

DETROIT ORDINANCES

ORDINANCE NO. 59-A

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO NORTHLAND CABLE PROPERTIES EIGHT LIMITED PARTNERSHIP ("NCP-Eight") TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY OF DETROIT AND DECLARING AN EMERGENCY.

The people of the City of Detroit do ordain:

Section 1. Short Title. This ordinance shall be known as the "Cable Television Franchise Ordinance."

Section 2. Definitions. For the purpose of this ordinance, the following terms 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 include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

2.1 "City" is the City of Detroit, Oregon.

2.2 "Company" is the grantee of rights under this franchise, including its successors or assigns.

2.3 "City Council" is the City Council of the City of Detroit, Oregon.

2.4 "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

2.5 "Technical facilities" or "facilities" shall mean all real property, equipment and fixtures used by the Company in the distribution of its services through its system, whether located in City or out, and includes but is not limited to poles, cables, wires, microwave transmitters, antennas, amplifiers, etc.

2.6 "Television system services" or "system services" or "services" shall mean all of the services provided by Company or available to Company to provide through its technical facilities by the grant of this franchise, and shall include but not be limited to the distribution of television and radio signals.

Section 3. Grant of Authority. City grants to NCP-Eight 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, conduits and other technical

facilities necessary for the construction, maintenance and operation in the City of a community television system for the interception, sale and distribution of television system services. This franchise is not exclusive, and the city reserves the right to grant a similar use of streets, alleys, public ways and places to any other person at any time during the period of this franchise.

Section 4. Compliance with Laws, Rules and Regulations. At all times during the term of this franchise Company shall comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon and the City of Detroit, including all agencies and subdivisions thereof. Company shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter by resolution or ordinance provide.

Section 5. Company Liability, Indemnification of City and Insurance.

5.1 Company shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.

5.2 Company shall pay, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Company in the construction, operation or maintenance of its technical facilities and system services.

5.3 This franchise shall not be effective until Company shows evidence of, and shall at all times be conditioned upon Company maintaining, a comprehensive liability insurance policy which shall contain the following provisions:

(a) Combined bodily injury and property damage policy limits of \$1,000,000 for each person and \$1,000,000 for each occurrence.

(b) An endorsement for completed operations coverage.

(c) A designation of City, its officers, agents and employees, as additional insureds for liability arising from or in connection with this franchise.

5.4 Upon filing acceptance required, the grantee shall, at his sole expense, obtain, file with the City and, unless otherwise authorized by the City Council, thereafter maintain during the full term of such franchise or any renewal thereof plus an additional six months thereafter, a corporate

surety bond or other adequate surety agreement in such form and amount, not less than the penalty sum of Five Thousand (\$5,000) Dollars, as shall have been approved by the City Attorney.

5.5 A certificate evidencing insurance as described in this ordinance shall be deposited with City.

Section 6. System Standards. For the term of this franchise, Company shall construct, operate and maintain its technical facilities and provide system services as follows:

6.1 Company shall provide its subscribers within the City good quality television and radio reception, station selection and other system services within the limits of its technical facilities; and

6.2 Company shall maintain and improve the technical facilities of its system according to generally accepted practices and standards in the cable television industry and according to the technical requirements of providing improved system services to the City (Company's obligation to improve its technical facilities shall not extend to extraordinarily costly improvements developed in the industry if the cost of such improvements would impair a reasonable return on Company's investment for the services Company provides); and

6.3 Company shall make available to its subscribers all signals, stations and system services available within the limits of the system's technical facilities.

Section 7. Company Rules. Company shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its right and perform its obligations under this franchise, and to assure uninterrupted service to its customers. Company rules and regulations shall be subject to the provisions of this ordinance and any other governmental regulations.

Section 8. Conditions on Street Occupancy.

8.1 Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places.

8.2 Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, the Company shall, at its own cost and expense and in a manner

approved by the City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good a condition as before the disturbance. If Company fails to make restoration as required, City shall cause the repairs to be made at the expense of the Company.

8.3 Relocation. If at any time during the period of this franchise City shall lawfully elect to alter, or change the grade of, any street, alley or other public way, the Company, upon reasonable notice by the City, shall remove and relocate its poles, wires, cables, underground conduits, manholes and other technical facilities at its own expense.

8.4 Placement of Fixtures. The Company shall not place its technical facilities where they will interfere with any gas, electric or telephone fixture, sewer or water facility. All facilities placed in the street shall be placed as the City directs.

8.5 Temporary Rearrangement of Facilities. Company shall upon receipt of seven days' written notice from anyone desiring to move a building or other object according to City ordinances regulating the moving of buildings arrange to temporarily raise, lower or otherwise move its facilities to permit the moving of buildings or other objects if the person wishing to move the building or other object makes a reasonable arrangement to reimburse Company for its expense in rearranging its facilities.

8.6 Tree Trimming. The Company may trim trees upon or overhanging streets, alleys, sidewalks and public places of the City so as to prevent the branches from coming in contact with the facilities of Company, all trimming to be done under the supervision of the City and at the expense of the Company.

Section 9. Discriminatory Practices Prohibited. Company shall make its system services available to all citizens of City without discrimination and shall not give any preference or advantage not available to all persons similarly situated.

Section 10. Extension of System Services. Company shall extend the services of its system to all citizens of City within the limits of the system's technical facilities.

Section 11. Transfer of Franchise. Company shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in this franchise or in the technical facilities used with this franchise, nor transfer or permit transfer of controlling interest in Company without prior written approval of the City Council; provided, however, that the Company shall have the right to encumber this franchise and the technical facilities

by assignment(s) of the same for security purposes in connection with the acquisition, financing and operation of the system and the franchise by the Company.

Section 12. City Rights in Franchise.

12.1 Use of System by City. City shall have the right to use Company's technical facilities without service charge for police and fire alarm systems or any other City-owned facilities of any nature. City use of Company facilities shall at all times comply with the rules and regulations of Company, and shall not compete or interfere with Company's use.

12.2 City Supervision and Inspection. The City shall have the right to supervise all construction or installation of Company facilities subject to the provisions of this ordinance and to make such inspections as it shall find necessary to insure compliance with governing laws, rules and regulations.

12.3 Termination or Abandonment of Franchise. Upon any termination of this franchise, whether before the expiration of the franchise or upon expiration, or by any abandonment of the franchise by Company, all technical facilities installed or used by Company shall be removed by Company at Company's expense and the property upon which the technical facilities were used reasonably restored by Company to the condition it was in before installation or use by the Company.

Section 13. Franchise Fee.

13.1 In consideration of the rights granted by this Ordinance, Company shall pay to City an amount equal to three percent (3%) of the gross receipts collected by Company for its system services to customers served in the City. Gross receipts shall include all amounts collected by Company from such customers, including but not limited to service charges and charges for installation or connections for customer service.

13.2 The fee required by this section shall be due and payable on or before the 15th day of each January, April, July and September for the preceding quarter.

13.3 City's acceptance of any payments due under this section shall not be considered a waiver by City of any breach of this franchise.

Section 14. Company Records and Reports. Company shall keep accurate books of accounts at an office within the State of Oregon throughout the term of this franchise. Company shall produce its books of account for inspection by City at any time

during normal business hours and City may require periodic reports from Company relating to its operation and revenue within the City.

Section 15. System Data. Company shall provide to the City, upon request, all current maps and other operational data relating to its system operations.

Section 16. Permit and Inspection Fees. Nothing in this ordinance shall be construed to limit the right of City to require Company to pay reasonable costs incurred by City in connection with the issuance of a permit, making an inspection, or performing any other service for or in connection with Company or its facilities, whether pursuant to this ordinance or any other ordinance or regulation now in effect or hereafter adopted by the City.

Section 17. Termination of Franchise. Upon the failure of Company, after sixty days notice and demand in writing, to perform promptly and fully each and every term, condition or obligation imposed upon it according to this ordinance, the City Council may, after an appropriate hearing by a court of competent jurisdiction in which Company has received due process and a right to be heard, terminate this franchise.

Section 18. Remedies not Exclusive; Waiver. All remedies under this ordinance, including termination of franchise are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce penal provision of any ordinance and also use any remedy available at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver or a breach of any other term, condition or obligation of this ordinance.

Section 19. Franchise Term. This franchise is granted for a term of 10 years. Company shall have an option to renew this franchise ordinance for another 10 years upon the following terms and conditions: Company shall not be in default in its performance of any of the material terms or conditions of this franchise, and shall be providing reasonably good system services.

Section 20. Emergency Use of Facilities. City, at its expense, may use Company's facilities during local emergencies for purposes of advising City's citizens in connection with the emergency.

Section 21. Acceptance of Franchise. Within thirty days from the effective date of this ordinance, Company shall file with the City Recorder-Treasurer a written unconditional

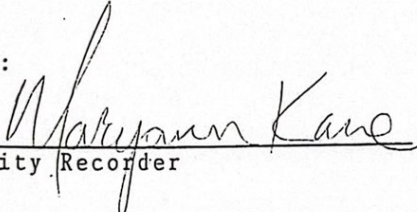
acceptance of this franchise and all of its terms and conditions, and if they fail to do so this ordinance shall be void and of no effect.

Section 22. Severability Clause. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance be declared invalid, such declaration shall not affect the validity of any other section subsection, paragraph, sentence, clause or phrase; and if this ordinance or any portion thereof should be held to be invalid on one ground but valid on another, it shall be construed that the valid ground is the one upon which the ordinance or such portion thereof was enacted.

Section 23. [Emergency clause]

Passed by the City Council and approved by the Mayor January 21, 1989.

Attest:

  
City Recorder

  
Mayor

:5901