

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 THE CITY OF BURLINGAME, KANSAS, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING BROADBAND TELE-COMMUNICATIONS NETWORK, TRANSMISSION AND DISTRIBUTION BY CABLE OF TELEVISION SIGNALS FOR A PERIOD OF TEN (10) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BURLINGAME, KANSAS,

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 Service" means the service tier which includes the retransmission of local broadcast signals.
- B. "Grantor" is the City of Burlingame, Kansas.
- C. "Council" is the governing body of the City of Burlingame, Kansas.
- D. "System" is a system utilizing certain electronic and other components which deliver to subscribing members of the public various broadband tele-communications services.
- E. "Cable Television Reception Service" means the delivery by Franchisee 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.
- F. "FCC" shall mean the Federal Communications Commission.
- G. "Franchisee" is U.S. Cable Television Group, L.P. or anyone who succeeds it in accordance with the provision of this Ordinance.

- H. "Person" is any person, firm, partnership, association, corporation or organization of any kind and any other legally recognized entity.
- I. "Subscribers" are those persons contracting to receive cable television reception services furnished under this Ordinance by Franchisee.

SECTION II. - GRANT OF NON-EXCLUSIVE AUTHORITY

- A. 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, easements dedicated for compatible uses and other public places in the City of Burlingame, Kansas, and 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 analog and digital, audio, visual, electronic and electric impulses in order to furnish television and radio programs and various other communications services for a period ending July 19, 2003 commencing from and after the effective date of this Ordinance.
- B. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive.
- C. 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. Such franchise shall be upon substantially the same terms and conditions with the same obligations and burdens, as contained herein.

SECTION III. - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

Franchisee shall during the term hereof, except in those areas which have been preempted by the Cable Communications Policy Act of 1984 or which are regulated by the FCC, be subject to all lawful exercise of the regulating and police powers of Grantor.

SECTION IV. - TERRITORIAL AREA INVOLVED

This Ordinance relates to the present territorial limits of Grantor and to any area annexed thereto during the term of this Ordinance. Franchisee shall not be required to service residents of Grantor that do not meet at least twenty-five (25) homes per mile density.

SECTION V. - LIABILITY AND INDEMNIFICATION

Franchise 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.

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 territory of Grantor, or by any act of Franchisee, its agents or employees. Franchisee 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. Franchisee 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 Franchisee. Insurance certificates evidencing such insurance coverage shall be deposited with and kept on file by the City.

These damages or penalties 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.

SECTION VI. - GENERAL SYSTEM SPECIFICATIONS

The facilities used by Franchisee shall have a minimum capacity of 300 MHz, and that 27 channels of entertainment and information will be available on the effective day of the Ordinance. The System shall also be capable of distributing color television signals, and when the signals Franchisee distributes are received in color, they shall be distributed in color where technically feasible.

SECTION VII. - TECHNICAL STANDARDS

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

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

- A. Franchisee shall render efficient service, make repairs promptly, and interrupt service only for good cause for the shortest time possible, such interruptions, insofar as possible, shall occur during periods of minimum use of the System.
- B. All service requests and complaints should be responded to promptly, generally within forty-eight (48) hours of receipt.
- C. Failure on the part of Franchisee to return a customer to service within forty-eight (48) hours of receipt of complaint 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. - SERVICE TO SCHOOLS AND CITY

Franchisee shall, subject to the line extension provisions of Section IV, 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.

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 service to all sets connected within such building to the terminal junction.

SECTION X. - EMERGENCY USE OF FACILITIES

In the case of any emergency or disaster, Franchisee shall, upon request of the Council, make available its facilities to Grantor for emergency use during the emergency or disaster. If Grantor wishes to operate a Civil Emergency Alert System on a plan that is mutually acceptable to Grantor and Franchisee and provides Franchisee with the necessary equipment for such system, Franchisee will permit the emergency System to be used on the System. Further, Franchisee will maintain said equipment and provide for regularly scheduled testing by Grantor to insure that the equipment is functioning properly.

SECTION XI. - 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 XII. - 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.
- 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 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, 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 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.
- 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 seventy-two (72) hours advance notice to arrange for such temporary wire changes.

- F. Subject to Grantor approval, Franchisee 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 Franchisee, except that at the option of Grantor, such trimming may be done by it or under its supervision and direction at the expense 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 City to acquire or transfer the system as specified in Section XVI, 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 XIII. - OWNERSHIP AND REMOVAL OF FACILITIES

All cable and passive equipment for 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.

SECTION XIV. - TRANSFER OF ORDINANCE

All right, title and interest of Franchise in this Ordinance and the Non-Exclusive Franchise granted herein shall be freely assignable upon consent of the Grantor which consent shall not be unreasonably withheld.

The Grantee will be provided with thirty (30) days notice of any proposed transfer, assignment, or sale. If Franchise does not receive written notification of the Grantor's objections to said transfer, assignment, or sale, within thirty (30) days of the original notification date, the Grantor's consent shall be deemed to have been given.

SECTION XV. - PAYMENT TO THE CITY

During the term of the rights granted hereunder, and so long as Franchisee operates said system, Franchisee shall pay as compensation to the Grantor a sum equal to three percent (3%) of the annual total gross receipts of the cable system. Payments shall be made twice annually, on October 1 for gross receipts from January 1 through June 30, and April 1 for gross receipts from July 1 to December 31 of the previous year. "Gross Receipts" shall consist of those revenues derived from the monthly service charges paid by subscribers residing within the corporate limits of the Grantor for basic cable service and premium pay services, such as Showtime. Gross receipts shall not include revenues as installation charges, and fees for reconnections, inspections, repairs or modifications of any installation, or State and Federal taxes relating thereto.

The payments that Franchisee makes to Grantor shall be in lieu of any occupation tax, license tax or similar levy by the Grantor. Upon completion of Franchisee's annual audit, Franchisee shall pay to the Grantor within fifteen (15) days, the balance due, if any, for the operating year covered by the audit, not later than April 1 of the following year. Once a year, the Grantor may audit the books and records of Franchisee relating to the revenue received by Franchisee from all cable television subscribers residing in the corporate limits of the Grantor.

This amount payable by Franchisee to the Grantor shall be the sole amount payable for all of its rights under this Ordinance including, but not limited to, the use of the streets and other facilities of the Grantor in the operation of the

cable system and for the municipal supervision thereof.

SECTION XVI. - DURATION AND RENEWAL OF ORDINANCE

The rights granted to Franchisee herein shall, except as provided in this Section, terminate on July 19, 2003, and shall be subject to renewal pursuant to the provisions of the Cable Communications Policy Act of 1984, and as amended, and applicable to new ordinances that are in the nature of a franchise. Pending final completion of renewal proceedings, the Ordinance shall remain in effect even if the original term has expired. The Grantor may undertake a review of Franchisee's performance of its obligations under this Ordinance at any time, but during the sixth year of this franchise (on or before December 29, 1999), the Grantor shall undertake a review on December 29, 1998, to determine whether Franchisee is substantially complying with the terms and conditions of this Ordinance. If, as a result of this review, the Grantor determines that Franchisee has not complied with all provisions of this Ordinance, it shall give Franchisee written notice of the basis for its determination, and Franchisee shall have ninety (90) days to remedy any bona fide deficiencies in its performance. The Grantor and Franchisee agree to negotiate in good faith any remaining points of dispute at the end of the ninety (90) day period. If this Ordinance is not renewed or if it is revoked for cause by the Grantee, the transfer of Franchisee's system shall be governed by Section 627 of the Cable Communications Policy Act of 1984.

The Grantor may require a review of the franchise on or about the third and seventh anniversary of its effective date.

SECTION XVII. - 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 locations of any pole or wire-holding structure of Franchisee shall be a vested interest and such poles or structures shall be removed or modified by Franchisee at its own expense whenever the Council or its designated representative determines that the public convenience would be substantially enhanced thereby.
- 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 reasonable.

- C. Where Grantor or a public utility serving Grantor desires to make use of poles or other wire-holding structures of Franchisee but agreement therefore with Franchisee cannot be reached, the Council may require Franchisee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with Franchisee's operations.

SECTION XVIII. - RATES AND CHARGES

A schedule of the rates and charges currently imposed by Franchisee is set forth in Attachment A to this Ordinance. Grantor reserves the right to regulate such rates and charges to the extent permitted by any present or future regulatory law.

In the event that Grantor has authority to regulate rates, the following procedures shall be used:

1. Before making any changes in the rates to subscribers for basic cable services, the Franchisee shall file in writing with Grantor a new proposed rate change at least thirty (30) days in advance of the proposed effective date for such rate change. If the Grantor takes no action to set the proposed rate change for hearing, said proposed rate changes shall become effective upon the expiration of the 30 day notice period.
2. If the Council wishes to hold a hearing on the proposed rate increase, the hearing shall be held within thirty (30) days of the filing of the proposed rate increase by the Franchisee. Following the hearing, the Council shall take final action on the proposed increase within thirty (30) days.

Any rate subject to regulation under the above provisions may be increased without the approval of Grantor, at the discretion of the Franchisee by an amount not to exceed five percent (5%) per calendar year. In addition, the Franchisee shall have the right to pass along through such costs as are permitted by law.

The Franchisee shall not discriminate in rates between customers of the same category except to the extent permitted by the Cable Communications Policy Act of 1984 and Federal Communications Commissions regulations.

SECTION XIX - 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 and copying by Grantor's Director of Finance or its authorized representative at all times.

SECTION XX. - 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 XXI. - 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 XXII. - 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 XXIII. - PUBLICATION

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

SECTION XXIV. - 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:

City of Burlingame, Kansas
101 East Santa Fe
Burlingame, Kansas 66413

To the Franchisee:

U.S. Cable Television Group, L.P.
218 South Street, Suite 200
Excelsior Springs, Missouri 64024

With a copy to:

Cablevision Systems Corporation
One Media Crossways
Woodbury, New York 11797-2013
Attention: Legal Department

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 XXV. - PRIOR ORDINANCES

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

SECTION XXVI. - EFFECTIVE DATE

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

Published prior to passage on the _____ day of _____, 199_.

Read and approved on the first reading on this _____ day of _____, 199_.

Read and approved on the second reading on this 6th day of July, 199³.

CAF1080


William R. Kraus, Mayor

ATTEST:


Cheryl D. Holloway, City Clerk