

ORDINANCE 2001- 2

AN ORDINANCE GRANTING UNTO TCA CABLE PARTNERS, ITS SUCCESSORS AND ASSIGNS, THE RIGHT TO ERECT AND MAINTAIN A CABLE COMMUNICATION SYSTEM IN THE CITY OF POTTSVILLE, ARKANSAS, AUTHORIZING THE USE, RIGHT, PRIVILEGE, POWER AND AUTHORITY TO CONSTRUCT, MAINTAIN, OPERATE AND REMOVE IN, OVER AND ACROSS HIGHWAYS, ROADS, BRIDGES, OR OTHER PUBLIC PLACES IN THE CITY OF POTTSVILLE, ARKANSAS, FOR THE PURPOSES OF RECEIVING AMPLIFYING AND TRANSMITTING AUDIO, VIDEO, RADIO OR OTHER FORMS OF ELECTRONIC OR ELECTRICAL SIGNALS OR INFORMATION SERVICES FOR SALE TO CITIZENS OF THE CITY OF POTTSVILLE, ARKANSAS, FOR A PERIOD OF FIFTEEN (15) YEARS.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POTTSVILLE, ARKANSAS, HAVING DETERMINED THAT TCA CABLE PARTNERS PERFORMANCE UNDER ITS FRANCHISE HAS BEEN SATISFACTORY, AND HAS SUBSTANTIALLY COMPLIED WITH THE MATERIAL TERMS OF THE EXISTING FRANCHISE AND WITH APPLICABLE LAW, FURTHER, THE CITY HAS DETERMINED THAT TCA CABLE PARTNERS' SERVICE HAS BEEN REASONABLE IN LIGHT OF COMMUNITY NEEDS AND HAS THE FINANCIAL, LEGAL AND TECHNICAL ABILITY TO PROVIDE SERVICES, FACILITIES AND EQUIPMENT NECESSARY TO MEET THE FUTURE CABLE-RELATED NEEDS OF THE COMMUNITY, AND DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1:

DEFINITIONS. For the purpose of the Agreement, the following terms, phrases, words, and abbreviations shall have the meanings outlined below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. **"Basic Cable Service"** means any service tier which includes the retransmission of local television broadcast signals.
- b. **"City"** means for the purpose of this ordinance all areas within the city limits of Pottsville, a municipal corporation located in the county of Pope, state of Arkansas.
- c. **"Cable Communication System, Cable Television System", "System"** sometimes referred to as **"Cable TV Systems"** or **"Broadband Communications Network"** means a system of antennas, cables, amplifiers, towers, microwave links, cable casting studios, and any other conductors, terminals, converters, equipment or facilities, designed and constructed for the primary purpose of distributing video programming to subscribers and the secondary or additional purpose of producing, receiving, amplifying, storing, processing or distributing audio, video and digital signals.

d. **"Franchising Authority"** means the City Council of the City of Pottsville, or the lawful, successor, transferee or assignee thereof.

e. **"Grantee"** means TCA Cable Partners, a Delaware general partnership or the lawful successor, transferee, or assignee thereof.

f. **"Gross Revenues"** means all revenues received for monthly cable service received by Grantee from Subscribers of the System located within the City; provided, however, that such phrase not include any taxes or fees on cable service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

g. **"Franchise Fee"** includes any tax, fee or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both solely because of their status as such.

h. **"Person"** means any individual, firm, partnership, association, corporation, company, or organization of any kind.

i. **"Public Way"** shall mean the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the city which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the System.

j. **"Rights-of-Way Easements and Private Property"**. Subject to federal and state law, Grantee is authorized to provide cable television services to or to install any equipment or facilities upon, across, in or through governmental rights-of-way, public utility easements located on private property included but not limited to rights-of-way and easements located in apartment complexes, condominiums, mobile home parks and residential subdivision developments with private roads.

SECTION 2:

That there is hereby granted to TCA Cable Partners, its successors and assigns, hereinafter called Grantee, the right, privilege and permission for a period of fifteen years (15 years) from the effective date of this ordinance to construct, maintain and operate in the present and future streets, avenues, alleys and public ground and places of the City of Pottsville, Arkansas, and its successors, towers, poles, lines cables, necessary wiring and other apparatus and appurtenances for the purpose of receiving, amplifying and distributing television signals to the said City, the inhabitants thereto, and persons firms and corporations thereof, and to use and occupy such present and future streets, avenues, alleys and public ground and places for such purposes. There is hereby granted the further right, privilege and authority to the Grantee to lease, rent, or in any other manner obtain the use of

such towers, poles, lines, cables and other equipment and facilities from any and all holders of public licenses and franchises within the corporate limits of the City of Pottsville, Arkansas, and to use such towers, poles, cables and other such equipment and facilities, subject to all the existing and future ordinances and regulation of the City.

SECTION 3:

This right-of-way for the use and purposes herein set forth shall not be exclusive but is merely a permit allowing Grantee to use the streets, roads, and alleys of the City of Pottsville for the purposes herein set forth. Where any aerial plant is placed, the poles used for the Grantee's distribution system shall include those erected and maintained by the Grantee, the telephone company, the power and light company and others when and where practical.

SECTION 4:

The Grantee's transmission and distribution system, poles, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with any improvements the City may deem proper to make, or to hinder unnecessarily or obstruct the free use of the streets, alleys, bridges or other public property.

Construction and maintenance of the transmission distribution system, including house connections, 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 the City of Pottsville affecting electrical installations which may be presently in effect or may be enacted by the City of Pottsville.

Installation and house drop hardware shall be uniform throughout the City, except the Grantee shall be free to change their hardware and installation procedure as improvements therein are developed except where changes are not permitted or required by regulations and ordinances of the City of Pottsville presently in effect or which may be enacted.

SECTION 5:

The Grantee shall have the right to prescribe reasonable service rules and regulations for the conduct of their business. Such service rules and regulations shall be kept on file at all times with the City Clerk.

SECTION 6:

The antenna, receiving and distribution equipment shall be installed and maintained so as to provide pictures on subscriber receivers throughout the system essentially of the same quality as those received at the antenna site and/or transmitted by the Grantee.

SECTION 7:

Grantee shall extend service to any area within the City requiring up to 300 feet of cable per home adjacent to and contiguous with existing cable plant as measured from the extremity of the trunk cable nearest the unserved area. In such a case, a newly installed subscriber shall not be ~~assessed~~ or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible.

However, where the residence, building, structure, development, or subdivision of a person requesting to be served cable television service by the Grantee in the City is located in areas requiring greater than 300 feet of cable per home, Grantee shall have the right to establish and collect an extension charge for erecting, constructing, or extending its cable, wire, or lines to the residence, building, structure, development, or subdivision desiring connection to Grantee's System. Grantee's charge for and decision to extend service will be based on the following criteria:

- a. Commercial feasibility.
- b. Technical practicability.
- c. Current cost to construct cable plant and facilities.
- d. The number of permanent homes in and/or between the area to be served.
- e. The day-to-day operational and maintenance costs of cable plant after it is constructed.

This extension charge shall be uniform and shall be applied indiscriminately to all persons desiring service from or connection to Grantee's system. Grantee shall have the right to determine the commercial feasibility of any request for service extension and shall have the right to refuse to serve an area or areas that would cause financial harm to the Grantee or be technically impracticable to build or both.

Grantee shall provide Basic cable service to all city buildings, and any public elementary or secondary school, at no charge, under the terms and conditions set forth in this Agreement as long as same shall be and remain in full force and effect.

SECTION 8:

The Grantee herein, its employees and servants, shall have the right and privilege of soliciting subscribers to the service to be furnished by Grantee.

Grantee shall be allowed to impose an administrative fee of \$5.00 to each subscriber invoice which has not been paid in full within twenty-one (21) days of the date of invoice to cover Grantee's expenses and costs of collection of such invoice amount.

SECTION 9:

In the event of the failure of the Grantee to render community television service in the City of Pottsville as contemplated and provided for in this Ordinance within a period of sixty (60) days

from the effective date of this Ordinance, the City Council of the City of Pottsville shall have the right, on reasonable notice to the Grantee, to declare this Ordinance and the rights granted thereunder forfeited; provided, however, that failure to comply with the provisions by reason of causes beyond the reasonable control of the Grantee, which could not be anticipated at the time of their acceptance by the Grantee, shall not be sufficient ground to declare a forfeiture. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, Acts of God, power outages or other events reasonably beyond its ability to control.

SECTION 10:

The Grantee shall indemnify and hold the City harmless at all times during the term of this grant from and against all claims for injury or damages to persons or property both real and personal caused by construction, erection, operations or maintenance of any structures, equipment, appliance or products authorized or used pursuant to authority of this ordinance.

The Grantee, upon receipt of due notice in writing from the City, shall defend at their own expense any action or proceeding against the City of Pottsville in which it is claimed that injury or damage arose from the Grantee's activities in the construction or operation of their television system; and in the event of a determination of liability, shall indemnify the City.

SECTION 11:

Upon termination or forfeiture of this grant, the Grantee shall, within a reasonable time, remove its poles, cables, wires and appliances from the City streets, lanes, roads, sidewalks, alleys, bridges, highway, other public places and from the premises of Grantee's customers within the City and subsequent additions thereto.

SECTION 12:

In the maintenance and operation of the television transmission and distribution system of Grantee in the streets, alleys and other public places, and in the course of any new construction or addition to the facilities of the Grantee, the Grantee shall proceed as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places, made by the Grantee in the course of its operations, shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by red warning lights.

Whenever the Grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley or other public place, the same shall be replaced and the surface restored in as good condition as before entry within forty-eight hours after completion of the Grantee's work.

Upon failure of the Grantee to make such restoration within such time, or to begin such restoration within such time if the restoration cannot reasonably be completed within such time, or upon the Grantee's delay of more than 24 hours in the continuation of restoration previously begun, the City may serve upon the Grantee notice of the City's intent to cause the restoration to be made, and, unless the Grantee within 24 hours after receipt of such notice shall begin or resume the proper

restoration to be made, the City may cause the proper restoration to be made, including the removal of excess dirt, and the expense of same shall be paid by the Grantee upon demand by the City.

The Grantee shall at all times comply with any and all rules and regulations which the City has made or may make to apply to the public generally with reference to the removal or replacement of pavements and to excavations in streets and other public places, not inconsistent with its use for the purposes contemplated by this ordinance.

SECTION 13:

Whenever the City of Pottsville finds that the construction of any of its streets and properties require the relocation of any part of Grantee's system, the City of Pottsville may order the Grantee to relocate the Grantee's properties therefore, and such shall be done at the sole expense of the Grantee.

SECTION 14:

As expeditiously as reasonably possible, after receipt of subscriber complaints regarding cable television operations, Grantee shall investigate such complaints and resolve them to the extent reasonably possible, and agents shall be available in the City for such purposes. The Grantee shall provide a local telephone number or toll free telephone number, to the inhabitants of the City of Pottsville, which can be used by inhabitants of the City of Pottsville to contact the Grantee for purpose of registering subscriber complaints. The Mayor of the City of Pottsville has primary responsibility for the continuing administration of the Grantee's rights and privileges herein, and of the reasonable implementation of the foregoing complaint procedures. Notice of the foregoing will be given by the Grantee to each new subscriber at the time of the initial regular subscription to the cable system.

SECTION 15:

When a customer's service is reported or found to be interrupted, it shall be restored as promptly as possible, but in the event it remains out of order though no fault of the customer, in excess of 24 consecutive hours, after knowledge by the company of the interruption, the company will refund the pro-rata part of that month's charges for the period of days during which the service was not provided. This refund may be accomplished by a credit on a subsequent bill for cable service.

SECTION 16:

In the event the television section or the community antenna system shall be interrupted or fail to function, by reason of an act of God, accident or cause otherwise beyond the control of the Grantee, the Grantee shall restore the service in a reasonable time and such interruption shall not constitute a breach of this ordinance.

SECTION 17:

All provisions by law provided and prescribed for the granting of this permit and authority are hereby to have been fully complied with and the permit shall be in full force and effect from and after its execution and approval. The Grantee shall pay, to the City of Pottsville as a franchise tax and as compensation for the right and privileges enjoyed hereunder, the maximum allowable franchise fee under federal law, five percent (5%) of gross subscriber revenue, payable quarterly at the end of March, June, September, and December of each year. Payment shall be made to the City of Pottsville within 45 days after the expiration of each quarter. The consideration set forth in this section shall be paid and received in lieu of any tax, license, charge, fee, or any other character of charge for use and occupancy of streets, alleys, and public places of the City; and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied.

Should the City not have the legal power to agree that the payment of the foregoing cash consideration shall be in lieu of the taxes, license, charges, fees, rentals, and taxes afore said, then the City agrees that it will apply so much of said payment as may be necessary to the satisfaction of the Grantee's obligations, if any, to pay any such taxes, licenses, charges, fee or rentals.

The period of any limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due. Unless the Franchising Authority initiates a lawsuit for recovery of such franchise fees in a court of competent jurisdiction, within three (3) years from and after such payment due date, such recovery shall be barred and the Franchising Authority shall be estopped from asserting any claims whatsoever against the Grantee relating to such alleged deficiencies.

SECTION 18:

Annually, Grantee shall supply to the City a copy of a financial statement prepared by a Certified Public Accountant reporting the gross annual basic subscriber revenues of the Grantee for the applicable fiscal period. The City shall have the right to inspect, either by employees or by an independently retained Certified Public Accountant, at any reasonable time, the financial records of the Grantee.

SECTION 19:

That the Grantee shall at all times keep its cable and other appurtenances used for transmitting signals shielded in such a manner that there will be not interference with signals received by private receiver's sets owned by persons not subscribing to Grantee's service.

SECTION 20:

If the Grantee shall fail to comply with any of the provisions of this grant, or default in any of its obligations except for causes beyond the reasonable control of the Grantee, and shall fail, within thirty (30) days after written notice from the City to correct such default or non-compliance,

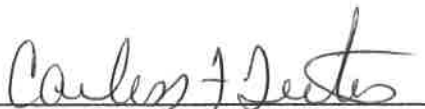
the City shall have the right to repeal this ordinance and all rights of the Grantee hereunder, after giving the Grantee reasonable notice of any meeting called for such purposes and opportunity for the Grantee to be heard at such meeting.

Passed on the 26 day of March



Mayor

ATTEST:



City Clerk