

ORDINANCE NO. 881

AN ORDINANCE GRANTING A RENEWAL NON-EXCLUSIVE FRANCHISE TO ENSTAR INCOME PROGRAM II-2, L.P. TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN Nokomis, Illinois COUNTY, Montgomery; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE NON-EXCLUSIVE FRANCHISE, PROVIDING FOR REGULATION AND USE OF SUCH SYSTEM; AND PROVIDING FOR PAYMENTS TO Nokomis FOR THE OPERATION OF SUCH SYSTEM.

WHEREAS, Enstar Income Program II-2, L.P. proposes to operate a Community Antenna Television System in Nokomis, Il ("Municipality") pursuant to Cable TV Ordinance dated 3/12/01 which allows the Company to construct and operate a Community Antenna Television System in Nokomis; and

WHEREAS, the Municipality has determined that the Company's proposal is reasonable to meet the Municipality's future cable-related community interests and needs.

NOW, THEREFORE, be it ordained and it is hereby ordained by the City of Nokomis under and pursuant to the authority granted to the same by the laws of the State of Illinois as follows:

SECTION 1. SHORT TITLE. This Ordinance shall be known and may be cited as the Nokomis Cable Television Franchise Ordinance. Chapter _____-Article _____-Section _____ of the Nokomis City Code.

SECTION 2. DEFINITIONS. For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense shall include the future, words in the plural number shall include the singular number, and words in the singular number shall include the plural number. Terms otherwise defined in this Ordinance shall have the meaning ascribed to them in such other sections of the Ordinance. The word "shall" is always mandatory and not merely directory.

Community Antenna Television System shall mean antennas, coaxial cables, amplifiers, drop lines, other conductors, and other equipment or facilities not limited to the foregoing, including any of the same, and any services performed by the use of same furnished by any public utility or other person or entity, whether pursuant to tariffs or any other arrangement, necessary for or incidental to the receiving of television signals or the transmission thereof to

customers at the selection of the Company for a consideration, or as a public service.

Cable Service shall mean the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and the subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

Municipality shall mean City of Nokomis, County of Montgomery and State of Illinois.

Company shall mean Enstar Income Program II-2, L.P., grantee of the franchise pursuant to the terms of this Ordinance, its successors and assigns.

Council shall mean the Board of Supervisors or Council (as the case may be) of Nokomis, County of Montgomery and State of Illinois.

Streets shall mean and include all public streets, ways, alleys and parkways owned by the Municipality.

Person and Applicant shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

SECTION 3. GRANT OF AUTHORITY. Subject to applicable law, including without limitation Title VI of the Communications Act of 1934, as amended, 47 U.S.C. § 521, et. seq., the Municipality hereby grants the right and privilege to the Company to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and in easements dedicated for compatible uses, and all extensions thereof, and additions thereto, in the Municipality, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the Municipality of the Community Antenna Television System for Cable Services and other lawful services. Company agrees to advise City Clerk of any major construction.

3.1 **Non-Exclusive Grant.** The franchise granted to the Company is to be non-exclusive but otherwise in accordance with all the privileges and authorities granted by the agreement in this Ordinance. The Municipality covenants and agrees with the Company that it shall not during the term as set forth in Section 7 below grant to any other person, firm or entity a franchise, right or privilege to maintain and/or operate a Community Antenna Television System for Cable Service

within the Municipality unless such franchise imposes on any such person, firm or entity all the same terms, conditions and requirements as imposed upon the Company under the terms of this Ordinance.

3.2 Use of Existing Utility Facilities. It is hereby granted to the Company, its successors and assigns, subject to ordinances, rules, regulations of the Municipality, the right, privilege and authority to lease, rent, or in any other manner obtain the use of the towers, poles, lines, cables and other equipment and facilities from any and all present and future holders of public licenses of franchises within or partially within the Municipality, and to use such towers, poles, lines, cables and other equipment and facilities.

3.3 Use of Equipment and Facilities. All equipment and facilities of the Company within the Municipality may also be used for the reception, transmission and distribution of radio and television signals and audio, visual, electronic or electric signals or impulses to or from areas outside of the Municipality.

3.4 Grant of Prescribed Rights. All rights and privileges granted to the Company pursuant to this Ordinance further shall be subject to the Company obtaining any and all necessary easements, right of ways and other grants from any and all property owners who may be affected by the construction, operation and maintenance of the aforesaid conductors and fixtures.

SECTION 4. INSURANCE COVERAGE.

A. The Company shall at all times keep in effect the following types of insurance coverage:

(1) Workmen's Compensation upon its employees employed or performing services within the Municipality.

(2) Property damage liability insurance and personal injury liability insurance in the aggregate amount of One Million (\$1,000,000.00) Dollars as to any one occurrence. Both the property damage and personal injury liability insurance policies shall be in the name of the Company and the Municipality as their interests may appear.

B. The Company does hereby agree to indemnify, defend, protect and save harmless the Municipality from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Workmen's Compensation Law and reasonable attorney's fees which may arise out of or be caused by the erection, maintenance, presence, use or removal of the Company's equipment or facilities within the Municipality or by an act of the Company, its agents or employees, and shall carry insurance in the

amount herein set forth to protect the Municipality from and against all claims, demands, actions, judgments, costs, expenses, liabilities and damages arising or resulting directly or indirectly from or by reason of any such loss, injury or damage. The Company shall also indemnify and save harmless the Municipality from any and all claims in law or in equity and shall pay all reasonable legal expenses incurred by the Municipality in defending any claim that the Municipality acted illegally in granting the franchise and adopting this Ordinance. In case legal actions shall be filed against the Municipality, either independently or jointly with the Company, to recover for any claim or damages, the Company, upon notice to and by the Municipality, shall defend the Municipality, its agents and employees against said action, and in the event of a final judgment being obtained against the Municipality, either independently or jointly with said Company, the Company shall pay such judgment and all costs and hold the Municipality harmless therefrom.

SECTION 5. SERVICE STANDARDS. The Company shall operate and maintain the Community Antenna Television System so that all customers shall receive signals of good technical quality and a full range of available services. Any complaints as to the quality of the signals or service shall be promptly and satisfactorily investigated by the Company, and adjustments required to correct situations disclosed by such investigations shall be made forthwith. It is hereby agreed by and between the Company and Municipality that all installations by the Company shall be of a permanent and durable nature and installed in accordance with good engineering practices and comply with ordinances and regulations of the Municipality existing at the time of such installations so as not to interfere in any manner with the rights of the public or individual property owners. The Community Antenna Television System shall not interfere with the travel and use of public places or facilities by the public, nor shall it obstruct or impede traffic.

A. The Company shall at all times keep at its office full and complete maps, plans and records showing the location of all franchise equipment and facilities installed in the streets, alleys and other public places within the corporate limits of the Municipality. The Company shall make available a telephone number to the customers so that emergency interruptions to the service may be reported.

SECTION 6. PAYMENT TO THE MUNICIPALITY. The Company shall pay to the Municipality for the privilege of operating its Community Antenna Television System under this franchise the sum of three (3%) Percent of its Gross revenues derived from subscribers within the Municipality. The Company shall make payments within 60 days after the end of each calendar year. An annual summary report showing such revenues received by the Company shall be filed with the City Clerk of

the Municipality and a copy shall be kept in the office of the Company. This report shall be certified as correct by either the president, vice-president, treasurer, or other finance officer of the Company. The Municipality shall have the right to inspect at reasonable times the records of the Company relating thereto to the extent necessary to verify the payments to which it is entitled. The said sums of money to be paid to and accepted by the Municipality are in full payment for the privilege of using public thoroughfares of the Municipality for the purpose of carrying out this franchise, except as other fees and charges may be required and made by laws of the United States of America or the State of Illinois.

SECTION 7. TERM OF FRANCHISE. The term of this franchise shall be for ten (10) years, commencing upon the execution of this Ordinance. This Ordinance shall be renewable by the Company for an additional five(5) year term with the approval of the Municipality.

SECTION 8. ASSIGNMENT. The franchise granted hereunder shall be assignable by the Company provided that the Company gives the Municipality sixty (60) days prior written notice of its intent to assign the franchise. Written notice shall be sent to the Municipality in care of its Clerk. The Company may assign, mortgage, pledge, or otherwise encumber the Franchise, the Community Antenna Television System, or assets relating thereto, as collateral for a loan or to secure indebtedness.

The Municipality acknowledges that the Company has entered into an agreement whereby the franchise granted hereunder will be assigned to Gans Multimedia, LLC, a Delaware limited liability company. The Company shall notify the Municipality within thirty (30) days after the consummation of such assignment.

SECTION 9. ACCEPTANCE BY THE COMPANY. This grant is made on the express condition that the Company, within thirty (30) days after this Ordinance takes effect and becomes operative, shall file with the Clerk of the Municipality a written acceptance of the same, and when this Ordinance shall have been accepted by the Company, such Ordinance and acceptance shall constitute a contract between the Municipality and Company for all the uses, services, and purposes set forth in this Ordinance, and the Company by its acceptance of the provisions of this Ordinance, binds itself to provide the necessary Community Antenna Television System and to establish, operate and maintain the local Community Antenna Television System contemplated by this Ordinance, continuing without substantial interruption except for causes beyond its control until the expiration of the term of this grant. In the event that the Company fails to file written acceptance within the period herein specified, this grant together with any rights or

liabilities arising out of the franchise for furnishing an adequate Community Antenna Television System for the benefit of inhabitants of the Municipality, and the acceptance of such proposal by the Municipality shall be, at the Municipality's option, of no force or effect.

SECTION 10. FEDERAL PREEMPTION. Should any federal or state agency hereafter exercise jurisdiction over the subject matter of this franchise Ordinance, then to the extent such jurisdiction shall preempt or preclude the exercise of like jurisdiction by the Municipality, the jurisdiction of the Municipality shall cease and terminate.

SECTION 11. FORFEITURE. The Municipality may at any time declare a forfeiture of this grant for a material violation or default by the Company of any of the terms hereof, provided that none of the terms of this grant shall be deemed to be violated so as to permit such forfeiture unless the Company shall first be given sixty (60) days written notice by the Municipality of such violation or default and of the attempt to declare a forfeiture, and thereafter such violation or default shall continue uncured (or such cure shall not be diligently pursued) for a period of more than ninety (90) days, all of the rights and privileges of the Company under the provisions of this Ordinance shall be forthwith declared forfeited and revoked. Company must respond in writing to Municipality of cure of any such violation. If any action shall be instituted or prosecuted directly or indirectly by the Company or by its stockholders or creditors to set aside or have declared void any terms of this grant, the whole of this grant may be thereupon forfeited and annulled at the option of the Municipality to be expressed by ordinance; provided, however, that the Company shall not be deemed to be in default of performance of any provision of this grant, nor shall any forfeiture be invoked for any violation of or failure to perform any provision hereof due to strikes, lockouts, insurrections, acts of God or any cause beyond the control of the Company.

Notwithstanding anything to the contrary, if the Company shall fail to make any payment required hereunder within forty-five (45) days after the same is due, any privilege, franchise or permission granted under this Ordinance shall at the Municipality's option, upon thirty (30) days prior written notice and Company's failure to cure within such thirty (30) day period, become null and void, and all rights and privileges of the Company hereunder shall cease and terminate.

SECTION 12. SEVERANCE. If any article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, or word in this Ordinance is for any reason declared to be

illegal, unconstitutional or invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of the Ordinance as a whole, or any other article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase, word or remaining portion of the within Ordinance. The Municipality hereby declares that it would have adopted the within Ordinance and each article, section, subsection, provision, regulation, limitation, restriction, sentence, clause, phrase and word thereof, irrespective of the fact that any one or more of the sections, subsections, provisions, regulations, limitations, restrictions, sentences, clauses, phrases or words may be declared illegal, unconstitutional or invalid.

SECTION 13. SYSTEM UPGRADE Company agrees to upgrade the existing cable TV system within 36 months of the date of Company's acceptance under Section 9. The upgraded system will be constructed to a 750 Mhz plant with capability for two-way transmission and digital compression. Services that may be made available after upgrade of the existing cable include: Pay per view, digital and music channels. Company further agrees to consider adding a channel that carries University of Illinois programming. (Providing programmer allows signal carriage and Company receives an adequate signal)

SECTION 14. CITY BOUNDARIES Company agrees to provide cable service to residential homes within agreed upon City limits. See attachment A.

ENACTED AND ORDAINED this 12th day of MARCH, 2001, in regular session duly assembled.

CITY OF NOKOMIS

BY: [Signature]
Mayor

ATTEST:

[Signature]
City Clerk

WITNESS:

[Signature]

ENSTAR INCOME PROGRAM, II-2, L.P.
BY: [Signature]
TITLE: Vice President