

ORDINANCE NO. 1104

An ordinance limiting and regulating the construction, installation, operation and maintenance within the corporate limits of the City of Lexington of wired or cabled television and radio systems and services; providing for non-exclusive franchises for not to exceed twenty-five (25) years; and the conditions thereof; prescribing penalties for such construction, installation, operation, or maintenance without franchise, and for the violation of such regulations and conditions; and providing the effective date thereof.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEXINGTON, NEBRASKA:

SECTION 1. Short title.

This ordinance shall be known and may be cited as "Lexington CATV Ordinance".

SECTION 2. City Council.

The authority to issue franchises authorizing wired or cabled television or radio systems within the corporate limits of the City of Lexington is hereby reserved unto the City Council of such City.

SECTION 3. All franchises issued pursuant to this ordinance shall be non-exclusive and for a term not to exceed twenty-five (25) years.

SECTION 4. Limitation on Construction.

It shall be unlawful for any person, firm or corporation, to construct, install, operate, or maintain in or along the streets, alleys, and public ways, or elsewhere within the corporate limits of the City of Lexington, a wired or cabled television or radio system without first obtaining from such City of Lexington a franchise authorizing the same.

SECTION 5. Every person, firm, or corporation applying for a franchise to construct, install, operate, or maintain within the corporate limits of the City of Lexington, pursuant to this Ordinance, must file with the City Clerk, notice of his, their, or its acceptance of the provisions of this Ordinance and a covenant and agreement that such franchise, if granted, shall be subject to the provisions and conditions of Sections 6 and 21, inclusive, of this Ordinance, and amendments thereto.

SECTION 6. Definitions.

For the purpose of this Ordinance, the following terms, phrases, words and 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 Lexington, Nebraska
- b. "Licensee" is the person, firm, or corporation granted a franchise to operate a system under this Ordinance.
- c. "Council" is the City Council of Lexington, Nebraska.
- d. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- e. "System" shall mean the lines, fixtures, equipment, attachments, poles, and all appurtenances thereto which are used in the construction, operation, and maintenance of the community antenna television system herein authorized.

SECTION 7. Grant of Authority

Every person, firm or corporation granted a franchise to construct, install, operate, and maintain a wired or cabled television or radio system within the corporate limits of the City of Lexington is hereby granted by the City 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 additions 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 community television system for the interception, sale and distribution of television signals and electronic service.

(1) Non-Exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of such franchise.

(2) Pole Facilities. Every licensee shall make attachments to the utility poles already in existence within the City, to all extent possible, PROVIDED, that if the licensee is unable to negotiate satisfactory agreements with respect to the same for the use of existing pole facilities, the licensee shall have the right to erect and maintain its own poles as necessary for the construction and maintenance of its said cabled television or radio system, the location of any such poles to be approved by the City Engineer, which approval shall not be unreasonably withheld.

SECTION 8. Compliance with Applicable Laws and Ordinances.

Every franchised person, firm, and corporation shall, at all times, during the term of such franchise, be subject to all lawful exercise of the police power of the City, and to such reasonable regulations as the City Council shall hereafter, by resolution, or ordinance, provide (and shall fully comply with both the "National Electrical Code 1965 of the National Fire Protection Association, and the National Electrical Safety Code of 1960, and all applicable rules and regulations now in effect, of, or hereafter adopted by the Federal Communications Commission, the State of Nebraska, and the United States Government,) Provided, this Ordinance shall not be construed to require or compel a violation of any constitutional enactment of the Federal Congress or lawful rule or regulation of any agency of the United States Government pertaining to wired or cabled television and radio systems and services.

SECTION 9. Company Liability - Indemnification.

Every such licensee shall indemnify and hold harmless the City, against and from any and all claims, demands, causes of action, damages, costs or liabilities in law or in equity of any kind and nature whatsoever, directly or indirectly resulting from or caused by the construction, installation, operation, or maintenance of the franchised system within the corporate limits of the City. Every such licensee shall, during the term of his, their, or its franchise, maintain in full force and effect, written by a company or companies authorized and qualified to do business in the State of Nebraska, and serviced through an authorized agent doing business within the City of Lexington, and satisfactory to the City:

(a) Workmen's Compensation Insurance in compliance with the laws of the State of Nebraska, and employee's liability insurance with limits of \$100,000;

(b) Bodily Injury Liability Insurance with limits for bodily injury, \$250,000 for each person, and \$500,000 for each occurrence; and

(c) Property Damage Liability Insurance with limits of \$200,000 each accident, and \$500,000 aggregate; and

failure to carry and maintain such insurance in full force and effect and furnish continuing evidence thereof, in the required amounts may, in the discretion of the City Council, result in termination of such franchise in the manner and under the conditions otherwise specified in this Ordinance, Licensee assumes all risk of loss, damage, or destruction of or to Licensee's equipment and other property by the City, its departments, officers, and employees, or resulting from or attributable

to the condition of any public street, alley or other public place, other than willful and deliberate misconduct on the part of any official or employee of the City.

SECTION 10. Performance Guarantee.

Every applicant hereunder shall, together with its application for franchise hereunder, and acceptance of the terms and conditions of this Ordinance, file with the City Clerk a U. S. Treasury Department approved corporate surety performance bond in the amount of Fifteen thousand dollars (\$15,000.00), which will be discharged and released in case of the completion and installation of the system as herein required within eighteen (18) months after the date of commencement of construction, Provided, the licensee commenced construction within one hundred twenty (120) days, and shall have completed the construction of the system and is offering wired or cabled television or radio service to not less than one hundred per cent of the land area within the corporate limits of such City existing on this date, within such eighteen (18) months; further, Provided, the preparation of a basic survey of the City and the engineering specifications of the proposed system shall constitute the starting or commencement of construction hereunder, and, further, Provided, a map of such basic survey shall be filed with the City Manager within such one hundred twenty (120) days.

SECTION 11. Service Standards.

(a) Every licensee shall maintain and operate the system and render efficient service in accordance with the rules and regulations as are or may be set forth by the Council, or agency of the United States Government having jurisdiction over such wired or cabled television and radio systems and services, Provided, however, the licensee shall operate the system so that there will be no interference with television reception, radio reception now in use by the City or any persons in the City.

(b) Every licensee shall carry all signals of every television station where the community antenna television system tower or towers and antenna equipment are located within the Federal Communication Commission approved predicted Grade B contour line of that television station. The television signals at no time shall be altered, interrupted, or blacked out in any way by the licensee.

(c) The community antenna television system shall maintain at all times:

- 1) Use all band equipment capable of passing the entire VHF television and FM radio spectrum.
- 2) Equipment that passes standard color television signals without perceptible degradation and no noticeable effect on color fidelity and intelligence.

3) Provide a minimum level of 1,000 microvolts at the input terminals of not to exceed two TV receivers on the line; additional sets will warrant additional line services and changes.

4) Provide that the system and all equipment be designed and rated for 24-hour per day continuous operation.

5) Provide a signal-to-noise ratio of not less than 42 decibels.

6) Provide a television signal with a hum modulation less than three per cent.

7) Use components having voltage standing wave ratio of 1.4 or less.

8) Provide an inter-modulation distortion not to exceed minus 52 decibels.

9) Provide that the plot of gain versus frequency across any six megacycle channel is to be a flat plus or minus one decibel.

(d) A licensee shall immediately install for the operation of the system in the City of Lexington, a twelve channel system capable of transporting and relaying all twelve channels and will provide an initial service of at least six channels of video and/or audio service, one of which shall be the state ETV channel; one a public service channel; and one, when reasonably available, the program output of FM radio stations furnishing background music; and, the licensee further will be obligated to improve the variety of service as the availability of signals make it practical.

(e) Every licensee, any and all of its officers, agents and employees, are specifically prohibited from engaging in the sale, service, rental, or leasing of television receivers, radio receivers, or television or radio receiver related parts and accessories with any person, anywhere in the City, whether for a fee or charge or not, excepting only the connection of television receivers to the licensee's community antenna system. Every licensee shall prohibit any of its officers, agents, and employees from violating the terms of this section at all times, whether in the performance of duties of the licensee or otherwise.

(f) Prohibition - Pay Television, Music Service, Advertising, and/or Regulated Public Utilities.

1) No licensee shall use a system for advertising purposes for pay, or for others, nor shall the licensee transmit over any of its equipment any commercial information or advertising, except that which is received from a regular broadcasting station and merely relayed to the subscribers in the same manner as is received from such broadcasting station with its normal program, without Council approval. The licensee shall have the

right to advertise its own service over its system, and may be permitted to carry advertising known as due bill advertising for travel, hotel or sales promotion items.

2) A licensee, any and all of its officers, agents, and employees shall not indicate and shall not recommend, in any manner a specific sale or service establishment, or individual be used for the sale or service of any television set.

3) Every licensee shall render said service without charge under this agreement to all schools and educational institutions within the City, whether private, or parochial, with the understanding that said service will be to a convenient point to the exterior of the said school, and in no way shall be intended to furnish service to points within the school proper, and shall provide without charge monthly service thereafter. Every licensee shall furnish to the City without charge such connection as may be required for regulation and supervision of the franchised system, not exceeding three, and shall provide without charge monthly service thereafter, provided that such connections be located in public buildings in areas being served by the franchised system.

(g) Every program which a licensee carries from any television station shall be carried in its entirety and without change.

(h) Service shall be provided hereunder in areas added or annexed, from time to time, to the City, within a reasonable time.

(i) Every licensee shall provide and keep accurately calibrated test equipment on hand in the City at all times for the testing of all service and operational standards outlined in this Ordinance, and shall conduct these tests as requested by the City under the supervision of a City representative in order to establish the level of performance of the system.

(j) Every licensee shall provide a local service channel providing local weather information and time information with continuous background music.

(k) Every licensee shall provide, without charge to the City, unless prohibited by law, regulation or licensee contract commitments, the use of adequate unused frequencies on the cabled system for the purpose of police work, fire department, civil defense, public emergency or disaster warning systems, provided that any necessary equipment or installation or maintenance expense for such use, other than

furnishing the existing cable, shall not be that of the licensee. The City, through its authorized agents shall give written notice to licensee of the type of use the City desires to make of the cable, and of the person or persons authorized to make such use, or to issue warnings, whereupon the licensee shall cooperate with the City to accomplish the ends desired by the City for the public good.

(1) Notice of Interruption for Repairs.

Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments, or installations, a licensee shall do so at such times as shall cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

SECTION 12. Licensee Rules

The licensee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the licensee to exercise its rights and to perform its obligations under this Franchise Ordinance and to assure an uninterrupted service to each and all its customers, provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof and shall be filed with the City and shall be subject to the approval of the City.

SECTION 13. City Rules

The right is hereby reserved to the City to adopt, in addition to the provisions herein contained in existing applicable ordinance, such additional regulations as the City may find necessary in the exercise of the police power, provided, such regulations by ordinance or otherwise shall be reasonable and not in conflict with the rights herein granted.

SECTION 14. Resident Manager.

A licensee shall, throughout the entire duration of this Franchise Ordinance, maintain an office, open to the public during all reasonable business hours, within the City, and the licensee shall require one of its officers, and/or principal stockholders to be a resident manager of the system, and such person shall reside and be active in the management of the system in the City throughout the duration of this Franchise Ordinance.

SECTION 15. Preferential or Discriminatory Practices Prohibited.

A licensee shall not, as to rates, charges, service, facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

SECTION 16. Records and Reports.

The City shall have access at all reasonable hours to all of a licensee's plans, contracts and engineering, accounting, financial, statistical, customer and service records relating to the franchised system and the operation of the licensee, and all other records required to be kept hereunder. The following records and reports shall be filed with the City Clerk and in the local office of the licensee.

- 1) Licensee Rules and Regulations. Copies of such rules, regulations, and terms and conditions adopted by the licensee for its business.
- 2) Revenue. An annual report showing total revenues and gross receipts shall be filed in the office of the City Clerk on or before January 20 next following.

SECTION 17. Procedure After Termination or Revocation.

Upon the revocation of any franchise by the Council, or at the end of the term of any franchise, the City shall have the right to determine whether the licensee shall continue to operate and maintain its distribution system, pending the decision of the City as to the future maintenance and operation of such system. If the licensee shall not have acquired an extension or renewal of franchise and accepted the same, it may have and it is hereby granted, the right to enter upon the streets, alleys, viaducts, bridges, roads, lanes and public ways of the City, for the purposes of removing therefrom any or all of its plants, structures, works, pipes, mains, conduits, cables, poles and wires strung thereon, and otherwise, at any time after the City has had ample time and opportunity to purchase, condemn or replace them. In so removing said equipment and appliances the licensee shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets, alleys and public ways and places in as good condition as that ^e prevailing prior to the licensee's removal of its equipment and appliances. The licensee must remove all equipment within six (6) months, and any equipment not so removed shall be the property of the City.

SECTION 18. Penalties

Any person, firm, or corporation, violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding One hundred dollars, (\$100.00), or be imprisoned in the

City jail for a period not exceeding thirty days, or be both so fined and imprisoned. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder. Provided, that any violation by a licensee, its assignee, or successors, of the provisions of this ordinance, or any material portions thereof, or the failure promptly to perform any of the provisions thereof, shall be cause for the forfeiture of the franchise issued to such licensee, and all rights hereunder, to the City, after written notice to the licensee, assignee, or successor, and continuation of such violation, failure, or default.

SECTION 19. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be 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 thereof.

SECTION 20. Ordinances Repealed.

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

SECTION 21. Effective Date.


This ordinance shall take effect immediately, and is hereby directed to be published in pamphlet form and distributed as directed by the President of the Council.

Enacted the 13th day of September, 1966.



President of the Council

ATTEST:



CITY CLERK

