

#166

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF CLINTON TO ENTER INTO AN AGREEMENT WITH CLINTON CABLEVISION SERVICE, INC., TO RENEW THEIR CABLE TELEVISION FRANCHISE, AND FOR OTHER PURPOSES

WHEREAS, Clinton Cablevision Services, Inc., has requested that its franchise be renewed; and

WHEREAS, it has been determined that the cable TV service provided by Clinton Cablevision Service, Inc., in the past has been satisfactory and there is no reason not to renew the term of its franchise.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLINTON, ARKANSAS:

Section 1. That the Mayor is authorized and directed to execute an Agreement with Clinton Cablevision Services, Inc.. Said Agreement to provide for the continuing operation of a cable system for the residents of Clinton, Arkansas.

Section 2. Said Agreement to be executed by the Mayor with Clinton Cablevision Services, Inc., shall be in the form as follows:

OPERATION AGREEMENT

This operating agreement made and entered into this 16<sup>th</sup> day of September, 1987, by and between the City of Clinton and Clinton Cablevision Services, inc., Witnesseth:

1. Definitions. For the purpose of this Agreement, 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) "City" is the City of Clinton, Arkansas.

(B) "Council" is the City Council of Clinton.

(C) "Clinton Cablevision Services, Inc." hereinafter referred to as "CATV System" or "System", means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily, but not exclusively, to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee.

(D) "Person" is any person, firm, partnership, association, corporation or organization of any kind.

(E) "Grantee" is Clinton Cablevision Services, Inc., or anyone who succeeds Clinton Cablevision Services, Inc., in accordance with the provisions of this permit.

2. Grant of Non-Exclusive Authority:

(A) There is hereby granted by the City to the grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additional thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the city of a CATV system for the interception, origination, sale and distribution of television, electronic and radio signals and related services.

(B) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth.

(C) This grant shall not require the grantee to serve all residents of the City, but only those that shall pay for the service and only to those areas of the City which are

economically feasible (35 subscribers per highway mile) for the grantee to extend such service.

3. Compliance with Applicable Laws and Ordinances. The grantee shall, at all times during the life of this permit, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

4. Territorial Area Involved. This permit relates to the present territorial limits of the City and to any area henceforth annexed or added thereto during the term of this permit.

5. Liability and Indemnification.

(A) The grantee shall pay, and by its acceptance of this permit, the grantee specifically agrees that it will pay, all damages and penalties which the City may legally be required to pay as a result of granting this permit. 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 CATV system authorized herein, whether or not any act of omission complained of is authorized, allowed, or prohibited by this permit.

(B) The grantee shall maintain, and by its acceptance of this permit specifically agrees that it will maintain throughout the term of this permit, liability insurance insuring the City and the grantee with regard to all damages mentioned in subparagraph (A) above in the minimum amounts as required by law.

6. Signal Quality Requirements. The grantee shall operate its system in accordance with all FCC regulations.

7. operation and Maintenance of System.

(A) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time practical. Such interruptions, insofar as practical, shall be preceded by notice and shall occur during periods of minimum use of the system.

(B) The grantee shall maintain an office in the City, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

8. Emergency Use of Facilities. In the case of any emergency or disaster, the grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster period.

9. Safety Requirements.

(A) The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(B) The grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the applicable ordinances and statutes of the city and State of Arkansas, and in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

(C) All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order.

10. New Developments. It shall be the policy of the City liberally to amend this permit, upon application of the grantee,

when necessary to enable the grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be constructed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

11. Conditions on Street Occupancy.

(A) All transmissions and distributions structures, lines, and equipment erected by the grantee within the City shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who join any of said streets, alleys or other places of public ways.

(B) In case of disturbance by the grantee of any street, sidewalk, alley, public way, or paved area, the grantee shall, at its own cost and expense and in a manner approved by the City Street or Engineering Department, 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, and in compliance with existing ordinances.

(C) Any poles or other fixtures placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.

(D) The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(E) The grantee shall have the authority to trim trees upon the overhanging streets, alleys, sidewalks, and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires or cables of the grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the grantee.

(F) In all sections of the City where the cables, wires, or other like facilities or public utilities are placed underground, the grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the grantee to do so.

12. Preferential or Discriminatory Practices Prohibited. The grantee shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, and not to subject any person to prejudice or disadvantage.

13. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

14. Transfer of permit. The grantee shall not transfer this permit to another person without prior approval of the City by ordinance, but the City specifically acknowledges that approval of the transfer will be granted unless specific harms and reasons are set forth in writing and further that it will not unduly hinder such transfer in any manner.

15. City Rights in Permit.

(A) The right is hereby reserved to the City or the City Council to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional



regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinances or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(B) A duly authorized representative of the City shall have the right to inspect the books, records, maps, plans, and other like materials of the grantee at any time during normal business hours.

(C) The City shall have the right to supervise all construction or installation work performed subject to the provisions of this permit and make such inspections as it shall find necessary to insure compliance with the terms of this permit and other pertinent provisions of law.

(D) The term of this permit shall be fifteen (15) years from the date of this Ordinance and its acceptance. This Ordinance may be renewed for an additional fifteen (15) year period if, after a public proceeding, affording due process, the performance of the system operator and the adequacy of the provisions of this Ordinance are found to be satisfactory.

16. Payment to the City. The grantee shall pay to the City as a permit and as compensation for the rights and privileges enjoyed hereunder, \$1.25 per subscriber annually for the number of subscribers existing at the end of each year. Such payment shall be made in January of each following year.

17. Subscriber Complaints. Any resident who believes that the grantee has failed adequately to resolve the resident's complaint within thirty (30) days of receipt of a written complaint by the grantee may refer the matter in the first instance to the mayor or his designated representative. In the event that said official is unable informally to resolve the matter to the satisfaction of all parties involved, the Council shall endeavor to resolve the matter after a suitable hearing in

which all interested parties may participate. Each subscriber shall be given notice of the procedures for reporting and resolving complaints at the time of initial tap-in and connection.

18. City's Right of Intervention. The grantee agrees not to oppose intervention by the City in any suit or proceeding to which the grantee is a party, except that this shall only apply to matters arising from the CATV service or operations.

19. Duration and Acceptance of Permit.

(A) This permit and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of fifteen (15) years from the date of this Ordinance and its acceptance, provided that within five (5) days after the date of the passage of this ordinance the grantee shall file with the City Clerk its unconditional acceptance of this permit and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to by or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths.

(B) Should the grantee fail to comply with subsection (A) above, it shall acquire no rights, privileges, or authority under this permit whatever.

20. Rates. The grantee's rates for the same type of services rendered in this operation will not exceed the state average based on a per city average rather than a per subscriber average for the same type of basic services rendered thereby.

21. Publication Costs. The grantee shall assume the cost of publication of the permit as such publication is required by



law and such is payable upon the grantee's filing of acceptance of this permit.


22. Rules of Federal Communications Commission. Section 76 of the rules of the Federal Communications Commission sets out certain recitations and provisions that must be contained in this franchise ordinance in order for the grantee to obtain a certificate of compliance from the Federal Communications Commission. It is the knowledge and belief of the grantee and the City that all of the present requirements of that rule are herein contained. Any changes in that rule shall be incorporated into this franchise ordinance within one year from the adoption of the change or at the time of the franchise ordinance renewal, whichever occurs first.


23. 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, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

IN WITNESS WHEREOF, the parties set their hands and seals the date as set out hereinabove.

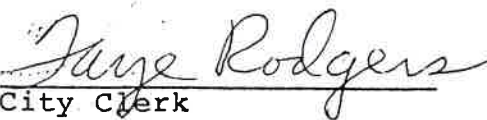
CITY

CLINTON CABLEVISION SERVICES, INC.

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Secretary

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

APPROVED:



Don Paul

Mayor

Date: 9/16/87

Attest:

Jayne Rodgers  
City Clerk