

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES PROVIDING FOR THE GRANTING OF FRANCHISES FOR COMMUNITY ANTENNA TELEVISION SYSTEMS IN THE CITY OF EL PASO DE ROBLES; PROVIDING TERMS AND CONDITIONS FOR THE OPERATION OF SUCH COMMUNITY ANTENNA TELEVISION SYSTEMS AND FEES THEREFOR

THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES ORDAIN AS FOLLOWS:

SECTION 1. A nonexclusive franchise to construct, operate and maintain a community antenna television system in the City of El Paso de Robles may be granted by the City Council to any person, firm or corporation offering to furnish and provide such system under and pursuant to the terms and provisions of this Ordinance.

SECTION 2. DEFINITIONS: For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein:

(a) "CITY": The City above named, a municipal corporation of the State of California, in its present incorporated form or in any later recognized, consolidated, enlarged or reincorporated form.

(b) "COUNCIL": The present governing body of the City or any future board constituting the legislative body of the City.

(c) "GRANTEE": The persons or corporations to whom or which a franchise under this Ordinance is granted by the City Council and the lawful successor or assignee of said persons or corporations.

(d) "STREET": The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, or drive, now or hereafter existing as such within the City.

(e) "COMMUNITY ANTENNA TELEVISION SYSTEM": Hereinafter referred to as "CATV"; Coaxial cables, wave guides, or other conductors and equipment for providing television service by cable or through its facilities as herein contemplated.

(c) No franchise granted under this Ordinance shall be effective unless and until each of the foregoing policies of insurance as required in this section have been delivered to the City.

SECTION 15. INSPECTION OF PROPERTY AND RECORDS: At all reasonable times, the grantee shall permit any duly authorized representative of the City to examine all property of the grantee, together with any appurtenant property of the grantee situated within or without the City, and to examine and transcribe any and all maps and other records kept or maintained by the grantee or under its control which deal with the operations, affairs, transactions or property of the grantee with respect thereof. The grantee shall, at all times, make and keep in the City full and complete plans and records showing the exact location of all CATV system equipment installed or in use in streets, alleys and public places in the City. The grantee shall file with the Director of Public Works, on or before the last day in March of each year, a current map or set of maps drawn to scale to be designated by the Director of Public Works, showing all CATV system equipment installed in streets, alleys and public places of the City during the previous year.

SECTION 16. OPERATIONAL STANDARDS: The CATV system shall be installed and maintained in accordance with the highest and best standards of the industry to the effect that subscribers shall receive the highest possible service. In determining the satisfactory extent of such standards the following will apply:

(a) The system shall be installed using all-band equipment capable of passing the entire VHF and FM spectrum, and it shall have the further capability of converting UHF for distribution to subscribers on the VHF band.

(b) The system, as installed, shall be capable of passing standard color TV signals without the introduction of noticeable effects on color fidelity and intelligence.

(c) The system and all equipment shall be designed and rated for 24-hour-per-day continuous operation.

(d) The system signal-to-noise ratio shall be not less than 46 decibels.

(e) Hum modulation of picture signal shall be less than 5%.

(f) The system shall use components having VSWR of 1.4 or less.

(g) Each CATV subscriber shall receive a minimum signal strength of One thousand (1000) microvolts as measured at the antenna terminals of the television set. Methods of measuring above standards, where necessary, will be established by the City Council.

(h) In the event the Council determines that the quality of service being rendered by the grantee is not equal to comparable systems delivering service in the State of California, the grantee, upon written notice from the Council, shall promptly commence and diligently prosecute whatever is necessary to bring its service up to such standards.

#### SECTION 17. MISCELLANEOUS PROVISIONS:

(a) All matters herein provided to be filed with the City shall be filed with the City Clerk.

(b) The rate schedule for any service agreement or increase thereto to subscribers must have written approval of the City Council.

(c) The grantee must pay to the City a sum of money sufficient to reimburse it for expense incurred by it in publishing legal notice and ordinances in connection with the granting of a franchise pursuant to the provisions of this Ordinance; such

payment to be made within thirty (30) days after the City shall furnish such grantee with a written statement of such expense.

(d) The grantee shall maintain an office within the City Limits of El Paso de Robles so that CATV maintenance service shall be promptly available to subscribers upon telephone request during all hours that the grantee is transmitting signals to subscribers.

(e) The grantee shall not engage in the business of selling television or other receivers which make use of signals transmitted by its system, nor shall the grantee engage in the repair of such receivers or the sale of parts for the same.

(f) The said CATV system operated by the grantee shall deliver adequate television signals from at least six (6) television stations plus any channel now installed or to be installed in the future in or adjacent to the City of San Luis Obispo, California. One of said stations shall be an educational television channel, when such material is available from such a channel. The grantee shall furnish without charge to schools located within the City Limits of the City of El Paso de Robles CATV service as is generally available in the area of the City of El Paso de Robles.

There shall be no degradation of any picture signal received by the CATV system.

(1) When it occurs that there is simultaneous duplication of the program being broadcast by a local station which is duly licensed by the Federal Communications Commission and authorized to furnish free television service to the area within the City Limits of El Paso de Robles and when such programs being duplicated are identical in all respects as to color, time and program content, then for that period of time such duplication exists, the signals of the outlying station shall not be transmitted to

subscribers of the CATV system and only those signals broadcast by the local station shall be used by the grantee to provide service to its subscribers.

(g) The grantee shall not transmit via the cable television system any AM or FM radio programs from AM or FM radio stations located in any city other than the City of El Paso de Robles.

SECTION 18. APPLICATION FOR FRANCHISE:

(a) Application for a franchise hereunder shall be filed with the City Clerk in a form approved by the City and shall contain the following information:

1. The name and address of applicant.
2. A general description of applicant's proposed CATV operation, including map of areas to be served.
3. A statement or schedule in a form approved by the City of proposed rates and charges to subscribers for installation and services, and a copy of proposed service agreement between the grantee and its subscribers shall accompany the application. For unusual circumstances, such as underground cable required, or more than 150 feet of distance for cable to connection of service to subscribers, an additional installation charge over that normally charged for installation as specified in the applicant's proposal may be charged, with easements to be supplied by subscribers at no charge. For remote, relatively inaccessible subscribers within the city, service will be made available on the basis of actual cost of materials, labor and easements, if required.
4. A statement of the corporate organization of the applicant, including the names and addresses of its officers, directors, and associates, and also including the names of subsidiary companies with a listing of other areas being served by CATV or similar systems.
5. A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm, group or corporation with respect to the franchise and the proposed operations. If a

franchise is granted to a person, firm, group or corporation posing as a front or representative for another person, firm, group or corporation, and such information is not disclosed in the original application, such franchise shall be revoked automatically, and the Council shall consider awarding the franchise to another qualified applicant.

6. Applicant shall also furnish a financial statement prepared by a certified public accountant as to the company's or corporation's financial ability to complete installation and operation of the CATV system.

7. A statement of proposed percentage franchise payment to the City referred to in this Ordinance.

(b) Upon consideration of any such application, the City Council may grant a franchise for CATV to such applicant as may appear from said application to be in its opinion best qualified to render proper and efficient CATV service to television viewers and subscribers in the City of El Paso de Robles. The council's decision in the selection will be final.

(c) Any franchise issued pursuant to this Ordinance shall include the following condition:

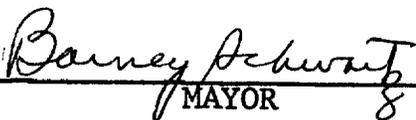
"The CATV system herein franchised shall be used and operated solely and exclusively for the purpose expressly authorized by Ordinance of the City of El Paso de Robles, and no other purpose whatsoever."

The inclusion of the foregoing statement in any such franchise shall not be deemed to limit the authority of the City Council to include any other reasonable condition, limitation or restriction which it may deem necessary to impose in connection with such franchise pursuant to the authority conferred by this Ordinance.

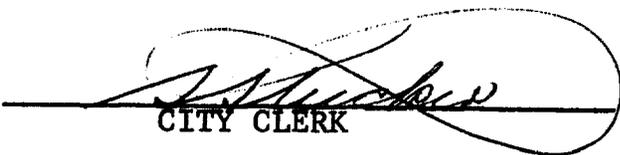
(d) Nothing herein contained shall permit grantee to furnish what is customarily known as "Pay TV", or sell advertising

or to sell television equipment, or to service television equipment.

PASSED and ADOPTED this 20<sup>th</sup> day of May, 1963.

  
MAYOR

ATTEST:

  
CITY CLERK

STATE OF CALIFORNIA  
COUNTY OF SAN LUIS OBISPO  
CITY OF EL PASO DE ROBLES

} SS.

I, S. S. Tucker, City Clerk of the City of El Paso de Robles, California, do hereby certify that the foregoing ORDINANCE No. 264, N.S. was duly and regularly adopted, passed, and approved by the City Council of the City of El Paso de Robles, California, at a regular meeting of said City Council held at the regular meeting place thereof, on the 20th day, of May 1963, by the following vote:

AYES: Councilmen Blake, Galba, Poe, Dale Schwartz and Barney Schwartz

NOES: Councilmen None

ABSENT: Councilmen None

Dated this 20th day of May, 1963

  
City Clerk and Ex-Officio Clerk of the City Council,  
City of El Paso de Robles, State of California.

CATV shall not mean or include the transmission of any special program or event in the manner commonly known and referred to as "pay television" transmission.

(f) "SUBSCRIBERS": Any person or entity receiving for any purpose the CATV service of the grantee herein.

(g) "GROSS ANNUAL RECEIPTS": Any and all revenue and other consideration in any form whatever received directly or indirectly from subscribers or users in payment for cable television service received within the city. Gross Annual Receipts shall not include any taxes on the services furnished by the grantee imposed directly or indirectly on any user or subscriber by any City, State or Federal agency and collected by the grantee for such governmental agency.

(h) "LOCAL STATION": A television broadcasting station which includes the City of El Paso de Robles in its primary service area.

SECTION 3. USES PERMITTED BY GRANTEE: Any non-exclusive franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the grantee to engage in the business of operating and providing a CATV system in the City of El Paso de Robles and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public street or highway, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate and provide similar facilities or properties rented or leased from a public utility franchised or permitted to do business in the City of El Paso de Robles.

It is hereby declared that the purpose and intent of this Ordinance is to prohibit in any form what is commonly known as "Pay TV" and to prohibit any grantee of any CATV system,

under penalty of revocation of franchise, or any other person, company, corporation or association, from directly or indirectly installing, maintaining or operating on any television set a coin box or any other device or means for collection of money for individual programs.

The grantee may make a charge to subscribers for connection to its CATV system and a fixed monthly charge as filed and approved as herein provided, for transmission to them only of television and audio programs received free by the public generally at the same time from regularly licensed stations, for closed circuit and for educational television

SECTION 4. DURATION OF FRANCHISE: No franchise, granted by the City Council under this Ordinance, shall be for a term longer than fifteen (15) years following the date of acceptance of such franchise by the grantee or the renewal thereof. Any such franchise may be terminated prior to its date of expiration by the City Council in the event that said Council shall have found, after notice and public hearing, that (a) grantee has failed to comply with any provision of this Ordinance, or has, by act or omission, violated any term or condition of any franchise or permit issued under this Ordinance; or (b) any provision of this Ordinance has become invalid or unenforceable, and the Council further finds that such provision constitutes a consideration material to the grant of said franchise; provided, however, that the grantee shall be given at least thirty (30) days' notice of any proposed termination proceedings.

SECTION 5. FRANCHISE PAYMENT: Any grantee granted a franchise under this Ordinance shall pay to the City, during the life of such franchise, and at the times hereinafter specified, a sum equal to a percentage of the monthly total gross receipts of the Grantee based upon proposals to be received by the Council, and such payment by the grantee to the City shall be in lieu of any occupation tax, license tax or similar levy, and shall be paid monthly. If the monthly payment based on the percentage of the

monthly total gross receipts of the Grantee amounts to less than \$100.00 per month, then Grantee shall pay the City the minimum amount of \$100.00 per month.

The Grantee shall file with the City, within thirty (30) days after the expiration of any calendar year during which such franchise is in force, a financial statement prepared by a certified public accountant, showing in detail the total gross receipts, as defined herein, of Grantee, its permitted successors or assigns, during the preceding calendar year. It shall be the duty of Grantee to pay to the City, within fifteen (15) days after the time for filing such statements, any unpaid balance for the calendar year covered by such statements.

Grantee's books, accounts and records shall, at all reasonable times, be open to inspection and examination by any officer, agent or employee of the City authorized by the City Council to make such inspection and shall be kept in such form as to enable such authorized officers, agents and employees to ascertain the amounts due the City and determine any other facts relative to the operations of the Grantee. The right is reserved to the City of audit and recomputation of any and all amounts paid under this Ordinance and no acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City may have for further or additional sums payable under this Ordinance or for the performance of any other obligation thereunder.

#### SECTION 6. LIMITATIONS OF FRANCHISE:

(a) Franchise granted under this Ordinance shall be nonexclusive.

(b) No privilege or exemption shall be granted or conferred by any franchise granted under this Ordinance except those specifically prescribed herein.

(c) Any privilege claimed under such franchise by the grantee in any street, or other public property, shall be subordinate to any prior lawful occupancy of the streets, or other public property.

(d) Any such franchise shall be a privilege to be held in personal trust by the original Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without prior consent of the City Council of the City expressed by resolution, and then only under such conditions as may be therein prescribed. The said consent of the City may not be arbitrarily refused; provided, however, the proposed assignee must show financial responsibility and must agree to comply with all provisions of this Ordinance; and provided, further, that no such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole, to secure an indebtedness in the usual course of business.

(e) The Grantee shall have no recourse whatsoever against City for any loss, cost, expense, or damage, arising out of any provisions or requirements of this Ordinance or its enforcement.

(f) The Grantee is subject to all requirements of the City ordinances, rules, regulations and specifications of the City heretofore or hereafter enacted or established, including, but not limited to, those concerning street work, street excavations, use, removal and relocation of property within a street, and other street work.

SECTION 7: RIGHTS RESERVED TO THE CITY: There is hereby reserved to the City every right and power which is required to be herein reserved or provided by any ordinance of the City, and the Grantee, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the City in its exercise of such right or power, heretofore or hereafter enacted or established. However, every proposal shall include complete CATV service in the entire area within the City Limits.

SECTION 8. PERMITS AND AUTHORIZATIONS: The Grantee shall proceed within thirty (30) days with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including utility joint use attachment

agreements, and microwave carrier licenses to be granted by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems, or their associated microwave transmission facilities. Further, the Grantee shall commence the installation within ninety (90) days subsequent to the obtaining of all the necessary permits and authorizations, and shall proceed to render service to subscribers within ninety (90) days following the commencement of installation of the system. The completion of the installation shall be pursued with reasonable diligence thereafter, so that service to all areas designated on the map accompanying the application for franchise, as provided in Section 18 hereof, shall be provided within a reasonable time from the date that service was first provided. Failure to do any of the foregoing shall be grounds for termination of franchise.

**SECTION 9: LOCATION OF GRANTEE'S PROPERTIES:**

(a) Any poles, wires, cable lines, conduits or other properties of the Grantee to be constructed or installed in streets, shall be so constructed or installed only at such locations and in such manner as shall be approved by the Director of Public Works of the City acting in the exercise of his reasonable discretion.

(b) The Grantee shall not install or erect any facilities or apparatus on public property or rights-of-way within the City (except those installed or erected upon public utility facilities now existing), without written approval of the Director of Public Works of the City.

(c) In those areas and portions of the City where either the transmission and distribution facilities of the public utility providing telephone service, or those of the utility providing electric service, are underground or hereafter may be placed underground, then the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers to Grantee's transmission and distribution lines may be in concrete boxes or vaults upon the surface of the ground.

**SECTION 10: REMOVAL OR ABANDONMENT OF PROPERTY OF GRANTEE:**

(a) In the event that the use of any part of the CATV 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 its franchise, or the franchise has been terminated, cancelled or has expired, the grantee shall promptly, upon being given notice, remove from the streets or public places all such property and poles of such system other than any which the Director of Public Works may permit to be abandoned in such place. In the event of any such removal, the grantee shall promptly restore the street or other area from which such property has been removed, to a condition satisfactory to the Director of Public Works.

**SECTION 11. CHANGE REQUIRED BY PUBLIC IMPROVEMENT:**

The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley or public place, or remove from the street, alley or public place, any property of the grantee when required by the Director of Public Works by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or other type of structures of improvements by governmental agencies when acting in a governmental or proprietary capacity, or any other structures or public improvements; provided, however, the grantee shall in all such cases have the privileges and be subject to the obligations to abandon any property of the grantee in place, as provided in Section 10 hereof.

**SECTION 12. FAILURE TO PERFORM STREET WORK:** Upon failure of the grantee to complete any work required by law or by the provisions of this Ordinance to be done in any street, within the time prescribed, and to the satisfaction of the

Director of Public Works, the Director of Public Works may cause such work to be done and the grantee shall pay to the City the cost thereof in the itemized amounts reported by the Director of Public Works to the grantee, within thirty (30) days after receipt of such itemized report.

SECTION 13. FAITHFUL PERFORMANCE BOND:

(a) The grantee shall, concurrently with the filing of and acceptance of award of any franchise granted under this Ordinance, file with the City Clerk, and at all times thereafter maintain in full force and effect for the term of such franchise at grantee's sole expense, a corporate surety bond in a company approved by, and in a form to be approved by, the City Attorney, in the amount of \$25,000.00, renewable annually, and conditioned upon the faithful performance of grantee, and upon the further condition that in the event grantee shall fail to comply with any one or more of the provisions of this Ordinance, or of any franchise issued to the grantee hereunder, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or loss suffered by the City as a result thereof, including the full amount of any compensation, indemnification, or costs of removal or abandonment of any property of the grantee as prescribed hereby which may be in default, plus a reasonable allowance for attorney's fees and costs, up to the full amount of the bond; said condition to be a continuing obligation for the duration of such franchise and thereafter until the grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of said franchise by the grantee or from its exercise of any privilege therein granted. The bond shall provide that thirty (30) days' prior written notice of intention not to renew, cancellation, or material change, be given to the City.

