

ORDINANCE NO. \_\_\_\_\_

352

AN ORDINANCE GRANTING A FRANCHISE TO THE DONIPHAN COUNTY CABLE TV, INC., ITS SUCCESSORS AND ASSIGN, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SUSTEM IN THE CITY, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OR FRANCHISE, PROVIDING FOR CITY REGULATIONS AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WATHENA, KANSAS, AS FOLLOWS:

Section 1. Short Title. This ordinance shall be known and may be cited as the Doniphan County Cable TV, Inc. Franchise Ordinance.

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 include the future, words in the plural number 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 Wathena, Kansas.
- (2) "Council" is the City Council of Wathena, Kansas.
- (3) "Community Antenna Television System", hereinafter referred to as "CATV System" or "System", means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee; but does not include the operation of a pay TV sytem.
- (4) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (5) Grantee is Doniphan County Cable TV, Inc., a corporation, or anyone who succeeds said corporation in accordance with the provisions of this Franchise.

Section 3. Grant of Non-Exclusive Authority.

- (a) There is hereby granted by the City to the Grantee the right and privilege 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 all extensions thereof,



and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV System for the interception, sale and distribution of television and radio signals.

- (b) The right to use and occupy said streets, alleys, public ways and places for the purposed herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this License and Permit.

Section 4. Compliance with Applicable Laws and Ordinances.

The grantee shall, at all times during the life of this License and Permit, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

Section 5. Territorial Area Involved. This License and Permit is related to the present territorial limits of the City and to any area henceforth added thereto during the term of this License and Permit.

Section 6. Liability and Indemnification.

- (a) This grantee shall pay and by its acceptance of this License and Permit the grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting this License and Permit. These damages and/or penalties shall include, but shall not be limited to, damages arising out of copyright installation, operation, or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License and Permit.
- (b) The grantee shall pay and by its acceptance of this License and Permit specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants or any employees of the City.
- (c) The grantee shall maintain, and by its acceptance of this License and Permit specifically agrees that it will maintain throughout the term of this License and Permit liability insurance insuring the City and the grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:
  - (1) \$100,000 for bodily injury or death to any one person, within the limit, however, of \$300,000 for bodily injury or death resulting from any one accident.

- (2) \$100,000 for property damage resulting from any one accident.
- (3) \$100,000 for infringement of copyrights, and,
- (4) \$100,000 for all other types of liability.
- (5) The Grantee shall maintain Workman's Compensation Coverage for the protection of its employees.

Section 7. Color TV. The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

Section 8. Signal Quality Requirements. The Grantee shall:

- (a) Produce a picture whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows.
- (b) Transmit signal of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
- (c) Limit failures to a minimum by locating and correcting malfunctions promptly.
- (d) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

Section 9. Operation and Maintenance of System.

- (a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible, such interruptions, insofar as possible, shall be preceded by notice and shall occur during the periods of minimum use of the system.

Section 10. Carriage of Signals. The Grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission. All FCC regulations shall be complied with by the Grantee.

Section 11. Emergency Use of Facilities. In the case of any emergency or disaster, the Grantee shall make its facilities available to the City for emergency use.

Section 12. This License and Permit authorizes only the operation of a CATV System as provided for herein, and does not take the place of any other license, or permit which might be required by law of the Grantee.



Section 13. Safety Requirements.

- (a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code Promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and in such manner that they will not interfere with any installation of the City or of a public utility serving the City.
- (c) All structures and all lines, equipments, and connections in, over, under and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good repair.

Section 14. New Development. It shall be the policy of the City liberally to amend this License and Permit, upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

Section 15. Conditions on Street Occupancy.

- (a) All transmissions and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located so 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 rights and reasonable convenience of property owners who join any of the said streets, alleys, or other public ways and places.
- (b) Paved streets and sidewalks shall not be disturbed in any manner whatsoever and whenever it becomes necessary to place any conduit, cable, lines or other means of signal transmission of any kind and type whatsoever beneath a paved street, or sidewalk, the same shall be placed by boring under any such paved street or sidewalk.
- (c) If at any time during the period of this License and Permit, the City shall lawfully elect to alter or change the grade or any street, sidewalk, alley, or other public way, the Grantee, 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.



- (d) Any poles or other fixtures placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.
- (e) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- (f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
- (g) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

Section 16. Preferential or Discriminatory Practices Prohibited.

The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, no subject any person to any prejudice or disadvantage.

Section 17. Removal of Facilities Upon Request. Upon termination

of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscribers upon his request.

Section 18. Transfer of License and Permit. Except for a mortgage

or assignment to secure a loan to construct and operate said system in Wathena, Kansas, Grantee shall not sell, lease, sublet or transfer its system and the privileges granted herein without first obtaining the City Council's approval.

Section 19. Filings and Communications with Regulatory Agencies.

Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other agency having jurisdiction in respect to any matters affecting CATV operation authorized pursuant to this License and Permit, shall also be submitted simultaneously to the City Council, if requested by the City.



Section 20. City Rights in License and Permit.

- (a) The right to hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- (b) The City shall be furnished with a statement compiled by a Certified Public Accountant reflecting and showing the gross income of service charges paid by users, and the City shall have the right to examine such of the Company's records relative to the gross income received by the Company for service charges paid by users.
- (c) The City shall have the right, during the life of this License and Permit, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any municipal use of the condition that such wire and pole fixtures do not interfere with the CATV operations of the Grantee.
- (d) The City shall have the right to supervise all construction or installation work performed subject to the provisions of the License and Permit and make such inspections as it shall find necessary to insure compliance with terms of this License and Permit and other pertinent provisions of Law.
- (e) At the expiration of the term for which the License and Permit is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the CATV System from all public ways within the City.

Section 21. Maps, Plats, and Reports.

- (a) The Grantee shall file with the City Clerk true and accurate maps or plats of all existing and proposed installations.
- (b) The Grantee shall keep on file with the City Clerk a current list of its shareholders and bondholders.

Section 22. Payment to the City. The Grantee shall pay to the City an amount equal to 3% of the annual gross service charge paid by users within the city during the year, for the use of the streets and other facilities of the City in operation of the CATV System and for the municipal supervision thereof. In addition, a negotiated contract of the use of City owned poles and space to erect a tower on City owned property will be negotiated. Doniphan County Cable TV, Inc. retains the right to bury cable or lease other property for the tower if proper agreements cannot be reached with the City of Wathena. The payments herein provided for shall be in addition to any other tax or payment owed to the City by the Grantee, including any payment for ad valorem taxes, if any.

Section 23. Forfeiture of License and Permit.

- (a) In addition to all other rights and power pertaining to the City by virtue of this License and Permit or otherwise, the City reserves the right to terminate and cancel this License and Permit and all rights and privileges of the Grantee hereunder in the event that the Grantee:



- (1) Violates any provision of this License and Permit or any rule, order, or determination of the City or City Council made pursuant to this License and Permit, except where such violation, other than of Section 24 or subsection (2) below, is without fault or through excusable neglect.
  - (2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.
  - (3) Attempts to evade any of the provisions of this License and Permit or practices any fraud or deceit upon the City, or
  - (4) Fails to complete construction and commence operation under this License and Permit according to provisions in Section 24.
- (b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the City's rights under this License and Permit or any provisions of law. In the event that such termination and cancellation depends as made by the City Council or its representative shall be conclusive. Provided, however, that before this License and Permit may be terminated and cancelled under this Section, the Grantee, must be provided with an opportunity to be heard before the City Council.

Section 24. The Grantee shall accomplish significant construction within one (1) year after receiving certification of authorization from the FCC and such other regulatory bodies as may have authority and jurisdiction over Cable TV operations, and shall thereafter equitably and reasonably extend energized trunk cable to a substantial percentage of its License and Permit area each year, to be completed within eighteen (18) months after certification.

Section 25. City's Right of Intervention. The Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party.

Section 26. Further Agreement and Waiver by Grantee. The Grantee agrees to abide by all provisions of this License and Permit, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of the License and Permit are unreasonable, arbitrary, or void.

Section 27. Duration and Acceptance of License and Permit.

- (a) This License and Permit and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of 15 years, provided that within 5 days subsequent to the date of the passage of this Ordinance the Grantee shall file with the City Clerk its unconditional acceptance of this License and Permit and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths.
- (b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this License and Permit whatever.



- (c) The Grantee shall have a right of renewal of this License and Permit upon such terms as the City and Grantee may agree upon, subject to such state or Federal regulations as may be in effect as of the time of renewal.

Section 28. Number of Channels. The Grantee's cable distribution system shall be capable of carrying at least twenty (20) television channels.

Section 29. Rates. The following rates and charges are hereby authorized for service under this License and Permit and shall not be changed by Grantee without prior notification to the City Council:

- (a) Initial Year. The rates and charges for the initial year of this License and Permit shall be as follows:

- (1) Initial tap-in and connection charges: \$25.00.
- (2) Monthly rates: 8.50 for 10 channels of service off air, 9.50 with addition of one additional independent station off satellite. 1.50 for each additional hookup.

- (b) Subsequent years. For all subsequent years, Grantee shall have the right to fix, charge, collect and receive reasonable rates for Community Antenna Television System service furnished within the corporate limits of the City of Wathena, provided, however, that any proposed rate increase to subscribers must first be submitted to the governing body of the City of Wathena for its approval and the City of Wathena reserves the right, at all times during the existence of this franchise, to fix and determine maximum rates to be charged all subscribers by the Grantee to the extent that the law provides for such right, power and authority by the City.

Section 30. Publication Costs. The Grantee shall assume the entire cost of publication of this License and Permit if such publication is required by law.

Section 31. Separability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional 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 hereof.

Section 32. Effective Date of License and Permit. This Ordinance and the License and Permit granted herein shall become effective upon approval by the City Council.

Section 33. Ordinances Repealed. Ordinance No. 333 and all other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Read the first, second, and third times and passed and approved this 18<sup>th</sup> day of December, 19 99

APPROVED:

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Mayor

(SEAL)

ATTEST:

Mary C. Moss  
City Clerk