

VILLAGE OF FLAT ROCK
ORDINANCE NO. 2

ORDINANCE ESTABLISHING CONDITIONS FOR AWARDDING NON-EXCLUSIVE
FRANCHISES FOR THE CONSTRUCTION, INSTALLATION AND MAINTENANCE
OF A CABLE TELEVISION SYSTEM AND CABLE TELEVISION SERVICE
TO MULTIPLE SUBSCRIBERS WITHIN THE VILLAGE OF FLAT ROCK

BE IT ORDAINED BY THE GOVERNING BODY OF THE VILLAGE OF FLAT ROCK, NORTH CAROLINA:

SECTION 1. PURPOSE

In the public interest and for the promotion of the public health, safety and convenience and pursuant to statutory authority contained in North Carolina General Statutes Section 160A-319 and other applicable laws, the following rules are adopted, which rules set forth the conditions, limitations, restrictions and requirements under which a person may construct or cause to be constructed, operate and maintain a community antenna television system and engage in the business of providing cable television service in the Village of Flat Rock, North Carolina.

SECTION 2. 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 Service" means the service tier which includes the transmission of local broadcast signals.
- B. "Grantor" means the Village of Flat Rock, North Carolina.
- C. "Grantee" means the person or persons to whom or to which a franchise is granted by the Village Council under this Ordinance or anyone who properly succeeds such person in accordance with the terms of this Ordinance.
- D. "Council" means the Village Council of the Village of Flat Rock, North Carolina.
- E. "System" means a system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband telecommunications services.
- F. "Cable Television Reception Service" means the delivery Grantee to television receivers (or any other suitable type of electronic terminal or receiver) of the electronic signals and other communications services carried over said system
- G. "FCC" means the Federal Communications Commission.

- H. "Person" means any person, firm, partnership, association, corporation or other business organization.
- I. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Grantee.

SECTION 3. GRANT OF FRANCHISE

A. Franchise Required: It shall be unlawful for any person to engage in the construction, operation or maintenance of a cable television system in the Village of Flat Rock unless such person shall first have obtained and shall currently hold a valid franchise granted pursuant to this Ordinance. Any such franchise shall be upon substantially the same terms and conditions with the same obligations and burdens as contained herein.

B. General Grant: The Village Council has the authority to grant the non-exclusive right, privilege and franchise to construct, erect, operate and maintain in, over, under and along public streets, roads, alleys, easements, rights-of-way and other public ways and areas a cable television system within the Village of Flat Rock.

C. Examination and Investigation of Applicants: The aforesaid right, privilege and franchise may be offered to qualified applicants, subject to the right of the Village, or its designated agency, to perform an examination and/or investigation of the applicants, said examination and/or investigation to include, but not be limited to, the legal, character, financial, technical and other qualifications of the applicants and as to whether any proposed construction plans and arrangements are shown, to the satisfaction of the Village Council, to be both feasible and adequate.

D. Non-Exclusivity: A franchise granted to construct, erect, operate and maintain a cable television system in the Village shall not be deemed to be an exclusive right or permission. The Village expressly reserves the right to grant similar, non-exclusive franchises to other persons to conduct cable television activities within the same or other areas of the Village at any time or any period of time. No additional franchise granted by the Village shall in any way affect the obligations of any Grantee hereunder.

SECTION 4. TERM

- No franchise shall be granted pursuant to this Ordinance for a term longer than fifteen (15) years. The term of the franchise shall commence on the first day of the month next following the date the Grantee accepts and agrees to abide by the terms and conditions of this Ordinance and of the franchise by signing and filing an acceptance thereof with the Village Clerk. If such acceptance shall not be filed within a period of thirty (30) days from the award of such franchise, the franchise so awarded shall be deemed void and of no further force and effect and the franchise so awarded shall stand revoked.

SECTION 5. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Grantee shall, during the term hereof, except in those areas which have been preempted by the Communications Act of 1934, as amended and as the same may from time to time be amended, or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of the Grantor.

SECTION 6. TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial jurisdiction of the Grantor and to any area annexed thereto during the term of this Ordinance and Grantee shall serve all residents of the Village, provided, however, Grantee shall not be required to serve residents that are beyond four hundred (400) feet from existing distribution lines except upon payment by such residents of the capital costs incurred by Grantee in bringing service to such residents. Grantee shall extend service to annexed areas at its normal installation charge and monthly rate where the number of homes to be passed by such new extension is 20 homes or more per mile and where such extension is contiguous to existing cable plant.

Grantee shall provide the Village annually, on or before February 1 of each year, a report showing any line extensions completed during the previous calendar year, together with a report of proposed line extensions planned for the then current year.

SECTION 7. LIABILITY AND INDEMNIFICATION

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

A. Worker's Compensation upon its employees engaged in any manner in the installation or servicing of its plant and equipment within the village of Flat Rock, North Carolina.

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, Personal 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) as to each occurrence and One Million Dollars (\$1,000,000.00) aggregate and Automobile Bodily Injury and Property Damage Liability combined One Million Dollars (1,000,000.00) as to each occurrence.

Grantee 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, presence, use or removal of attachments or poles within the territory of Grantor, or by any act of Grantee, its agents or employees. Grantee shall carry insurance in the above described amounts to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. Grantee shall also carry such insurance as it deems necessary to protect it from all claims

under the Worker's Compensation laws in effect that may be applicable to Grantee. All of the foregoing insurance policies shall be and remain in full force and effect during the entire period of the rights granted hereunder. Insurance certificates, evidencing such insurance coverage, shall be deposited with and kept on file by the Grantor.

These damages shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of or attributable to the installation, operation and/or maintenance of the system authorized herein, whether or not any act or omission complained of is authorized by this Ordinance.

SECTION 8. GENERAL SYSTEM-SPECIFICATIONS

A. The facilities used by Grantee shall have a minimum capacity of 33 MHz and at least 36 channels of entertainment and information will be available on the date of the granting of a franchise hereunder. The system shall also be capable of delivering color television signals, and when the signals Grantee distributes are received in color, they shall be distributed in color where technically feasible.

B. Grantee shall upgrade the system from time to time in order to provide channel capacity similar to that offered in communities of similar size in the state, provided, however, that any such investment will be economically feasible.

SECTION 9. TECHNICAL STANDARDS

Grantee shall be governed by the technical standards established by the FCC.

SECTION 10. CUSTOMER SERVICE STANDARDS/OPERATION AND MAINTENANCE OF SYSTEM

A. 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, to occur during periods of minimum use of the system.

B. Grantee shall be governed by all Customer Service Standards established by the FCC and shall abide by all rules and regulations set forth by the Federal Government.

C. Grantee shall provide such adjustments and repairs as are necessary to provide a quality signal to subscribers within twenty-four (24) hours of the time a report of failure or malfunction of service is made. Failure on the part of Grantee to restore a customer to service within twenty-four (24) hours of receipt of such a report will, upon the request by such customer, result in a credit to that customer's account for the portion of the month such customer was without cable service.

D. Grantee agrees to maintain a toll-free telephone listing for the Village for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within fifteen (15) days of receipt and shall make a good faith effort to resolve them swiftly and equitably.

E. Knowledgeable, qualified representatives of the Grantee will be available to respond to customer telephone inquiries Monday through Friday during normal business hours. Additionally, based on community needs, Grantee will provide telephone access to its customers located within the Village after normal working hours and on weekends when necessary.

F. Under normal operating conditions, telephone answer time by a customer service representative, including wait time and the time required to transfer the call, shall not exceed thirty (30) seconds. This standard shall be met no less than ninety (90) percent of the time measured on an annual basis. The customer will receive a busy signal less than three (3) percent of the time the cable office is open for business.

SECTION 11. LOCAL BUSINESS OFFICE

During the term of the franchise, and any renewal thereof, Grantee agrees to maintain a local business agent within Henderson County, where customer payments may be made and a local telephone line to be used by customers of the Grantee to handle the receipt and investigation of complaints with respect to the quality of service, malfunctioning of equipment and other matters relating to the operation of the system.

SECTION 12. SERVICE TO SCHOOLS AND VILLAGE

Grantee shall, subject to the line extension provisions of Section 6, provide basic cable service at no cost to public and parochial elementary and secondary schools at one terminal junction for educational purposes upon request of the school system.

Grantee shall also provide without charge basic television service to all governmental buildings within the Village.

SECTION 13. EMERGENCY USE OF FACILITIES

In case of any emergency or disaster Grantee shall comply with the FCC's Emergency Alert System.

SECTION 14. SAFETY REQUIREMENTS

Grantee 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 15. LIMITATIONS ON RIGHTS GRANTED

A. All transmission and distribution structures, lines and equipment erected by Grantee within the Village shall be located as to cause minimum interference with the proper use of streets, alleys and 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 such structures, lines and equipment shall be removed by Grantee whenever Grantor reasonably finds that the same restrict or obstruct the operation or location of any future streets, alleys or public ways or public places within the Village.

B. Construction and maintenance of the system shall be in accordance with 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 installations which may be presently in effect or change by future ordinances.

C. In case of disturbance of any street, sidewalk, alley, public way or paved area, Grantee 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 area in as good condition as before the work involving such disturbance was done.

D. If at any time during the term of the franchise Grantor or other governmental bodies or agencies shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, Grantee, upon reasonable notice by Grantor, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

E. Grantee shall on the request of any person holding a valid building moving permit or any person who wishes to remove trees or structures from such person's property, temporarily raise or lower its cable to permit the moving of buildings or tree removal. The expense of such removal or raising or lowering of cable shall be paid by the person requesting the same and Grantee shall be authorized to require such payment in advance. Grantee shall be given not less than seventy-two (72) hours advance notice to arrange for such temporary cable changes.

F. Subject to Grantor's approval, Grantee shall have the authority to trim trees that are overhanging 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 Grantee, except that, at the option of Grantor, such trimming may be done by it or under its supervision and direction at the expense of Grantee.

G. Grantee 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 Grantee when required by Grantor or other governmental authority by reason of traffic conditions, change of established 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 Grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of Grantee in place as hereinafter provided.

H. In all sections of the Village, where the Grantor or other governmental agency designates an area where all presently above ground services are to be placed underground, Grantee shall place its cables underground on the same time schedule and on the same conditions that are applicable to others providing above ground services in such areas.

SECTION 16. OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for cable television reception service installed by Grantee at a subscriber's location shall remain the property of Grantee and Grantee shall have the right to remove such cable and equipment. Upon termination of all service to any subscriber, Grantee shall promptly remove all its above ground facilities and equipment from the premises upon the request of such subscriber.

SECTION 17. TRANSFER OF FRANCHISE

Grantee shall not assign, sell or transfer the franchise granted pursuant to this Ordinance-except upon the prior written consent of the Village Council, which consent shall not be unreasonably withheld.

SECTION 18. FRANCHISE FEE

Grantee shall pay to the Village during the term of a franchise a sum equal to three percent (3%) of the gross revenues from subscribers within the Village received by Grantee during the year, such sum to be paid quarterly and within thirty (30) days from the end of each quarter and shall be accompanied by a statement showing how such sum was calculated. Grantee shall file with the Village annually within ninety (90) days following the end of Grantee's fiscal year a financial statement prepared according to generally accepted accounting procedures and certified by the Chief Financial Officer of Grantee, showing in detail the gross annual subscriber revenues from subscribers within the Village during the preceding quarters. It shall be the duty of the Grantee to pay to the Village within thirty (30) days after the time for filing such statement the sum, if any, due and not paid during the preceding quarters.

All books and records of Grantee relative to its subscribers and its revenues shall be made available for inspection and audit by the Village or its designee for the purpose of determining the correctness of Grantee's payments to the Village.

SECTION 19. ERECTION, REMOVAL, AND COMMON USE OF POLES

A. No poles or other wire-holding structures shall be erected by Grantee without prior approval of the designated representative of the Village 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 shall constitute a vested interest and such poles and structures shall be removed or modified by Grantee at its own expense whenever the Council or its designated representative determines that the public convenience would be enhanced thereby.

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

C. Where Grantor or a public utility serving the Village desires to

make use of poles or other wire-holding structures of the Grantee but agreement therefor with the Grantee cannot be reached, the Village Council may require Grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines would enhance the public convenience and would not unduly interfere with Grantee's operations.

SECTION 20. RATES AND CHARGES

A schedule of the rates and charges currently in effect within the Village of Flat Rock shall be provided to Grantor by Grantee at the time of Grantee's acceptance of a franchise. Grantor reserves the right to regulate such rates and charges to the extent permitted by any present or future law.

In the event that Grantor has authority to regulate rates and charges, the procedures authorized by the grant of such authority, or regulations issued pursuant thereto, shall be followed. In the absence of procedures specified therein, the following procedures shall be used:

A. Before making any changes in rates to subscribers, Grantee shall file, in writing, with Grantor any new proposed change in rates or charges, together with the basis for such proposed change, at least thirty (30) days in advance of the proposed effective date for such change. If the Village takes no action to set a hearing date for such proposed change, such proposed change shall become effective upon the expiration of such thirty (30) day period.

B. If the Grantor decides to hold a hearing on any such proposed change in rates or charges, such hearing shall be held within thirty (30) days of the proposed change. In the absence of unusual circumstances, the Council shall take final action on such proposed change within thirty (30) days following the date of such hearing.

Grantee shall not discriminate in rates among customers of the same category except to the extent permitted by the Communications Act of 1934 as amended and as the same may be amended and by FCC regulations.

SECTION 21. SEVERABILITY

If any portion of this Ordinance should be held to be invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the remainder of this Ordinance.

ADOPTED, June 13, 1996

MAYOR

THIS ORDINANCE APPROVED
AS TO FORM:

ATTEST:

VILLAGE ATTORNEY

VILLAGE CLERK

