
FRANCHISE AGREEMENT

CABLE FOR THE FUTURE

AN ORDINANCE GRANTING NATIONAL CABLE, INC., THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, RIGHTS-OF-WAY, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE COMMUNITY HEREOF AND ANY SUBSEQUENT ADDITIONS THERETO, TOWERS, POLES, LINES, CABLES, WIRES AND OTHER APPARATUS FOR THE PURPOSE OF RECEPTION, TRANSMISSION AND DISTRIBUTION BY CABLE OF VIDEO AND AUDIO PROGRAMMING AND OTHER TELECOMMUNICATION SERVICES TO SUBSCRIBERS WITHIN THE COMMUNITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF KEMPNER, TEXAS;
COMMUNITY

SECTION I - TITLE

This ordinance shall be known and may be cited as the "CITY OF KEMPNER Community Antenna Television Ordinance."
COMMUNITY

SECTION II - DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When required by 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.

1. "Cable Act" is the Cable Communications Policy Act of 1984, 47 U.S.C. & 521 et seq. and any amendment thereto subsequent to the effective date of this Ordinance.
2. "Cable Service" means the transmission and delivery by the Grantee to subscribers' television receivers (or any other suitable type of electronic terminal or receiver) of telecommunication signals, including the retransmission of broadcast and satellite-received video and audio programming, and of programming originated by Grantee.
3. "Community" is the CITY OF KEMPNER, TEXAS.
Community's Name
4. "Council" is the Council of the City of Kempner.
Community
5. "Cable System" is a facility utilizing certain electronics and other components which is designed to deliver to subscribing members of the public Cable Service and various other communications services.
6. "FCC" shall mean Federal Communications Commission.

7. "Person" is an individual, firm, partnership, association, corporation, governmental entity, or organization of any kind, and any other legally recognized entity.
8. "Grantee" is *NATIONAL CABLE, INC* and its successors and assigns in accordance with the provisions of this Ordinance.
9. "Subscribers" are those persons contracting to receive Cable Service furnished under this Ordinance by Grantee.

SECTION III - GRANT OF NON-EXCLUSIVE AUTHORITY

1. There is hereby granted by the Community to the Grantee, and to its successors, assignees or designees, the non-exclusive right, privilege and authority to erect, maintain, operate and reconstruct, in, under, over, along, across and upon the existing and future streets, rights-of-way, lanes, avenues, sidewalks, alleys, bridges, highways, and any easements dedicated for compatible uses within the Community and subsequent additions thereto, towers, poles, lines, cables, wires, manholes and all other appliances and equipment necessary or desirable for the construction, maintenance, operation and reconstruction in the Community of a Cable System, for the purpose of reception, transmission and distribution of audio, visual, electronic and electric impulses in order to furnish Cable Service to Subscribers for a period of ~~twenty~~ ^{TEN} (10) years, and any renewals thereof, commencing from and after the effective date of this Ordinance.

2. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, provided, however, that any additional grants to other Persons to construct and operate a Cable System shall not operate to materially modify, revoke, or terminate any rights of Grantee hereunder, and shall be upon terms and conditions substantially similar to those contained herein.

3. Grantee shall be responsible for the cost of construction, maintenance and operation of the Cable System. Grantee shall also be responsible for obtaining any necessary utility, planning board, zoning and construction permits required for the construction of the Cable System.

SECTION IV - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Grantee shall, during the term hereof and any renewal terms, comply with all applicable provisions of the Cable Act, the Copyright Act of 1976, and the rules and regulations of the FCC and, except in those areas which have been preempted by the Cable Act or by any other statute or rule or which are regulated by the FCC, shall be subject to all lawful exercise of the regulating and police powers of the Community. If any provision of this franchise shall become inconsistent with applicable federal law or regulation, such provision shall be deemed modified to conform with applicable law.

SECTION V - TERRITORIAL AREA INVOLVED

The service area comprises the existing legal limits of the Community and any additions or accessions thereto. Grantee may, but shall not be required to serve (i) areas or individual homes adjoining, but outside the Community limits, (ii) individual homes in the Community to which it is not economically feasible to provide service from Grantee's existing facilities, and (iii) private property if access thereto is not permitted by the property owner and not permitted by applicable federal law. Grantee may negotiate directly the amount to be charged for bringing Cable Service to those residents.

SECTION VI - LIABILITY AND INDEMNIFICATION

Grantee shall, at all times, keep in effect the following types of insurance coverage, listing the Community as an additional insured:

1. Worker's Compensation upon all its employees and subcontractors involved in any manner in the installation or servicing of its plant and equipment as required by the TEXAS statutes.
State

2. Property damage liability insurance to the extent of \$1,000,000.00 as to each occurrence and personal injury liability insurance to the extent of \$1,000,000.00 as to each occurrence, automobile bodily injury liability insurance of \$1,000,000.00 as to each occurrence and property damage liability of \$1,000,000.00 for hired, borrowed or non-ownership automobile liability coverage. In addition, a \$2,000,000.00 umbrella policy.

3. Grantee shall indemnify, protect, and save harmless the Community from and against any damages, losses, claims or liabilities arising out of physical damage to property, bodily injury or death to persons, including payments made by the Community under any Worker's Compensation law, in connection with the erection, maintenance, presence, use or removal by Grantee of the Cable System, or any other act of Grantee, its agents or employees, in connection with the provision of Cable Service, including copyright infringement. The Community shall cooperate with Grantee in defending any litigation, investigation or proceeding involving a claim for which indemnification may be paid.

4. Grantee shall also carry such insurance as it deems necessary to protect it from claims under any Worker's Compensation law that may be applicable to Grantee. All insurance required shall be and remain in full force and effect for the entire life of the rights granted hereunder. Insurance certificates evidencing such insurance coverage shall be deposited with and be kept on file by the Community.

SECTION VII - GENERAL SYSTEM SPECIFICATIONS

1. Grantee's Cable System shall have a minimum of 12

channels. The electronic design frequency of 300mhz allows up to a 36 channel capacity.

2. The Grantee shall provide to the Community, upon completion of construction of the Cable System, an "as built" construction drawing.

SECTION VIII - TECHNICAL STANDARDS

Grantee shall be governed by technical standards as may be established by the FCC from time to time.

SECTION IX - CONSTRUCTION AND MAINTENANCE OF THE CABLE SYSTEM

1. Grantee shall commence construction of the Cable System as soon as practicable after the effective date of this Ordinance once Grantee obtains all permits and achieves all necessary coordination with utilities and local planning authorities. The Community shall have the right to inspect the construction and installation work being performed by Grantee, upon reasonable notice to Grantee, and to require from Grantee periodic reports on the progress of such construction.

2. Grantee may, in its discretion, employ third party contractors to construct or maintain the Cable System and provide Cable Service.

3. The Grantee shall render efficient service to Subscribers, make repairs promptly, and interrupt Subscriber service only for good cause and for the shortest possible time.

SECTION X - EMERGENCY USE OF FACILITIES

In the case of a local emergency or disaster, the Grantee shall, upon request of the Council, make available its facilities to the Community for emergency use during the emergency or disaster. If the Community wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to the Community and Grantee and provides Grantee with the necessary equipment for such system, Grantee will permit the emergency system to be used on the Cable System.

SECTION XI - SAFETY REQUIREMENTS

The Grantee shall, at all times, employ ordinary care in the construction and operation of the Cable System and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injuries or nuisances to the public.

SECTION XII - LIMITATION ON RIGHTS GRANTED

1. All reception, transmission and distribution structures, lines and equipment erected by the Grantee within the Community shall be so located as to cause minimum interference with the proper use of street, alleys and other public ways and places, and to cause minimum interference with the rights and

reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and Grantee shall remove its lines and equipment whenever the Council reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places in the Community.

2. Construction and maintenance of the Cable System shall be in accordance with the provisions of the National Electrical Safety Code, the national Electrical Code, and such applicable Ordinance and regulations of the Community, affecting electrical installation, which may be presently in effect, or changed by future Ordinance.

3. The Grantee shall have the authority to trim trees on public streets, alleys, sidewalks, rights of way and other public areas of the Community so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee. Trimming of trees in private property shall require the written consent of the property owner.

4. The Grantee shall, in the case of disturbance of any public street, sidewalk, alley, right-of-way or paved area caused by Grantee or its representatives at any time during the term hereof and any renewals, restore the same to its original condition at the Grantee's expense.

SECTION XIII - OWNERSHIP AND REMOVAL OF FACILITIES

During the term and any renewals hereof and upon termination or revocation of this franchise, all equipment and facilities installed by Grantee in the public areas of the Community or at a subscriber's premises shall be personal property and shall remain the property of Grantee, regardless of its method of affixation to property, and Grantee shall have the right to remove said facilities and equipment upon termination or revocation.

SECTION XIV - ASSIGNMENT

Once construction of the Cable System is substantially completed, the Grantee may assign its rights under this Ordinance to another Person by giving the Council thirty (30) days written notice. Such assignment shall become effective only if the assignee executes a copy of this Ordinance and agrees to be bound by the terms hereof. Grantee may pledge this franchise or all or a portion of the Cable System as security for any indebtedness of Grantee.

SECTION XV - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Grantee herein shall, except as provided in this Section, terminate ~~twenty~~ ^{ten} (10) years from the effective date of this Ordinance. The rights granted to Grantee herein shall be subject to renewal pursuant to the provisions of Section 546 of the Cable Act, or any applicable successor statute. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original ~~twenty~~ ^{TEN} (10) year term

has expired. If this Ordinance is not renewed or if it is revoked for cause by the Community, the transfer of Grantee's system shall be governed by Section 547 of the Cable Act.

SECTION XVI - REVOCATION FOR CAUSE

The Council may at any time revoke the franchise herein granted upon a material breach by Grantee of any of the provisions of this Ordinance should Grantee fail to (i) cure such breach or (ii) object in writing to the Council's stated grounds for revocation, within ninety days after receiving written notice of the breach by the Council. If Grantee objects to the Council's grounds for revocation, the Council shall conduct a public hearing on the matter and, once the Council issues its findings and conclusions, the parties may avail themselves of any remedies provided by law. During such time as the dispute over the proposed revocation is unsettled, this franchise shall remain in effect.

SECTION XVII - MODIFICATIONS OF OBLIGATIONS

In addition to any other remedies provided by law or equity, Grantee's obligations under this Ordinance may be modified, at its request, in accordance with section 545 of Cable Act.

SECTION XVIII - SEVERABILITY

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, or is superseded or preempted by FCC regulations or any statute, 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 XIX - FRANCHISE FEE

During the term hereof, Grantee shall pay to the Community an annual fee, payable in a lump sum, based on 3% (maximum of 3%), of the annual gross revenues received by the Grantee from the operation of the Cable System. Such fee shall not, during the term hereof, exceed 3% of gross revenues and may be passed on directly to each Subscriber once the Cable System is operational. For purposes of this section, "gross revenues" does not include fees or taxes collected by Grantee from Subscribers for direct pass-through to a governmental entity, Subscribers' payments to Grantee for terminal equipment destroyed or lost by the Subscriber, tax refunds, converter deposits by Subscribers and interest earned thereon, and any franchise fee reimbursement. Grantee shall keep and maintain accurate records with respect to the gross revenues of the Cable System. The Community shall have the right, upon reasonable notice to Grantee, to inspect Grantee's books and records as are necessary to confirm the accuracy of Grantee's franchise fee payments.

SECTION XX - ACCEPTANCE

This Ordinance is subject to acceptance by Grantee.

SECTION XXI - COMPLETION OF SYSTEM

The Grantee agrees to commence work on the system and have it in operation within twenty-four (24) months from the date of Acceptance by Grantee. However, the Grantee may ask the City Council for an extension of time if the work of installing the cable has been started and not completed within twenty-four (24) months. Approval of the extension of time shall not be unreasonably withheld. If work has not been completed and the system in operation or an extension of time granted, this Ordinance shall be withdrawn by Council.

SECTION XXII - MISCELLANEOUS

1. During the processing of this Ordinance, any legal expenses and/or publication costs incurred by either party remain the obligation of the respective party that incurred them.

2. Grantee shall not deny Cable Service to any potential Subscriber on the basis of race, color, religion, national origin, age or sex. Grantee will comply with the Equal Employment Opportunity requirements of the Cable Act and the FCC.

3. Grantee's obligation to meet the requirements of the franchise shall be deferred or excused if, by force majeure, performance hereunder is made unreasonably burdensome or impossible.

4. The Community hereby warrants that it has the legal right to issue this franchise to Grantee.

First Reading 8/4/98

~~Second Reading~~ XXXXXX

Adopted 8-4-98

Effective Date Upon Acceptance

Mayor Ronan Fanelor

Attest: Francis Spina

Accepted By: [Signature]
JACK WILSON
PRESIDENT

NATIONAL CABLE, INC.
5151 REED RD. SUITE 106-A
COLUMBUS, OHIO 43220

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