

ROLLA

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO/CABLE TV, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY TELEVISION ANTENNA SYSTEM IN THE CITY OF ROLLA, NORTH DAKOTA.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, N. D.:

Short Title:

This Ordinance shall be known and may be cited as the:

"Cable Television Franchise Ordinance."

I. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When inconsistent with the context, words used in the present tense include the future, words in the plural include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of
- (2) "Company" is the
- (3) "Council" is the
- (4) "Person" is any firm, person, partnership, association, corporation, company or organization of any kind.

II. GRANT OF AUTHORITY

WHEREAS, the application of the Company for a Franchise for a Community Television System in the City has been on file since *January 3, 1977* in the office of the City Auditor, together with a proposed rate schedule and said application and proposed rate schedule having been available for public inspection since said date; and

WHEREAS, the Council, at regularly scheduled and fully public proceedings affording due process to all persons, having duly investigated and approved the Company's legal status, the character and reputation of its' officers and majority stock-holders, the technical and other qualifications of said Company and its' personnel and having further investigated and approved the adequacy and feasibility of the proposed construction and construction arrangements of said system.

NOW THEREFORE, There is hereby granted by the City to the Company the right and privilege to construct, erect, operate, and maintain in upon, along, across, above, over and under all the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto, in the City, poles,

2

wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a community cable TV system for the interception, sale and distribution of television and other signals.

(1) Non-Exclusive Grant: The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive and the City reserves the right to grant similar use of said streets, alleys, public ways and places to any person at any time during the period of this Franchise except as to any other cable TV system.

(2) Compliance With Federal Regulations; Any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission relating to Cable Television Service shall be incorporated into the franchise granted hereunder within one year of the adoption of such modification or at the time of franchise renewal, whichever occurs first.

III. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Company shall, at all times during the life of this Franchise be subject to all lawful exercise of the police power of the City, and to present ordinances and such reasonable regulation as the City shall hereafter by ordinance provide.

IV. CONSTRUCTION STANDARDS

(1) All construction of the Company, including installation, shall conform to the National Electric Safety Code, the statutes of the State of North Dakota and the ordinances of the City. The Company shall provide the City with a map designating the location of cable television facilities and said map shall be available for public examination.

(2) All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the right or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places.

(3) In case of any disturbance of pavement, sidewalk, driveway or any other surfacing, Company shall, at its own cost and expense, and in a manner approved by the City Engineer, replace and restore all such disturbed areas in as good as condition as before said work was commenced.

3

(4) In the event that at any time during the period of this Franchise the City shall lawfully elect to alter or change the grade of any street, alley or other public way, the Company upon reasonable notice by the City, shall remove, relay and relocate its' poles, wires, cables, underground conduits, manholes and other fixtures at its own expense in locations to be approved by the City Engineer.

(5) The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main and all such poles or other fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways. Locations are to be approved by the City Engineer.

(6) The Company shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or move its' wires to permit the moving of buildings. The expense of same shall be paid by the person requesting same and the Company shall have authority to require payment in advance and not less than forty-eight hours advance notice.

(7) The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. All such trimming to be done with the approval of and under the supervision of the Park Board Superintendent and at the expense of the Company.

V. SERVICE AND MAINTENANCE STANDARDS

The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be set forth by the Council, or by the proper Federal and/or State regulatory body.

(1) The Company shall have a maintenance service readily available to subscribers upon telephone request. The Company shall employ at least one qualified technician to provide said maintenance.

(2) Whenever it is necessary to shut off or interrupt for the purpose of making repairs, adjustments or installations, the Company shall do so at such time as will cause the least amount of inconvenience to its' customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its' customers.

3) The franchisee and franchisor have adopted a plan for the investigation and resolution of complaints regarding cable television complaints. This plan among other things requires that the system have available at all times an agent or service personnel to receive and handle service calls and complaints; the office of the City Auditor shall have the primary responsibility for the administration of the franchise and the implementation of complaint procedures and that all subscribers to the cable system shall be notified at the time of their initial subscription of the complaint procedures.

4) The Company shall, upon the request of any subscriber, promptly remove all wires and equipment from the premises of such subscriber at no expense to such subscriber.

5) The Company shall at all times operate the cable system so as not to interfere with existing reception and shall prevent radiation from Company's cables to the antennas in the City.

In the event the Company's operation should interfere with existing reception or radiation should emit from Company's cables to the antennas in the City and the same is not corrected within a reasonable time after the Company shall have been notified of said, then, in that event, Council of the City may terminate this Franchise.

6) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted to any subscriber receiver.

7) Company shall install a system hereunder capable of distributing up to 12 television channels in accordance with the best accepted standard of the industry.

VI. FRANCHISE FEES

The Company shall pay to the City the sum of 1% of the gross revenues from regular television services received from the aforesaid community antenna system. Said payment shall be made on or before December 31st of each year during the term of this Franchise herein granted.

VII. TERM OF FRANCHISE

(1) The Franchise and rights herein granted shall take effect in force from and after the final passage hereof, as required by law, except as otherwise provided, and shall continue in force and effect for a term of fifteen (15) years from the effective date of this Franchise.

(2) The Franchise granted hereunder may be revoked by the city in the event the Company fails to apply for a Certificate of

Compliance from the Federal Communications Commission within ninety (90) days of the effective date of this Ordinance.

(3) The Franchise granted hereunder may be revoked by the City in the event the Company fails to commence significant construction within one hundred twenty (120) days of the granting of a Certificate of Compliance, or if the Company ceases to furnish TV signals or services for 90 days after commencing services.

VIII. INDEMNITY AND INSURANCE

The Company shall indemnify and save the City harmless from any and all liability, damage or expense from accident or damage, either to itself or persons or property of others, which may occur by reason of the Company's activities in the cable television business. For this purpose and prior to commencing construction of any kind, the Company shall have in full force and effect and thereafter so maintain and file evidence thereof with the City, a good and sufficient policy of insurance with liability limits of \$100,000.00 for property damage, \$250,000.00 for bodily injury to each person and \$500,000.00 for each accident. The said policy shall protect the City from and against any and all claims, actions, suits, liability, expense or damage of any kind or description which may accrue to or be suffered by the City by reason of the construction, maintenance or operation of Company's facilities.

IX. RECORDS AND REPORTS

(1) The City shall have access at all reasonable hours to all of the Company plans, contracts, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder. The following records and reports shall be filed with the City Auditor:

- (a) Copies of such rules and regulations as may be adopted by the Company for the conduct of its' business.
- (b) An annual summary report showing gross revenues received by the Company from its' operation of the community television antenna system during the preceding year, and such other information as the City shall request to properties and expenses related to Company's service within the City.

X. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

The Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantages to any person, nor subject any person to any

prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

XI. EXTENSION POLICY

(1) The Company is to have completed construction of energized trunk cables throughout the franchise area within one year of the date of the granting of a Certificate of Compliance.

(2) Subsequent extensions proposed by the Company shall be submitted to and approved by the City as follows:

The Company shall file with the City Council its' plan setting forth the stages by which it intends to extend its' service into the newly annexed areas of the City. This extension plan shall be filed with the Council as soon as it has been formulated by the Company. No installation of facilities shall commence until the Council has approved the extension plan. Upon the approval by Council of the plan the Company shall complete the same within six months of such approval. If Council does not approve said plan, negotiations between the Company and City, in conjunction with public proceedings shall be carried on until an acceptable policy can be determined and approved.

XII. EXTENSION BY ANNEXATION

Upon the annexation of any territory to the City, the portion of any said system that may be located or operated within such territory and upon the streets, alleys or public ground thereof, shall thereafter be subject to all the terms of this grant as though it were an extension made thereunder.

XIII. APPROVAL OF TRANSFER

The Company shall not sell or transfer its' plant or system to another, nor transfer any rights under this Franchise to another without Council approval. Further, no sale or transfer shall be effective until the vendee, assignee or lessee has filed in the office of the City Auditor an instrument, duly executed, reciting the fact of such sale, assignment or lease, accepting the terms of the Franchise and agreeing to all the conditions thereof.

XIV. CITY RIGHTS IN FRANCHISE

(1) The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power, provided that

such regulations by ordinance shall be reasonable and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the United States and the State of North Dakota.

(2) During the life of this Franchise, the City shall have the right to maintain upon the poles of the Company such fixtures as may be necessary for a police and fire alarm system, such fixtures to be installed, maintained and constructed by the City at its' expense and in accordance with the Company's rules and regulations.

(3) The City shall be soley responsible for all damages to persons or property arising out of the City's use of said poles and shall save the Company harmless from all claims and demands whatsoever arising out of said use. In the event of the Company's removal of poles, the City shall save the Company harmless from all expense, damage to persons or property arising out of the removal of City's aforesaid fixtures.

(4) The City reserves the general right to see that the system of the Company is constructed and maintained in a safe condition. If the City determines that an unsafe condition exists it may order the Company to make the necessary repairs. If the Company shall fail to make said repairs forthwith, the City may cause said repairs to be made and collect all cost and expense for same from the Company.

XV. COMPANY RULES

The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise and to assure an uninterrupted service to its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of the laws of the State of North Dakota and, if required by law, shall be subject to approval by the proper Federal and/or State regulatory body.

XVI. SEPARABILITY

If any section, sub-section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconsitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

XVII. EFFECTIVE DATE

This Ordinance shall be in full force and effect after its passage and approval.

ATTEST: Gallow Mitchell
City Auditor

Clarence Eller
Mayor

First Reading: January 3, 1977

Second Reading: and passage:

Approval: February 7, 1977

vote: yes; Lawson, Lamont, Lindbo, Kueger,
meas, and Newhooker.