

ORDINANCE NO. 806

AN ORDINANCE RELATING TO A CABLE TELEVISION SYSTEM AND SERVICES IN THE VILLAGE OF SAINT ELIZABETH, MO. AND GRANTING A NON-EXCLUSIVE FRANCHISE TO DOUGLAS CABLE COMMUNICATIONS, L.P., TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM AND SERVICE WITHIN THE VILLAGE OF SAINT ELIZABETH, MO.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF SAINT ELIZABETH, MO.:

Section 1. AUTHORITY: This ordinance is passed and approved by the Board of Trustees of the Village of Saint Elizabeth, MO and enacted pursuant to the laws of the State of Missouri.

Section 2. FRANCHISE GRANT: Pursuant to law, a non-exclusive franchise is granted to DOUGLAS CABLE COMMUNICATIONS, L.P., to construct, own and operate a cable television system in the Village of Saint Elizabeth, MO. Said non-exclusive franchise granted for a period of fifteen (15) years, shall vest all the rights, privileges and immunities of a cable system with Douglas Cable Communications, L.P., however, said non-exclusive franchise shall be subject to and conditional upon all the terms, duties and obligations found in the laws of the State of Missouri, rules and regulations of the Federal Communications Commission and of this ordinance.

Section 3. RIGHTS CONFERRED BY FRANCHISE:

(a) This ordinance confers upon the Grantee the non-exclusive, authority, power and franchise to establish, construct, acquire, own, operate and maintain a cable television system within the Village and to render, furnish and sell such service to the inhabitants of Village and its environs and to use and occupy the streets and other public places within the corporate limits of the Village as the same now exists or may hereafter exist for its cable television system, including the right to enter and construct, erect, locate, relocate, repair, and rebuild, in, on, under, along, over, and across the streets, alleys, avenues, parkways, lanes, bridges, to make use of all land dedicated or acquired for public use and locations approved by the Village Engineer, and other public places in the Village, for all towers, poles, cables, amplifiers, conduits, and other facilities owned, leased, or otherwise used by grantee for the furnishing of cable television service within the Village during the continuance of the franchise hereby granted and in accordance with the laws and regulations of the Federal Communications Commission, the State of Missouri, County of Miller and ordinances and regulations of the Village of Saint Elizabeth, MO.

(b) The poles used for the Grantee's distribution system shall be those erected and maintained by anyone authorized to maintain poles in the streets or public ways when and where practicable. It is contemplated that reasonable standard pole attachment agreements will be entered into with non-municipal utilities as required by Douglas Cable Communications, L.P. Grantee is specifically granted the right to set its own poles in the event

reasonable joint use is not possible or feasible. In any areas where electric and telephone utilities are now underground and in any new sub-division or new additions where said utilities are underground, the Grantee will construct its cable underground.

(c) The Village reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonably designate where such facilities are to be placed within the public ways and places. Further, if available, the Village shall provide to Grantee at no charge space for attachment on all municipally owned poles. Any municipally owned land, if desirable by Grantee for head-end location, shall be provided at no charge given consideration as described in Section 8 herein.

Section 4. INSTALLATION OF CABLE SYSTEM:

(a) The installation of the Cable System shall be in accordance with the requirements of the National Electric Safety Code and all applicable laws, ordinances, rules and regulations of the FCC.

(b) The Grantee, at its expense, shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public places of the Village so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

(c) The Grantee shall at its expense protect, support, temporarily disconnect, relocate or remove any property of the Grantee located upon streets, rights of way and easements of the Village when required by the Village because of traffic conditions, public safety, street vacation, street construction, change of establishment of street grade, installation of sewers, drains, water pipes, power lines and tracts or any other type of structure or improvement by the Village on Village facilities.

(d) Any pavements, sidewalks, or curbing taken up by Grantee, and any and all excavation made by Grantee shall be done only after notice to Village, and shall be done in such a manner so as to cause the least reasonable inconvenience to the inhabitants of the Village and to the general public. All repairs and replacements shall be made at the expense of the Grantee, with all reasonable speed, leaving such disturbed areas in as good condition as existed prior to any such taking up or excavation.

Section 5. RE-LOCATION OF PROPERTY: The grantee, at the request of any person holding a permit issued by the Village, shall temporarily remove, raise or lower its wires or cables to permit the moving of building or equipment. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the Grantee may require such payment in advance. The grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary wire or cable change. The charge by the Grantee for such re-location shall not exceed Grantee's cost, and in no event shall be more than a reasonable sum for such services.

Section 6. RATES AND CHARGES: The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as

shall be reasonably necessary to enable the Grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to each and all of its customers.

Section 7. INDEMNIFICATION:

(a) The Grantee agrees to hold and save said Village harmless from any and all liability that may arise out of the construction, maintenance, operation or use of Grantee's system and works and the providing of such services and to provide and keep in force adequate liability insurance therefor, to the extent of bodily injury limits of \$500,000-\$500,000 and a property damage limit of \$300,000-\$300,000, naming the Village as an additional insured, as its interest may appear. Grantee shall also provide and maintain insurance under a Broad Form Automobile policy with \$100,000-\$500,000 coverage limits and Workmens Compensation insurance with Missouri statutory limits. All insurance shall be issued by a company authorized to do business in the State of Kansas and shall be provided before the Grantee, its successors or assigns thereof, shall commence the construction or other operations mentioned in this section. The Village shall notify the Grantee's representative or employee in the Village, if any, within, ten (10) days after presentation of any demand or claim that may arise, whether by suit or otherwise, against the Village. Grantee shall maintain on file upon request of the City Clerk, a current certificate of insurance. All insurance policies shall, if possible, provide for not less than thirty (30) days notice of cancellation. The policies mentioned herein shall name the Village, its officers, boards, commissions, agents and employees as additional insureds.

(b) Grantee agrees to indemnify, and save harmless the Village, its officers, and employees from and against any and all claims, demands, actions, suits and proceedings, by others against all liability to others, including, but not limited to any liability for damages by reason of or arising out of a failure by Grantee to secure consents from the owners, authorized distributors or licensees, or to obtain proper licenses on programs to be delivered by the grantee CATV system, and against other loss, cost, expense and damages resulting therefrom, including copyright infringement which the Village may incur arising out of the exercise or enjoyment by Grantee of its franchise.

Section 8. PAYMENT TO THE VILLAGE: In consideration of the rights, privileges, and franchise hereby granted, and as compensation to the Village for the use of its public ways and places by the Grantee, and to properly regulate the activities of Grantee, the Grantee shall, on or before the last day of January and the last day of July of each year to which this franchise is effective, pay to the City a sum equal to three (3) percent of the basic subscriber revenues for cable television service within the then existing corporate limits of the Village for the preceding six-month period ending on the last day of December and the last day of June respectively. The books of Grantee shall be open to inspection by the Village at all reasonable times to verify the accuracy of the computation and correctness of the report which shall accompany payment. Grantee shall keep books and records pursuant to established practices using generally accepted auditing procedures.

Section 9. SERVICE: Grantee shall maintain a Toll-Free Service staffed to provided adequate service during usual business hours and have a listed telephone so that messages, complaints and requests for service or repairs or adjustments may be received at any time without toll charges.

Section 10. FRANCHISE TERMINATION: If the Grantee should violate any of the terms, conditions or provisions of this franchise, or if the Grantee should fail to comply with any reasonable provision of any ordinance of the Village regulation, the use by the Grantee of the streets, alleys, easements, or public ways of the Village, or if the Grantee shall become insolvent, unable, or unwilling to pay its debts, or Grantee abandons the cable system, or after having constructed and placed all or any portion thereof in operation, for any reason fails to operate it for a period of thirty (30) days, and such violation continues for thirty (30) days after the Grantee shall have been notified in writing by the Village to desist from such violation so specified, or if the Grantee is adjudged bankrupt, or there is notice of a prospective foreclosure or other judicial sale of all or a substantial part of the system, or Grantee is found to have practiced any fraud upon the Village, then the Village may terminate and cancel this franchise, and thereupon all of the rights and privileges granted by this franchise, shall be deemed to have been forfeited and annulled. In the event such forfeiture is imposed, the Grantee shall be afforded a period of six (6) months after a final order of forfeiture, and including any appeal thereof, within which to sell, transfer, convey or otherwise dispose of the above described cable television system to a qualified purchaser at fair market value. During the six (6) month period the Grantee shall operate the cable television system pursuant to the terms and provision of this franchise.

Section 11. SEVERABILITY: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof. The Village declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portions of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required by Grantee by the franchise granted hereunder.

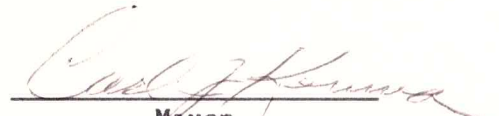
Section 12. PLAT OF SYSTEM: This ordinance is passed and adopted in conformity with the laws of the State of Missouri and, the addition to other provisions herein set out, said Grantee shall file with the Village and obtain approval thereof a proper map showing and describing the exact location or proposed location of all its facilities within the Village's streets, alleys, and public ways.

Section 13. All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance, excluding however, any and all public utility franchises heretofore granted to public utilities, including utilities regulated by the Public Service Commission.

Section 14. EFFECTIVE DATE: This ordinance shall take effect from and after this passage, and adoption.

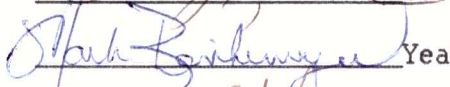
Section 15. RENEWAL: The Grantee shall be entitled to a renewal of this franchise for an additional period of ten (10) years upon a showing that the Grantee has substantially complied with all material terms of the franchise, and has proposed in its request for renewal to continue to meet the terms of the franchise. The renewal procedures shall be governed by the applicable sections of the Cable Communications Policy Act of 1984.

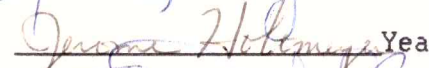
Read three times, passed and unanimously adopted by the Board of Trustees of the Village of Saint Elizabeth, MO. on the ____ day of _____, 19__.


Mayor


 Yea

 Yea

 Yea

 Yea

 Yea


Attest: City Clerk