

ORDINANCE NO 82-5

AN ORDINANCE GRANTING A FRANCHISE TO CABLE CONSULTANTS, INC. Wyoming Corporation, Box 122, Pinedale, Wyoming 82941, dba Manila CATV LTD, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF DAGGETT, UTAH, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DAGGETT ORDAIN AS FOLLOWS:

Section 1. DEFINITIONS. When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

- (a) "County" means Daggett County, Utah.
- (b) "County Commissioners" means the governing body of the county.
- (c) "Grantee" means CABLE CONSULTANTS, INC., and its successors and assigns, grantee of rights under this ordinance.
- (d) "Person" means any natural person, company or entity of any kind.
- (e) "Franchise area" means all of that area within the corporate limits of the county as now or hereafter constituted. Except corporate limits of city of Manila, Utah.

- (f) "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever named called, now or hereafter existing as such within the franchise area.
- (g) "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.
- (h) "CATV" means a cable television system.
- (i) "Cable Television System" means a system composed of without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by cable, radio, television, or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- (j) "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.
- (k) "Subscriber" means any person or entity receiving and paying for basic CATV service.
- (l) "Basic Subscriber Revenues" means all remuneration received directly by the Grantee from subscribers in payment for regularly furnished basic CATV service,

but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the Grantee.

Section 2. GRANT OF AUTHORITY. There is hereby granted by the County to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the County and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across, and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such as poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; or properties rented or leased from other persons, including but not limited to any public utility.

Section 3. NON-EXCLUSIVE GRANT. County's grant of authority to Grantee as set forth in Section 2 above is non-exclusive.

Section 4. DURATION OF FRANCHISE. The franchise and rights herein granted shall take effect twenty (20) days after publication or posting of this ordinance and shall continue in force and effect for ten (10) years after said effective date. Upon application by the Grantee to the County, the franchise may be renewed for subsequent ten (10) year periods.

Section 5. CONDITIONS OF STREET OCCUPANCY.

(a) Notice of Proposed Constructions. The Grantee shall first

obtain the approval of the County Building Inspector before any construction is commenced on any of the streets, alleys, public grounds or places of the county. The Grantee shall give the County reasonable written notice of proposed construction so as to coordinate all work between the County and the Grantee. Approval for construction shall not be unreasonable withheld. In the event the County Building Inspector does not approve a request made by the grantee, the grantee may appeal through a written statement submitted to the County Commissioners within thirty (30) days from the date of Inspector's failure to approve.

(b) Grantee shall assure that operation of its cable TV system does not cause electronic interference with reception of translator signals on any channels by residents of the County. If such interference occurs, the county Building Inspector is authorized to direct Grantee to remove TV signals from those cable channels or take whatever other action is necessary to eliminate such interference.

(c) The Grantee shall render effective service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, as far as possible, shall be preceded by notice and shall occur during periods of minimum use of the system

(d) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the County, replace and restore such street or paved area in as good condition as heretofore.

(e) The Grantee, shall, at its expense, protect support,

temporarily disconnect, relocate in the same street or other public places, or remove from the street or other public place, any property of the Grantee when lawfully required by the County by reason of traffic conditions, public safety, street, vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the County; but, the Grantee shall have the right of abandonment of its property subject to County approval and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

(f) the Grantee shall, on the request of any person holding a building permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings, provided:

(1) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and

(2) The Grantee is given not less than three business days advance notice to arrange for temporary wire changes.

(g) No trees belonging to a private landowner shall be trimmed or cut without first receiving permission from the landowner.

(h) Subject to any applicable state or federal regulations or tariffs, the County shall have the right to make additional use, for any public purpose, of any poles, or conduits, controlled or maintained exclusively by or for the Grantee in any street, provided:

(1) Such use by the County does not interfere with the use by the Grantee; and

(2) The County holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

Section 6. SAFETY REQUIREMENTS.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain 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) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

Section 7. SYSTEM CONSTRUCTION AND EXTENSION.

(a) The Grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible.

(b) Whenever the Grantee shall have received written requests for service from at least fifteen (15) subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least twenty five (25) subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension

length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(c) No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances where the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 cable feet) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

(d) For any residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions, but otherwise the Grantee shall not be obligated to construct CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the Grantee's plans and specifications. Developer may enter into a written agreement with the Grantee at the rate of twenty percent (20%) of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed two (2) years.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder and certify to the county prior to final approval of the subdivision or development that the facilities required herein are properly installed. The County shall have the right to review and require its approval of the maps and specifications provided by the Grantee.

Section 8. OPERATIONAL STANDARDS: FORCE MAJEURE. The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

Section 9. LOCAL OFFICE COMPLAINTS. The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable television operations may be promptly reported to the Grantee.

Section 10. RATES. Rates charged by the Grantee for monthly service hereunder shall be fair and reasonable and nondiscriminatory and designed to meet all necessary costs of service. Initial and all subsequent modifications of rates shall be set for the operation and maintenance of a CATV system as fair and reasonable under existing conditions in connection with the rights granted herein.

Section 11. FRANCHISE PAYMENTS. The Grantee shall pay the County, on or before the 1st day of July of each year following the year in which this ordinance is adopted and approved by the County, a franchise fee of three percent (3%) of annual basic

subscriber revenues received for cable television operations in the County for the preceding calendar year. County shall have the right to review franchise fee every five (5) years and to increase such fee to fee maximum not to exceed 5% total of subscriber revenues.

Section 12. INDEMNIFICATION OF CITY.

(2) The Grantee at all times protect and hold the county harmless from all claims, actions, suits, liability, loss, expense, or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the County gives the Grantee reasonable prompt notice of any such claims, actions, and suits, without limitation, in writing.

The Grantee shall, concurrently with the award of a franchise hereunder, furnish to the County and at all times during the existence of any franchise granted hereunder, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy in a company approved by the County Commissioners protecting the County and all of its officers, board, commissions, agents, employees and appointees against liability for loss or damage for personal injury, death and property damage, occasioned by the operations of the Grantee under the franchise with

minimum liability limits of Five Hundred Thousand and no/100 (\$500,000.00) for the personal injury or death of any one person and One Million and no/100 Dollars (\$1,000,000.00) for personal injury or death of two or more persons in any one occurrence, and Two Hundred and Fifty Thousand and no/100 (\$250,000.00) for damage to property resulting from any one occurrence.

The policy mentioned in the foregoing paragraph shall name the county, its officers, boards, commissions, agents, employees and appointees as additional insureds and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the County thirty (30) days in advance of the effective date thereof; if such insurance is provided by a policy which also covers the franchise or any other entity or person other than those above named, then such policy shall contain an endorsement concerning gross liability, which endorsement shall be subject to approval by the County Attorney.

Review of Coverage. The County Commissioners shall annually review the above insurance provisions; and, if it is determined that the insurance coverage is inadequate, additional insurance may be required as reasonably determined by the County Commissioners and shall then be provided by the Grantee.

Section 13. PROCEDURE UPON TERMINATION. Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the County for the purposes of removing therefrom any or all of its

property or otherwise. In so removing said property, the Grantee shall make and shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property.

Section 14. ASSIGNABILITY. The rights and privileges hereunder granted to Grantee are and shall be transferable and said County consents that the Grantee, its successors and assigns, may, at any time during the term hereof, freely and completely transfer same to any person or corporation. It is understood, however, that by the transfer the transferee is obligated and bound by all provisions and conditions contained in this ordinance to be done and performed by said Grantee, its successors and assigns.

Section 15. MISCELLANEOUS PROVISIONS.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the County shall be filed with the County Recorder.

(b) The Grantee shall provide without charge one outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

(c) In the case of any emergency or disaster, the Grantee shall, upon request of the County, make available its facilities to the County for emergency use during the emergency or disaster period.

Section 16. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the County. The County reserves the right to adopt from time to time in addition

to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the State or other local or Federal laws or regulations.

Section 17. VIOLATIONS: PENALTIES.

(a) Unauthorized Connections Prohibited. It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, accoustically, inductively or otherwise, with any part of a franchise CATV system within this County for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to Grantee.

(b) Tampering with CATV equipment Prohibited. It shall be unlawful for any person, without the consent of the Grantee to willfully tamper with, remove or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

(c) Penalties for Violations. Any persons convicted of violating subparts (a) and (b) above this Section shall be subject to a monetary fine not to exceed Two Hundred Ninety Nine and 00/100 (\$299.00) or imprisonment up to ninety (90) days or both.

Section 18. RIGHTS OF AMENDMENT RESERVED TO CITY. The County reserves the right to amend or repeal any section of this ordinance, except the term of duration of franchise of Section 4, and adopt additional provisions hereto in the following circumstances so long as such amendments do not deny Grantee the substantial rights of franchise as contained herein.

(a) To adopt subsequent amendments of applicable FCC Rules as required by FCC Rules 76:31 (a) (6).

(b) To cause the ordinance to comply with applicable FCC Rules or standards.

Section 19. SEPARABILITY. If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 20. EFFECTIVE DATE This ordinance shall take effect and be in force twenty (20) days from and after its publication or posting.

Duly passed by the County Commissioners of Daggett County, Utah this 18th day of August, 1982.

Voting Against

None

Voting For

/s/ Carl S. Collett

/s/ Laray Sadlier

/s/ Jerry N. Taylor

ATTEST:

/s/ Gene Briggs

County Clerk