred Thousand Dollars (\$500,000) aggregate as to any single incident; and against liability due to bodily injury or to death of persons, not less than Five Hundred Thousand Dollars (\$500,000) as to any one person, and not less than Five Hundred Thousand Dollars (\$500,000) as to any one accident. Franchisee also maintains an all risk umbrella policy subject to normal exclusions in the amount of One Million Dollars (\$1,000,000). The Franchisee also shall carry such insurance as it deems necessary to protect it from all claims under the workers' compensation laws in effect that may be applicable to the Franchisee. All insurance required by this Agreement shall remain in full force and effect for the entire life of this Agreement. Coverage limits specified in this paragraph shall be increased as necessary to at least equal any express maximum dollar limit on municipal liability imposed by law. The coverage and limits shall be reviewed periodically to keep limits at prudent levels. Copies of the insurance policies shall be approved by the Board and deposited with and kept on file by the Town Clerk.

- V. Franchise Fee An annual franchise fee will be payable to the TOWN in the amount of three per cent (3%) of LAKES' gross revenues from the cable system installed on the highways, as such revenues from time to time may be defined and/or permitted by the FCC to be used as a base for computing such fee. The franchise

fee shall be paid to the TOWN on or before February twenty-eighth of each year for each preceding twelve month period ending on December thirty-first of each year, and LAKES agrees to provide with each payment a statement by a certified public accountant of the revenues upon which the fee is based. The franchise fee provided for herein shall be subject to renegotiation upon each term of renewal of this franchise, but shall at all times be subject to the rules and regulations imposed by the FCC, and/or federal, state and local laws. This franchise fee is exclusive of any real estate taxes which may be authorized by law to be levied upon LAKES. No franchise fee shall be payable for service provided by LAKES prior to the effective date of this franchise.

- VI. Term This franchise is for a period of fifteen (15) years from the date hereof.
- VII. Renewal This franchise, as modified and amended during the term hereof, may be renewed for a period of fifteen (15) years in accordance with State and Federal law, providing LAKES has observed its material terms. In seeking renewal, LAKES shall file an application for renewal with the Board of Selectmen of the TOWN not less than three (3) months prior to the expiration of the original or of any renewal term. The TOWN shall conduct a full, open and public renewal proceeding upon prior notice with opportunity of all interested parties to be heard. The proceeding shall be held for the sole purpose of considering the performance of LAKES under this franchise, the adequacy of this franchise and its consistency with the applicable law and the rules and regulations of the FCC. Renewal shall not be unreasonably denied, and if denied, shall be subject to further proceedings as hereinafter set forth. If this franchise is renewed, all of the terms and provisions contained herein, as modified and amended during its term or terms, shall be

controlling. It is specifically agreed and understood that the franchise fee provided for herein shall be subject to renegotiation upon each term of renewal of this franchise, but shall at all times be subject to the rules and regulations imposed by the FCC, and/or federal, state and local laws.

VIII. FCC Regulation All existing and future decisions, rules, regulations and clarifications of rules, if any, by the FCC applicable to cable television, and all amendments and modifications thereof, especially all amendments and modifications of Section 76.31 of the Commission's Rules, shall be deemed incorporated into this franchise upon their effective dates and this franchise shall be deemed amended and modified accordingly.

IX. Other Activities - Plant Relocation

- A. Nothing contained in this franchise shall be construed to restrict or to prohibit LAKES from providing services other than regular subscriber service as that term is defined by the FCC, or from privately engaging in any activity or business permitted by law. LAKES expressly agrees, where necessary, to apply for and obtain all permits required by law.
- B. LAKES expressly agrees to apply for, pay for and obtain all permits required by law in connection with any plant, relocation, including any and all cost and expense resulting in changes of highways or other changes required by federal, state or other governmental agencies. LAKES shall be entitled to reimbursement, if any, from any third party to the extent of expenses incurred by LAKES for such changes.

- X. Alleged Material Violations In the event that LAKES is alleged to be in material violation of this Agreement, the Selectmen of the TOWN shall give LAKES written notice thereof, setting forth the facts in sufficient detail to apprise LAKES of the violation charged. LAKES shall then have sixty (60) days from the giving of such written notice in which to take action to correct, or in good faith attempt to correct, such claimed violation, and upon its failure to take such action within said period the TOWN, after a full due process hearing subject to further proceedings as hereinafter set forth, may terminate this franchise upon finding that LAKES is in material violation of this Agreement.
- XI. Further Proceedings - Arbitration To ensure continuity of service by the expeditious resolution of any dispute or disagreement in any way arising out of or resulting from this franchise or any claimed breach or material violation of this franchise, or any dispute or disagreement in any way arising out of or resulting from any hearing held pursuant to the provisions of this franchise, such dispute or disagreement shall be submitted to arbitration by a Board of three arbitrators; one chosen by the TOWN, one chosen by LAKES, and the third chosen by the named two arbitrators. Should either party fail to choose an arbitrator, or should the two chosen arbitrators fail to choose a third, the appointment shall be made by the American Arbitration Association, failing which either party may apply to the Superior Court to appoint an arbitrator or arbitrators. All matters shall be heard de novo by the Board of Arbitrators, and the Board shall have final and conclusive authority on all such matters, but it shall not be empowered to depart from or in any way alter the terms of this franchise. The arbitrators shall be entitled to reasonable compensation for their services, and they shall determine whether their charges are to be shared equally by the parties, or are to be paid in full by the party found to be in

the wrong; and each party agrees to make payment to the arbitrators in accordance with said determination, and if they make no such determination, to pay one-half of their charges. This section shall be governed by and construed in accordance with the laws and statutes of the State of New Hampshire and particularly, but without limitation, Chapter 542 of the Revised Statutes Annotated, 1955, as amended, and if and to the extent that anything herein is inconsistent therewith or anything required thereby is omitted herefrom, the provisions of the applicable laws shall govern, and the omission shall be deemed supplied. Neither party shall have the right to bring any legal proceedings against the other, save only as expressly authorized in and for the purposes specifically set forth in the said Chapter 542 with respect to agreements to arbitrate, arbitration proceedings and arbitrators' awards which may include damages to either party.

If either party fails or refuses to comply with the Board of Arbitrator's award, such party shall reimburse the other party for all expenses, including attorney's fees, reasonably incurred in obtaining judicial enforcement of the award.

The provisions of this Section XI shall in any and all events survive termination and/or breach of this franchise.

- XII. Notices All notices required to be given under the terms of this franchise shall be in writing, shall be mailed by certified mail, return receipt requested, to the business offices of the respective parties, and shall be deemed given upon such mailing. The current business offices of the parties are as follows:

Town of New Durham: Board of Selectmen
Town Hall
New Durham, New Hampshire 03855

Lakes Cablevision Corp: 408 Union Avenue
Laconia, New Hampshire 03246

Written notice of the change of address of either party shall be given promptly to the other party.

XIII. Performance Excused Performance by LAKES of its obligations and duties under this franchise is contingent upon strikes, accidents, acts of God, acts of war, weather conditions, regulations or restrictions imposed by any government or governmental agency, inability to secure labor, supplies, licenses or easements, inability to secure agreements with public utilities whose facilities are used by LAKES and/or other delays or conditions beyond LAKES' reasonable control.

XIV. Transfers and Assignments All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the TOWN and the successors and assigns of LAKES; and, except as herein provided, shall not be transferred or assigned without the written approval of the TOWN, which approval may be withheld only in the event that the proposed assignee, upon hearing and subject to further proceedings as hereinabove set forth, is found to be unqualified to carry out the terms of this franchise. Such approval shall be deemed to have been granted if no action is taken by the TOWN within sixty (60) days after written application therefor is made. This section shall not prevent the assignment of this franchise by LAKES as security for debt without such approval, or prevent without such approval transfers

or assignments of this franchise between any parent and subsidiary corporation of LAKES or between persons or entities of which at least fifty per cent (50%) of the beneficial ownership is held by the same person, persons or entities.

XV. Amendments In addition to the provisions of Section 7, this franchise may be amended by mutual agreement of the parties, which amendments shall be in writing and, when duly signed by the parties, shall be deemed incorporated in and a part of this franchise.

XVI. Severability If any section, paragraph, sentence, clause, phrase or portion of this franchise is for any reason held invalid or unconstitutional by any Federal or State Court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the Town of New Durham and Lakes Cablevision Corp. have caused their respective names to be subscribed and seals to be affixed hereto by the undersigned officials, hereunto duly authorized, this 9 day of June, 1987.

APPENDIX B

SUBSCRIBER RATES

The rates and charges in effect in New Durham, New Hampshire, as of the date of this Franchise for regular subscriber service as provided by Lakes Cablevision Corp. shall be:

A.	<u>Installations and Disconnection:</u>	
	Installation charge for first outlet (See footnote #1 below)	\$25.00
	Installation charge for each additional outlet	\$10.00 15.00
	Moving charge (i.e., disconnect and reconnect within area served by the company within 30 days)	\$20.00 15.00
	Reconnect within 30 days	\$20.00 15.00
	Disconnect upon termination of service	no charge
	Install parental control box (refundable \$15 deposit)	no charge
B.	<u>Monthly Service Charge:</u> (See footnote #2 below)	\$15.90 16.95
	Basic monthly service for first outlet	\$ 3.50 2.00
	Monthly charge for each additional outlet	\$ 1.00
	Rental of channel converter (See footnote #3 below)	\$ 4.50
	Rental of remote control converter	Less 50%
	Charitable and Philanthropic agencies (See footnote #4 below)	no charge
	Public schools, libraries, firehouse, etc.	

THE ABOVE SUBJECT TO THE FOLLOWING FOOTNOTES

#1 Provided work is done at time of initial installation of service and house is 150' or less from utility pole on which cable presently exists. An additional charge for more than 150' shall be \$.50 per lineal foot up to 300'. (Underground installations do not include digging or covering trenches.)

For distances greater than 300', an onsite inspection and special quotation shall be made. If more than one residence would be served, the charges shall be borne equally by each household subscribing. If, within three (3) years, other household(s) request service that would utilize the extended cables, the initial charge shall be recalculated on the basis of the increased number of subscribers(s) and the sum collected from the new subscriber(s) shall be apportioned and returned to the earlier subscriber(s).

#2 Charges for services are payable before the end of the month during which service is rendered. A statement of the amounts unpaid, if any, is sent the subscriber at the beginning of the next month. Subscribers whose accounts are not made current by the 15th of the month are disconnected in accordance with a notice given on the statement to the effect.

#3 Converters are available without monthly charge upon receipt of a refundable deposit.

#4 Includes subsidized tenants in subsidized housing.

Larry J. Perkins
Witness

Elmer Beardford
Witness

Mary V. Fuller
Witness

David L. Wentworth
Witness

TOWN OF NEW DURHAM

By: Lew Buttrick
Selectman

By: James H. Meigs
Selectman

By: William H. Carey
Selectman

LAKES CABLEVISION CORP.

By: H S B White
duly authorized