

ORDINANCE NO. 450.2

AN ORDINANCE GRANTING TO FRANCHISEE, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN HART COUNTY, KENTUCKY, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING CABLE SERVICE FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF HART COUNTY KENTUCKY, U.S.A.

SECTION I. - DEFINITIONS

For the purposes 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.

- A. "Basic Cable Television Service" means the service tier which includes the retransmission of local broadcast signals.
- B. "Grantor" is Hart County, Kentucky
- C. "Council" is the Fiscal Court of Hart County, Kentucky
- D. "System" means a facility that uses any public right-of-way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community is a system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband telecommunications services.
- E. "Cable Service" means the provision of Cable Television Service.
- F. "Cable Television Service" the one-way transmission of video programming or other programming services and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- G. "FCC" shall mean the Federal Communications Commission.
- H. "Franchisee" is MEDIACOM SOUTHEAST LLC or its successors or assigns.

- I. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- J. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Franchisee.
- K. The "Term" of this Ordinance shall have the meaning as defined in Section XVII of this Ordinance.

SECTION II. - GRANT OF NON-EXCLUSIVE AUTHORITY

- A. For the Term of this Ordinance, there is hereby granted by Grantor to Franchisee and its successors, assigns or designees, the non-exclusive right to erect, maintain and operate in, under, over, along, across and upon the present and future streets, lanes, avenues, sidewalks, alleys, bridges, highways, rights-of-ways, easements dedicated for compatible uses and other public places located within the boundaries of Hart County, Kentucky including subsequent additions thereto, towers, poles, lines, cable, wires, manholes and all other fixtures and equipment necessary for the maintenance and operation of a System for the purpose of transmission and distribution of cable services, information services, data services and broadband telecommunications services.
- B. Grantor shall not permit any person to provide services similar to those provided by Franchisee without first having secured a non-exclusive franchise from Grantor that shall impose the same costs, obligations and restrictions imposed by this Ordinance.
- C. In the event that another entity providing multi-channel video programming serves residents of the County using facilities that occupy the streets and rights of way or that includes the delivery of video programming using the facilities of a common carrier (e.g., an Open Video System), and that entity operates with no franchise or operates under a franchise that imposes lesser burdens on it than upon the Franchisee, Grantee shall have the right, upon 30-day written notice to the County, to unilaterally adopt the less burdensome provisions imposed on the competing provider.

SECTION III. - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Franchisee shall during the Term, be subject to all lawful exercise of the police powers of Grantor except as those powers are limited by federal law, including the Communications Policy Act of 1984, as amended and the regulations of the FCC.

SECTION IV. - FRANCHISE AREA

This Ordinance permits the provision of service to the present boundaries of Grantor and to any area annexed thereto during the Term. Franchisee shall not be required to service residents of areas within the present boundaries of Grantor and any areas annexed by Grantor after the effective date of this Ordinance that are more than four hundred feet (400') from a point of connection to existing distribution lines or where there is present a density of less than 20 residences per mile except upon payment by such residents of the capital costs incurred by Franchisee in bringing service to such residents.

SECTION V. - LIABILITY AND INDEMNIFICATION

Franchisee shall indemnify, protect, and save harmless Grantor from and against losses and physical damage to property and bodily injury or death to persons, including payments made under any Worker's Compensation law which may arise out of the erection, maintenance, use or removal of said attachments or poles within the boundaries of Grantor, or by any act of Franchisee, its agents or employees. Franchisee's obligation to indemnify Grantor shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this Ordinance.

Franchisee shall, at all times, keep in effect the following types of coverage:

- A. Worker's Compensation.
- B. Property Damage Liability Insurance to the extent of Two Hundred Fifty Thousand Dollars (\$250,000.00) as to each occurrence and Two Hundred Fifty Thousand Dollars (\$250,000.00) aggregate, and Personal Injury Liability Insurance to the extent of Five Hundred Thousand Dollars (\$500,000.00) as to each occurrence and Five Hundred Thousand Dollars (\$500,000.00) aggregate. Excess Bodily Injury and Property Damage of One Million Dollars (\$1,000,000.00) each occurrence and One Million Dollars (\$1,000,000.00) aggregate. Automobile Bodily Injury and Property Damage Liability combined One Million Dollars (\$1,000,000.00) each occurrence.
- C. Franchisee shall maintain policies of insurance in the above described amounts to protect the parties hereto from and against all actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Franchisee shall also maintain policies of insurance in amounts it deems necessary to protect it from all claims under the Worker's Compensation laws in effect that may be applicable to Franchisee. Grantor shall keep on file Certificates evidencing such insurance coverage.

SECTION VI. - GENERAL SYSTEM SPECIFICATIONS

The facilities used by Franchisee shall have a minimum capacity of 330 MHz and have at least 43 activated channels.

SECTION VII. - TECHNICAL STANDARDS

Franchisee shall comply with the technical standards established by the FCC.

SECTION VIII. - CUSTOMER SERVICE STANDARDS/OPERATION AND MAINTENANCE OF SYSTEM

- A. Franchisee shall render service and make repairs in a commercially reasonable manner, and interrupt service only for good cause, including as required by federal law for the shortest time possible, such interruptions, insofar as possible, shall occur during periods of minimum use of the System.
- B. Under normal operating conditions, Franchisee shall respond to service requests within two business days following receipt.
- C. Failure by Franchisee to restore any service to a customer to service within two business days after receipt of notification of a complete disruption of service will, upon request by the customer, result in the issuance of a credit to that customer's account for the portion of a month they were without cable service.

SECTION IX. - LOCAL BUSINESS AGENT

During the term of this franchise, and any renewal thereof, Franchisee agrees to maintain a local or toll free telephone number to be used by customers of the Franchisee to contact Franchisee and to place requests for service or inquiries.

SECTION X. - SERVICE TO SCHOOLS AND CITY

Franchisee shall, subject to the line extension provisions of Section IV, provide Basic Cable Television Service at no separate charge to public elementary and secondary schools, at one terminal junction for educational purposes upon request of the school system.

Franchisee shall, subject to the line extension provisions of Section IV, also provide without charge, at one building other than a hospital, nursing home, apartment or building at the airport, to be selected by the Council, one junction terminal to said building and shall also furnish to the building, without charge, Basic Cable Television Service to the building's terminal junction.

SECTION XI. - EMERGENCY ALERT SYSTEM

Franchisee shall provide emergency alert facilities as required by federal law. Grantor or its designee shall have the capability of disseminating emergency messages over the cable system provided that Grantor or its designee acquires, at its own cost, all necessary interface and encoding equipment.

SECTION XII. - SAFETY REQUIREMENTS

Franchisee shall, at all times, employ ordinary care and shall use and maintain commonly accepted methods and devices for preventing failures and accidents which are likely to cause damages, injuries, or nuisances to the public.

SECTION XIII. - LIMITATIONS ON RIGHTS GRANTED

- A. All transmission and distribution structures, lines and equipment erected by Franchisee within Grantor shall be located as to cause minimum interference with the proper use of streets, alleys and the public ways and places, and to cause minimum interference with the rights and reasonable convenience or property owners who adjoin any of the said streets, alleys or other public ways and places, and said poles or towers shall be removed by Franchisee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets or public places within Grantor and Grantor concurrently requires relocation of similarly situated utilities.
- B. Construction and maintenance of the System shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters, and such applicable ordinances and regulations of Grantor, affecting electrical installation, which are presently in effect at the time of construction.
- C. In case of disturbance of any street, sidewalk, alley, public way or paved area, Franchisee shall, at its own cost and expense and in a manner approved by Grantor, replace and restore such street, sidewalk, alley, public way or paved areas in at least as good a condition as before the work involving such disturbance was done.
- D. If at any time during the period of this Ordinance Grantor shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, Franchisee, upon reasonable notice by Grantor, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense provided Grantor concurrently imposes identical requirements on similarly situated utilities.

- E. Franchisee shall on the request of any person holding a building moving permit or any person who wishes to remove trees or structures from their property, temporarily raise or lower its wires to permit the moving of buildings or tree removal. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same; the Franchisee shall have the authority to require such payment in advance. Franchisee shall be given not less than fourteen (14) days advance notice to arrange for such temporary wire changes.
- F. Subject to Grantor approval, Franchisee shall have the authority to trim trees that overhang the streets, alleys, sidewalks and public ways and places so as to prevent the branches of such trees from coming in contact with the wires and cables of Franchisee.
- G. Franchisee, shall, at its expense, protect, support, temporarily disconnect, relocate on the same street, alley or public place, or remove from the street, alley or public place, any property of Franchisee when required by Grantor by reason of traffic conditions, change of establishments of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or other structure of public improvement; provided, however, that Franchisee shall in all cases have the privileges and be subject to the obligations to abandon any property of Franchisee in place as hereinafter provided.
- H. In all sections of Grantor where Grantor designates an area where all presently above ground services are to be placed underground, Franchisee shall place its wires underground on the same time schedule and on the same conditions that are applicable to the providing of other above ground services in the designated areas.
- I. In the event that the use of any part of the System is discontinued for any reason for a continuous period of twelve (12) months, or in the event such System or property has been installed in any street or public place without complying with the requirements of this Ordinance, or the rights granted hereunder have been subject to the rights of the Grantor to acquire or transfer the system as specified in Section XV, promptly remove from the streets, or public places, all such property and poles of such System other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the street or other areas from which such satisfactory to Grantor.
- J. Any property of Franchisee to be abandoned in place shall be abandoned in such a manner as Grantor may prescribe. Upon permanent abandonment of the property of Franchisee in place, it shall submit to Grantor an instrument to be approved by Grantor, transferring to Grantor the ownership of such property.

SECTION XIV. - OWNERSHIP AND REMOVAL OF FACILITIES

- A. All cable and equipment for cable service including cable television reception service installed by Franchisee at a subscriber's location shall remain the property of Franchisee and Franchisee shall have the right to remove said cable and equipment. Upon termination of all service to any subscriber, Franchisee shall promptly remove all its above ground facilities and equipment from the premises upon the request of such subscriber.
- B. At the end of the Term of this franchise, the Company at its sole cost and expense and upon direction of the Grantor, shall remove the above-ground cables and appurtenant devices constructed or maintained in connection with the services authorized herein, unless the Company, its affiliated entities or assignees should, within six (6) months after such expiration, termination or revocation obtain certification from the FCC to operate an Open Video System or any other federal or state certification to provide telecommunication services.

SECTION XV. - TRANSFER OF ORDINANCE

All right, title and interest of Franchisee in this Ordinance and the Non-exclusive Franchise granted herein shall be freely assignable without consent of Grantor.

SECTION XVI. - PAYMENT TO THE COUNTY

The Franchisee shall pay Grantor five percent (5%) of gross monthly receipts for Basic Cable Television Service provided to all subscribers located within Grantor. Such payment shall be made annually within ninety (90) days after the end of each calendar year. All other license fees or taxes levied upon Franchisee by Grantor shall be credited against the payment required herein.

SECTION XVII. - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Franchisee herein shall become effective upon the passage of this Ordinance and shall continue for a period of fifteen (15) years, unless terminated earlier in accordance with this Ordinance ("Term"). Franchisee shall have the option to renew this franchise for an additional fifteen (15) years at any time before the expiration of the Term under the same terms and conditions by providing notice as required under Section XXVI.

SECTION XVIII. - ERECTION, REMOVAL AND COMMON USE OF POLES

- A. No poles or other wire-holding structures shall be erected by Franchisee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which

approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of Franchisee shall create a vested interest.

- B. Where poles or other wire-holding structures already existing in use in serving Grantor are available for use by Franchisee, but it does not make arrangements for such use, the Council may require Franchisee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to Franchisee are just and commercially reasonable.

SECTION XIX. - RATES AND CHARGES

The Grantor reserves the right to regulate such rates and charges to the extent permitted by and using methodologies prescribed by Federal law.

SECTION XX - BOOKS AND RECORDS

The Franchisee shall keep full, true, accurate, and current books of accounts, which books and records shall be made available for inspection at reasonable times by authorized representatives of Grantor as may be reasonably necessary for the administration of this Ordinance. To the extent Grantor obtains any personally identifiable information or other information protected under federal, state or local privacy laws, Grantor shall assume all of the obligations of a cable operator with respect to protecting the confidentiality of that information. Grantor shall indemnify and hold Franchisee harmless from any costs, losses or damages arising from the disclosure of any protected information to or by Grantor.

SECTION XXI. - FORCE MAJEURE

The Franchisee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of the Franchise), where such noncompliance or alleged defaults occurred or were caused by strike, riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature, labor disputes, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Franchisee's ability to anticipate and control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Franchisee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

SECTION XXII. - MISCELLANEOUS

Franchisee's legal, financial, technical and other qualifications, and the adequacy and feasibility of its construction arrangements, if any, have been approved by the Council

after consideration in a full public proceeding affording due process to all interested persons.

SECTION XXIII. - MODIFICATION OF OBLIGATIONS

In addition to any other remedies provided by law or regulation, Franchisee's obligations under this Ordinance may be modified, at its request, in accordance with Section 625 of Cable Communications Policy Act of 1984 as it now exists, or as hereafter amended.

SECTION XXIV. - 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 amended by the United States Congress or is superseded or preempted by Federal Communications Commission regulation, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION XXV. - PUBLICATION

Franchisee shall assume the costs of any required publication of this Ordinance.

SECTION XXVI. - NOTICES

All notices and other communications hereunder this Ordinance shall be in writing and shall be deemed to have been given on the date of actual delivery if mailed, first class, registered or certified mail, return receipt requested, postage paid to the following respective addresses:

To Grantor:

Hart County, Kentucky Fiscal Court
Hart County Courthouse
P.O. Box 486
Munfordville, Kentucky 42765
Attn: Judge Executive

To the Franchisee:

MEDIACOM SOUTHEAST LLC
LEGAL DEPT: BRUCE GLUCKMAN
100 Crystal Run Road
Middletown, NY 10941

With a copy to:

MEDICOM SOUTHEAST LLC
90 Main Street
Benton, KY 42025
Attn: General Manager

Either of the foregoing parties to this Ordinance may change the address to which all communications and notices may be sent to it by addressing notices of such change in the manner provided hereunder.

SECTION XXVII – CONTRACT RIGHTS

Acceptance of this Ordinance by Franchisee shall create enforceable contract rights between Franchisee and Grantor with respect to the terms of this Ordinance.

SECTION XXVIII. - PRIOR ORDINANCES

All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this Ordinance.

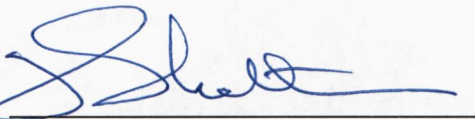
SECTION XXIX. - EFFECTIVE DATE

This Ordinance shall take effect after its passage, approval, and publication as provided by law.

Published prior to passage on the 6 day of November, 2001.


Read and approved on the first reading on this 1 day of November, 2001.

Read and approved on the second reading on this 16 day of November, 2001.

BY: 

Judge Executive

ATTEST:



ACCEPTANCE

The Non-Exclusive Franchise as granted under this Ordinance is approved and accepted on this day 3rd day of December, 2001 by MEDIACOM SOUTHEAST LLC.

BY: Bruce Meacham
MEDIACOM SOUTHEAST LLC
(by its authorized representative)