

**ORDINANCE NO. 39**  
**CITY OF LIBERTY LAKE**  
**SPOKANE COUNTY, WASHINGTON**

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON, GRANTING  
THE RIGHT OF FRANCHISE TO COMMUNITY CABLE SERVICE FOR  
OPERATION OF A PUBLIC SERVICE BUSINESS IN THE CITY OF LIBERTY LAKE.**

WHEREAS, the City of Liberty Lake will incorporate on August 31, 2001;

WHEREAS, RCW 35.02.160 provides that any franchise or permit heretofore granted to any person, firm or corporation by the state or county, authorizing or otherwise permitting the operation of a public service business or facility is automatically cancelled upon incorporation, but that upon incorporation the City must grant such business a franchise or permit to continue such business within the City for a term of not less than the remaining term of the original franchise or permit, or seven years, whichever is the shorter;

WHEREAS, a franchise has been granted and assigned by Spokane County to Community Cable Service also known as "CCS, LLC" as set forth herein; and

WHEREAS, the City of Liberty Lake intends to allow Community Cable Service to continue operation under the same terms and conditions as the pre-existing franchise with Spokane County for the remaining term of the original franchise or seven years, whichever is the shorter period;

NOW, THEREFORE, the City Council of the City of Liberty Lake, Washington, do ordain as follows:

**Section 1.** The City of Liberty Lake hereby grants unto Community Cable Service a Franchise under the same terms and conditions as set forth in Spokane County Franchise No. 88 0894. This Franchise shall expire September 13, 2003. Unless the context requires otherwise, references to Spokane County shall be construed as references to the City of Liberty Lake and references to the Board of County Commissioners shall refer to the Liberty Lake City Council. Further, all work done in the public right of way shall be pursuant to Spokane County standards unless there is a superseding City of Liberty Lake standard.

**Section 2.** A true and correct copy of this Franchise is attached hereto and identified as Exhibit "A".

**Section 3.** Official Bonds. The Franchisee shall take all necessary steps to transfer any bonds, certificates of insurance or other security currently held by Spokane County to the City of Liberty Lake with the franchise rights granted herein not effective until such transfers are made.

**Section 4.** Severability. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

**Section 5.** Effective Date. This Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary, and on the date of incorporation.  
PASSED by the City Council this 19 day of August 2001.

  
\_\_\_\_\_  
Mayor, Steve Peterson

ATTEST:  
  
\_\_\_\_\_  
Interim City Clerk, Arlene Fisher

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Interim City Attorney, Stanley M. Schwartz  
Date of Publication: 8/23/01  
Effective Date: Date of Incorporation

NO. 0 0736

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF CONSIDERING	)	
THE TRANSFER OF CABLE	)	
TELEVISION SYSTEM FRANCHISE NO.	)	
88-0894 FROM COMMUNITY	)	
ANTENNAE SYSTEMS OF SPOKANE,	)	RESOLUTION
WASHINGTON, AKA COMMUNITY	)	
CABLE SERVICE TO A LIMITED	)	
LIABILITY COMPANY KNOWN AS	)	
"CCS, LLC"	)	

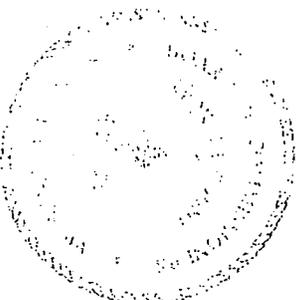
WHEREAS, pursuant to the provisions of RCW 36.32.120(6), the Board of County Commissioners of Spokane County has the care of County property and the management of County funds and business; and

WHEREAS, on or about September 13, 1988, Spokane County, consistent with the provisions of chapter 36.55 RCW and County Code, granted a cable television franchise to Community Cable Service under Resolution No. 88-0894; and

WHEREAS, Community Cable Service ("CCS"), owned and operated by Martin W. and Charis S. Howser requested permission from the Board of County Commissioners to transfer their franchise to Community Cable Services, LLC ("CCS, LLC"); and

WHEREAS, the Board of County Commissioners held a public hearing on August 1, 2000 and continued the same until August 8, 2000 for the purpose of receiving public testimony as to whether or not the Board should approve Mr. Howser's request to transfer his cable television franchise from CCS to CCS, LLC; and

WHEREAS, the Spokane City/County Cable Advisory Board, by correspondence dated July 28, 2000, recommended that Mr. Howser's request be approved subject to certain conditions, which Mr. Howser acquiesced to at the public hearings held on his request. Additionally, Mr. Howser voluntarily desired to impose upon himself and any other owners of his cable television franchise compliance with a condition concerning his allowing video programming not protected by the Constitution of the United States.



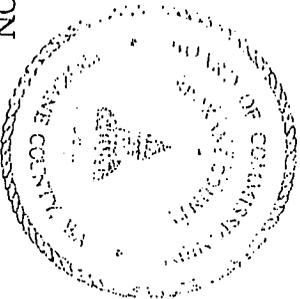
This is to Certify this is a true and correct copy of the original document NO. 0-0736 on file in the County Commissioners minutes of 8-8-2000 dated this 18th day of Sept 18 2000 BY Marta Suckler CLERK OF THE BOARD

0 0736

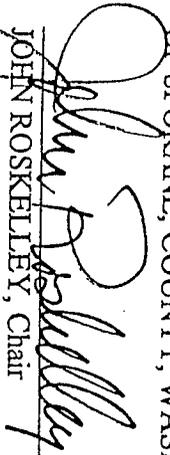
NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of County Commissioners of Spokane County, pursuant to Section 11(d) of the Cable Television franchise granted to CCS and its owners, Martin W. And Charis S. Houser, under Resolution No. 88-0894, that the Board does hereby approve the transfer of the franchise granted under Resolution No. 88-0894 from CCS to CCS, LLC, subject to the following conditions:

- (1) The franchise granted under Resolution No. 88-0894 shall be modified to include all conditions recommended by the Cable Advisory Board in its correspondence dated July 28, 2000, a copy of which is attached hereto and incorporated herein as Exhibit "A."
- (2) The franchise granted under Resolution No. 88-0894 shall be modified to include all conditions under the "Standard Franchise" applicable to a cable television franchise, as determined by the Spokane County Engineer.
- (3) The franchise shall recognize Mr. Houser's voluntary agreement to operate the franchise consistent with a policy addressing obscenity, a draft copy of which is attached hereto and incorporated herein as Exhibit "B."

PASSED AND ADOPTED this 8th day of August 2000.



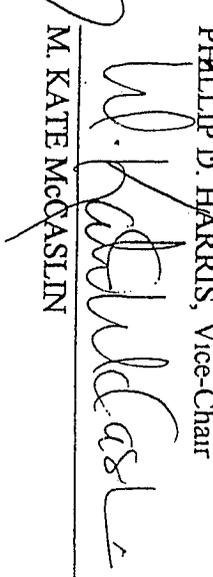
BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

  
JOHN ROSKELLY, Chair

  
PHILLIP D. HARRIS, Vice-Chair

ATTEST:  
VICKY M. DALTON  
CLERK OF THE BOARD

BY:   
Daniela Erickson, Deputy

  
M. KATE MCCASLIN

*Attachment A*

Spokane City-County Cable Advisory Board

Spokane Public Works • 1026 West Broad

July 28, 2000

Spokane County Board of Commissioners  
1028 W Broadway Ave  
Spokane WA 99260

Post-it® Fax Note	7671	Date	9/18	Pages	2
To	<i>Annexa</i>	From	<i>Patricia Ennis</i>		
ON-DISK		CC			
Phone #		Phone #			
Fax #	<i>509-323-774</i>	Fax #			

Re: Request by Community Cable Service to Transfer Cable Franchise

Hon. Commissioners,

On July 18, 2000, the Cable Advisory Board (CAB) recommended that you defer disposition of the above referenced request to allow time to gather documents that we had requested and conduct a review of the franchise.

In response to the CAB's requests, Mr. Martin Hovser of Community Cable Service has demonstrated exemplary cooperation and been forthcoming in providing the items we had requested.

On July 26, 2000, the CAB held a special public meeting to review and discuss the state of the franchise – pending the transfer. At this meeting, Mr. Hovser and board members discussed a variety of issues, including those in our report dated July 14, 2000.

As a result of our discussion, the CAB recommends that the County Board of Commissioners approve the requested transfer agreement subject to the following considerations:

- Franchise transfer document to include the language of the standard franchise document currently used by Spokane County Engineering department.
- Spokane County to be made a party of record in the loan agreement between Community Cable Services LLC and Westburg Media Capital to ensure that Spokane County receives timely notice in the event of a default
- Spokane County verifies that Westburg Media Capital clearly understands that in the event of a default, any transfer of the franchise from Westburg Media Capital to another party would be subject to the approval of the County Board of Commissioners.
- The current system upgrade project is completed and fully operational for all subscribers by December 1, 2000.
- Franchisee provides at least one government access channel, establishing the necessary interconnects to carry Spokane County government programming currently available on AT&T channel 5.

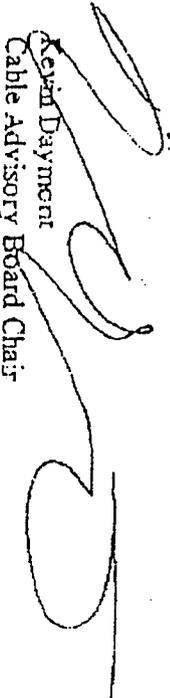
- Franchisee provides at least one educational access channel.
- Franchisee will provide the county with timely and accurate annual reports including broad information on consumer complaints and service calls.
- Franchisee shall be subject to fines and/or penalties in the event that franchise fees are not paid in a timely manner.
- Franchisee to post a performance bond in the amount established by the Spokane County Engineering department.
- Spokane County encourages the franchisee to provide subscribers with locally originated programming.

On the above listed issues, both Mr. Houser and the CAB are in agreement regarding inclusion in the transfer agreement.

Following discussion on the issue of including a written agreement to restrict or forbid the deployment of any service or channel whose content would be considered "adult" or is primarily sexual in nature, the CAB voted not to recommend consideration of such an agreement. While Mr. Houser is willing to enter into such an agreement, and it is, in fact, the current policy of his company not to carry such programming, the CAB recognizes that such an agreement cannot be made binding on any subsequent owner of the franchise and that requiring such restrictions on programming as a condition of granting the franchise is a violation of the Federal Communications Act of 1934 as amended.

The CAB wishes to thank Mr. Houser for his cooperation and forthrightness in providing documents and information regarding his operation.

Sincerely,

  
Kevin Daymont  
Cable Advisory Board Chair

cc James P. Emacio, Spokane County  
Martin Houser, Community Cable Service  
David Westburg, Westburg Media Capital LLC  
Cable Advisory Board Members

*Attachment B*

**POSSIBLE LEASE OR FRANCHISE STATEMENT OF MUTUAL UNDERSTANDING AND**

**CONSIDERATION THAT OPERATOR WILL NOT OFFER "ADULT" PORNOGRAPHY**

That the City/County Government and the "Community Theater/Cable Co.", prospective tenant/franchisee of a certain publicly owned property containing a theater facility/cable TV franchise, wish to clarify and accept the understanding between the parties as mutual consideration for a contract of lease/franchise, they hereby state and agree as follows:

- (1) Whereas the City/County Government received an offer from the "Community Theater/Cable Co., Inc.", a prospective tenant/franchisee of the Government's theater property/cable TV franchise, that the tenant/franchisee would not show "pornographic" films, such as those commonly understood to be called "adult films" and those that are or would be rated "X" or unrated but known as "XX" or "XXX", etc. and by letter/proposed contract clause of mandd/sy, the President/Agent of the "Community Theater/Cable Co.", stated what the Government considers an important consideration for entering into a contract for lease/franchise: "As President/Agent of the Community Theater/Cable Co.", I want to assure you and the City/County Council that our goal is to provide a first-class theater/cable franchise for this community. It is our policy that pornographic, "adult" films containing graphic sexual conduct lacking in serious literary, artistic, political, and scientific value will not be shown. For example, it is our corporate policy not to offer "X" rated or unrated "X" character or hard-core pornography films/s-called "adult" pornography channels, such as Spice, Hot, or Playboy."
  - (2) Whereas the Government understands that the representations of the "Community Theater/Cable Co.", as an offer and assurance of intent that the theater/cable service would not be used as an "adult" pornography theater/service and whereas the Government wishes to accept this offer as a form of consideration for its contractual obligations in furtherance of the exercise of the Government's proprietary function in leasing/franchising to a private party and whereas the Government has an interest in its reputation to uphold and maintain a high community standard and the best interests and example of public morality, health, safety, and welfare by and for its citizens and wishes to set a higher standard for itself and its own properties and contracts than it could impose on private properties or businesses under the Government's police power and, in addition, the Government wishes to avoid being used by or associated with pornographers in other places or cases as an argument against the enforcement of state or federal obscenity statutes, laws, or regulations; and
  - (3) Whereas it is not the intent of either party to restrict any information or expression because of the message, ideas, or controversial nature of speech, art, disease prevention, or political advocacy contained in a work, but only to avoid and prevent the theater/cable service from showing "adult" pornographic films or being known as an "adult theater" "porn channel" provider to the detriment of the reputation and well-being of both parties;
- Therefore, the Government and the "Community Theater/Cable Co." agree that one consideration for the lease/franchise shall be that the tenant/franchisee agrees not to show pornographic films or movies that are characterized by their emphasis on the depiction of specified sexual activities or specified anatomical parts, as those terms are used and defined in zoning and licensing ordinances referred to as "adult use" or "adult entertainment" or "sexually oriented business" ordinances, including those upheld by the Supreme Court of the United States in such cases as *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 53 (1976), and *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 44-45 (1986). The parties further agree that this understanding extends to pornographic films and shows as described above and that it does not extend to films that are rated G, PG, PG-13, R, or NC-17 by the Motion Picture Association of America, and does not extend to films or works simply because of the message or ideas expressed in a sexual context.

**NATIONAL LAW CENTER FOR CHILDREN AND FAMILIES**

3819 PLAZA DRIVE, FAIRFAX, VA 22030, (703) 691-4626, FAX: -4669,

[NLCC@NationalLawCenter.org](mailto:NLCC@NationalLawCenter.org), [BriceTarlton@NationalLawCenter.org](mailto:BriceTarlton@NationalLawCenter.org)

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF APPLICATION OF COMMUNITY )  
ANTENNA SYSTEM FOR A FRANCHISE FOR THE ) ORDER GRANTING FRANCHISE  
OPERATIONS OF CABLE TELEVISION SYSTEMS )

WHEREAS, The Board of County Commissioners of Spokane County, Washington, pursuant to the provisions of the Revised Code of Washington, Section 36.55.010 may grant franchises to persons to use the rights-of-way of County roads in Spokane County to construct, maintain and operate transmission and distribution lines or cables for the transmission and distribution of cable television signals; and

WHEREAS, The Board of County Commissioners of Spokane County, Washington, pursuant to Resolution No. 78-634, enacted an "Ordinance Regulating the Operation of Any Cable Television Systems in the County of Spokane"; and

WHEREAS, Said ordinance provides rules and regulations for the operation of any Cable Television Systems in the unincorporated areas of the County of Spokane, providing terms and conditions for the operation of such Cable Television Systems and the fees therefor, providing penalties and other matters; and

WHEREAS, COMMUNITY ANTENNA SYSTEM, of SPOKANE, WASHINGTON, has submitted an application for a non-exclusive franchise pursuant to Section 31 of Ordinance No. 78-634; and

WHEREAS, The Board of County Commissioners, having held a public hearing in respect to said application, having considered the respective interests proposed in advance, and being fully advised in the premises, does hereby find that the granting of a franchise under the terms and conditions of Ordinance No. 78-634 be in the public interest.

NOW, THEREFORE, BE IT RESOLVED By the Board of County Commissioners of Spokane County, Washington, that there is hereby granted to COMMUNITY ANTENNA SYSTEM of SPOKANE, WASHINGTON, hereinafter called Grantee, subject to all the terms and conditions of Ordinance No. 78-634 for a term of fifteen (15) years from the date hereof, the right, privilege, authority and franchise, for itself to construct, maintain, and operate transmission and distribution lines or cables for the transmitting and distributing of television, FM radio, and other audio-visual electrical signals, together with poles, and other appurtenances, upon, over, along, underneath, and across the County Roads and rights-of-way, described as follows, now existing or hereafter existing:

LIBERTY LAKE AREA - Sections 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23,  
24, 25, 26, 27 and 28, Township 25 N., Range 45 E.W.M.

HIDDEN VALLEY AND GREEN HOLLOW SUBDIVISION AREA - Sections 11, 12, 13 and  
14, Township 26 N., Range 42 E.W.M.

MULLEN HILL TERRACE PARK AREA - East Half of the Southwest Quarter of  
Section 17, Township 24 N., Range 43 E.W.M.

BE IT FURTHER RESOLVED By the Board of County Commissioners of Spokane County, Washington, that the CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by the ordinance of the county and no other purpose whatsoever.

BE IT FURTHER RESOLVED That the Grantee shall obtain a permit from the County engineer to install any and all COMMUNITY ANTENNA SYSTEM TV devices in the public rights-of-way prior to construction.

BE IT FURTHER RESOLVED That the terms of this franchise shall be as set forth in Ordinance No. 78-634, applicable federal law and regulation and the franchise application submitted by the Grantee on July 26, 1988. Provided, however, that if any part of said application is found by the Federal Communications Commission to be inconsistent with their rules and regulations, such rules and regulations shall prevail.

BE IT FURTHER RESOLVED That in accordance with Resolution 82-0372, the following variances to Chapter 7.40 of the County Code relating to Cable Television Franchises, are hereby granted.

- a. Section 7.40.180: Bond requirement reduced from \$250,000 to \$35,000.
- b. Requirements of Section 7.40.21 (13), (14), (15), (16), (17) and Section 7.40.22 and Section 7.40.23 are waived.

BE IT FURTHER RESOLVED That the Grantee hereunder shall not issue any capitol stock on account of the Franchise or the value thereof, nor shall the Grantee have any right to receive upon a condemnation proceeding brought by the County to acquire the properties of the Grantee, any compensation on account of the franchise or its value.

BE IT FURTHER RESOLVED That pursuant to Section 7.40.060 of the County Code, the franchise fee shall be five percent (5%) of gross subscriber revenues received from cable television operations in Spokane County.

BE IT FURTHER RESOLVED That this Franchise shall become effective as provided by Section 33 of Ordinance No. 78-634.

PASSED AND ADOPTED By the Board this 13th day of September, 1988.

BOARD OF COUNTY COMMISSIONERS  
OF SPOKANE COUNTY, WASHINGTON

*[Handwritten signature]*  
*[Handwritten signature]*



ALBERT: WILLIAM E. DONAHUE  
CLERK OF THE BOARD  
BY *[Handwritten signature]*

APPROVED AS TO FORM

*[Handwritten signature]*  
Deputy Prosecuting Attorney

01180

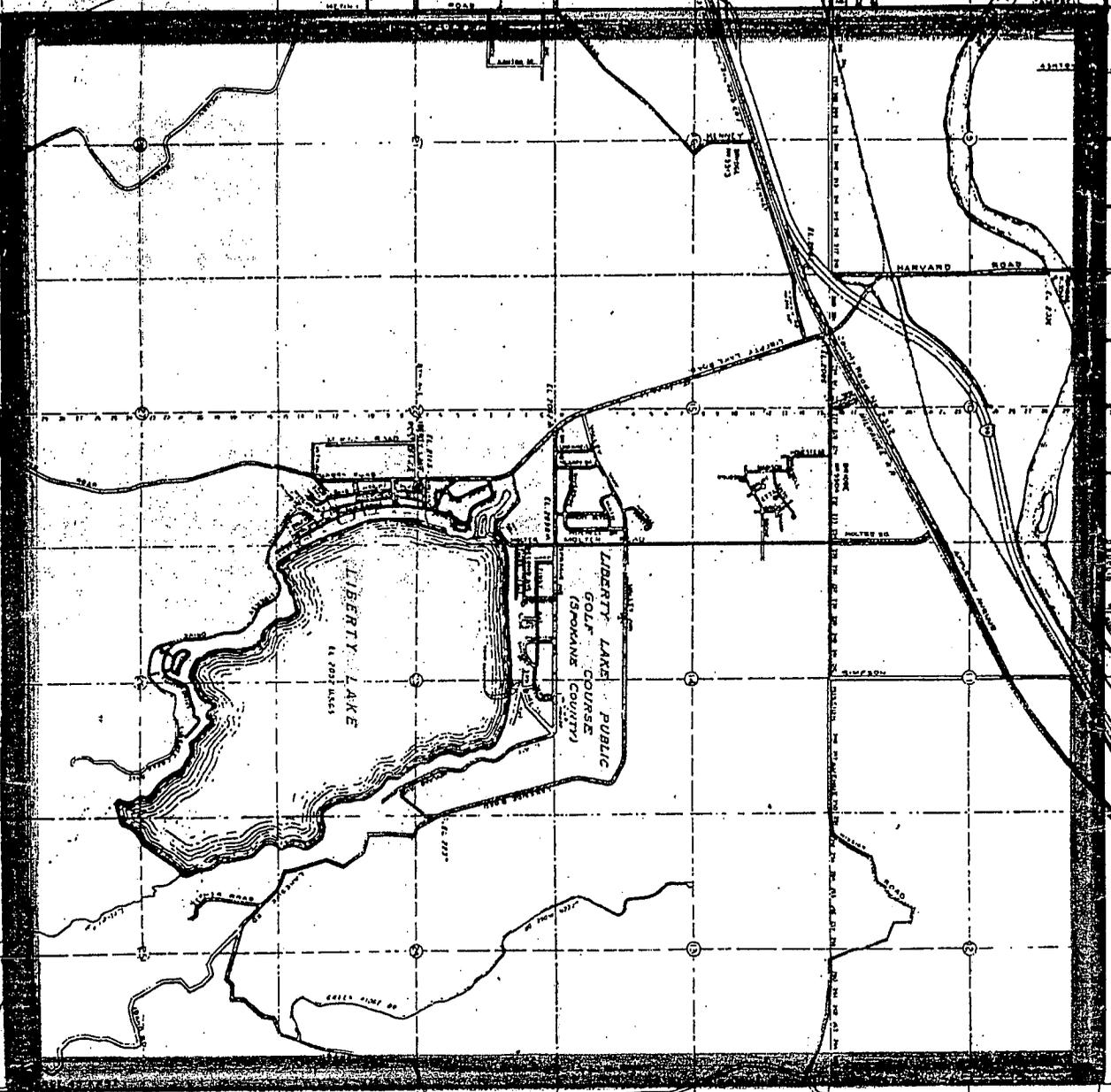
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RECEIVED  
SEP 16 4 01 PM '88

*[Handwritten signature]*

WILLIAM E. DONAHUE  
Address  
SPOKANE COUNTY, WASH. DISTRICT

*[Handwritten signature]*

FRANCHISE  
CABLE TV  
TRANSMISSION LINE  
LIBERTY LAKE



STATE OF IDAHO

RANGE 46 T4S