

2-13-1996

96-213
ORDINANCE NO. 213

CITY OF FRANKSTON, TEXAS

CABLE TELEVISION FRANCHISE ORDINANCE

WHEREAS Northland Cable Properties Four Limited Partnership's legal, character, financial, technical, and other qualifications, and the adequacy and feasibility of its cable television service, and its plans for the future cable-related needs and interests of the City of Frankston have been approved as part of a full public proceeding affording due process; and

WHEREAS the City of Frankston hereby desires to grant the application for franchise renewal to Northland Cable Properties Four Limited Partnership.

NOW, THEREFORE, BE IT ORDAINED as follows:

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

Section 2. Definitions. For the purposes of this Ordinance 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 Frankston, Texas.

(b) "Cable System" means a system of coaxial cables, optical fiber or other transmission facilities, electrical conductors and such ancillary receiving and processing equipment, and any and all other equipment necessary or convenient to the transmission of television, radio and any other lawful signals to subscribers for a fee.

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

(d) "Grantee" is Northland Cable Properties Four Limited Partnership, a Washington limited partnership.

(e) "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the City.

(f) "Gross Subscriber Revenues" shall include any and all receipts actually received by Grantee from regular subscriber monthly service charges to its subscribers within the

City in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services, if any, within the City, and the net receipts from ancillary or auxiliary services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel basis, if any; but shall not include (i) any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee, or collected by Grantee on behalf of any governmental entity, or (ii) revenue from installations, disconnections, re-installations, equipment rentals, and/or commissions from the sale of goods and services.

Section 3. Grant of Nonexclusive Authority.

(a) The City hereby grants to the Grantee the non-exclusive franchise, right, authority and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, easements, rights-of-way, public ways and all other public places now laid out or dedicated, and all extensions thereof and additions thereto, in the City, a Cable System for the transmission of television signals and other signals with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, the Franchise granted hereby shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements and public grounds and places in the City to install, operate, erect or in any way acquire the use of all lines and equipment necessary or convenient to the Cable System and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections.

(b) The right to use and occupy said streets, alleys, easements, 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, easements, public ways and places, to any Person at any time during the period of this Franchise; provided, however, that no such grant shall be made on terms and conditions less restrictive than those contained in this Ordinance and only in a public proceeding affording due process.

Section 4. Use of Existing Pole Line Facilities. There is hereby granted the further right, privilege, and authority to the Grantee to lease, rent, or in any other manner obtain the use of towers, poles, lines, cables and other equipment, and facilities from the City and any and all holders of public licenses and franchises within the limits of the City, and to use such towers, poles, lines, cables and other equipment and facilities, subject to all existing and future ordinances and regulations of the City. When and where practicable, the poles used for the Grantee's distribution system shall be those erected and maintained by the City or the public utilities serving the City; provided that mutually satisfactory rental agreements can be entered into by the Grantee with the City or said companies; otherwise, the Grantee may erect its own poles when and where required. The Grantee shall not be obligated to service areas to where it is unable to obtain pole line facilities located in a direct route to such areas and the Grantee is not required to erect or obtain the use of pole line facilities along an indirect or circuitous route, nor is the Grantee required to use underground conduits in areas where underground conduits are not in use, in order to supply service to such areas. In areas or locations where underground conduit is in use, or shall at some future date be used by public utility companies serving the City, the Grantee by negotiation with said

companies when and where practicable, will join in the use of underground facilities, provided mutually satisfactory agreements can be entered into with said companies, otherwise, the Grantee may install its own underground conduit and facilities. Under no circumstances shall the Grantee be obligated to place its facilities underground except in accordance with Section 10(g) hereof.

Section 5. Duration. This Franchise shall continue in full force and effect for a period of twelve (12) years commencing on the date this Ordinance is signed and approved by the Mayor of the City.

Section 6. Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area henceforth added or annexed thereto during the term of this Franchise.

Section 7. System Construction and Description.

(a) The Grantee's Cable System shall be located, erected and maintained so as not to endanger or unreasonably interfere with the lives of persons, or to unnecessarily hinder or obstruct the free use of the streets, alleys, bridges, or other public property.

(b) All installations of equipment shall be durable, and installed in accordance with good engineering practices, and of sufficient height to comply with all existing regulations, ordinances, and state laws so as not to interfere with the right of the public or individual property owners, and shall not unreasonably interfere with the travel and use of public places by the public and during the construction, repair, or removal thereof, shall not unreasonably obstruct or impede traffic.

(c) In the maintenance and operation of its Cable System in the streets, alleys, and other public places, and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by the Grantee in the course of its operations shall be guarded and protected at all times by the placement of barriers, fences, or boardings, the bounds of which, during periods of dusk and darkness, shall be designated by warning lights.

(d) It is the stated intention of the City that the City and all public utilities and other holders of public licenses and franchises within the limits of the City shall cooperate with the Grantee to allow the Grantee's joint usage of poles and pole line facilities wherever possible or wherever such usage does not unreasonably interfere with the normal operation of said poles and pole lines so that the number of new or additional poles constructed by the Grantee within the City may be minimized. Such cooperation shall include the rights of joint usage at reasonable rates and on reasonable terms in accordance with the rules and regulations of the Federal Communications Commission.

(e) The Grantee and the City shall grant to each other, free of expense, joint use of any and all poles owned by either party for any proper purpose, insofar as the same may be done without interfering with the use and enjoyment of either party's own wires and other facilities and provided that all such joint use shall be in full compliance with all rules, regulations, requirements and conditions of the National Electrical Safety Code prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters affecting electrical installations which may be presently in effect or future changes thereto.

(f) The Grantee shall not be required to extend its Cable System to serve any area within the franchised area unless or until (i) such area shall have a density of forty-five (45) dwelling units per cable mile and (ii) such dwelling units are situated along public easements to which Grantee can gain access.

Section 8. Indemnification. Except for the negligence of or the willful acts or omissions of the City, its officials, agents and employees, the Grantee shall, to the extent of the insurance coverage required pursuant to Section 9 hereof, indemnify, protect and save harmless the City from and against losses and physical damages to property, and bodily injury or death to Persons which may arise out of or be caused by the improper or negligent erection, maintenance, presence, use or removal of its Cable System or said attachments on poles within the City, or by any improper or negligent act of the Grantee, its agents or employees. The City shall notify the Grantee in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any aforesaid reasons. Where any such claim or demand made against the City is made by suit or other legal action, written notice shall be given by the City to the Grantee not less than ten (10) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever notice yields the Grantee the greater amount of time within which to prepare an answer. Failure by the City to properly notify the Grantee in accordance with the foregoing of any suit, claim or demand against the City shall release the Grantee from its obligations to indemnify the City as provided herein.

Section 9. Liability Insurance. The Grantee shall carry insurance to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage described in Section 8 above. The amounts of such insurance against liability due to physical damage to property shall not be less than Two Hundred Fifty Thousand Dollars (\$250,000) as to any one accident and not less than Five Hundred Thousand Dollars (\$500,000) aggregate in any single policy year; and against liability due to bodily injury or to death of Persons not less than Five Hundred Thousand (\$500,000) as to any one Person and not less than One Million Dollars (\$1,000,000) as to any one accident. The Grantee shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation laws in effect that may be applicable to the Grantee. All insurance required by this Franchise Agreement shall be and remain in full force and effect for the term of this Franchise Agreement.

Section 10. Conditions on Street Occupancy.

(a) All transmission and distribution structures, lines, and equipment erected by the Grantee 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 and reasonable convenience of property owners who adjoin any of the said streets, alleys, or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall at its own cost and expense, replace and restore such street, sidewalk, alley, public way, or paved area in as reasonably good a condition as before the work involving such disturbance was done.

(c) If at any time during the period of the Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Grantee upon reasonable notice by the City shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense; provided, however, that if public funds or funds from property owners are available for such relocation pursuant to law or if the City pays for the relocation of the facilities of any public utility, Grantee shall not be required to pay the cost.

(d) Any poles or other fixtures placed in any public way by the Grantee shall be placed in such manner as not to unreasonably interfere with the usual travel on such public way, or to, unreasonably endanger users of such public way.

(e) The Grantee shall, on the request of any Person holding a building moving permit lawfully 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 seventy-two (72) hours advance notice to arrange for such temporary wire changes.

(f) The Grantee shall have the authority but not the obligation 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 facilities of the Grantee.

(g) In the areas of the City where all of the cables, wires, or other like facilities of all public utilities are placed underground, the Grantee shall place its cables, wires or other facilities underground.

Section 11. Complaint Procedure. The Grantee shall maintain a business office or a toll-free telephone listing in the City for the purpose of receiving inquiries and complaints from its Subscribers and the general public. Grantee shall endeavor to investigate all complaints within two (2) business days of their receipt and shall in good faith attempt to resolve them swiftly and equitably.

Section 12. Operation and Maintenance of System. The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Any planned service interruptions, insofar as possible, shall occur during periods of minimum use of the Cable System.

Section 13. Preferential or Discriminatory Practices
Prohibited. Grantee shall not, as to rates, charges, services, facilities, rules, regulations, or in any other respect make or grant any undue preference or advantage to any Person, nor subject any Person to undue prejudice or disadvantage.

Section 14. Franchise Fee. During the term of this Franchise and the Grantee's active operation of its Cable System under the terms of this Franchise, the Grantee shall pay to the City a fee equal to five percent (5%) of the Gross Subscriber Revenues received by the Grantee from the subscribers in the City. The franchise fee shall be paid semi-annually, in arrears, one-half within sixty (60) days following the last day of June and one-half within sixty (60) days following the last day of December of each year and shall be computed on the basis of Gross Subscriber Revenues received by the Grantee during the immediately preceding 6-month period. The fee payable to the City hereunder shall be in lieu of any other license, excise or privilege taxes or fees or similar charges that may be imposed by the City on Grantee.

Section 15. Free Installations and Service.

(a) Grantee shall, at no cost, make one installation and provide its basic cable service at the following locations:

- (1) The City Hall or the main municipal office used by the City or such other office designated by the City;
- (2) All police and fire stations located in the City; and
- (3) All public libraries located in the City.

Grantee's obligations hereunder shall be limited to making one standard installation at a single point on the premises reasonably convenient to use and shall not require the wiring of an entire building. Grantee shall not be obligated to extend its facilities to provide the services described in this Section unless the conditions specified in Section 7(f) have been met.

(b) In the event service calls or repairs are required for any location as to which installation or service is rendered without charge, Grantee shall be entitled to make a fair and reasonable charge for any repairs other than those necessary to effect delivery of signal to a single point on the premises reasonably convenient to use.

Section 16. Emergency Use of Facilities. In the case of emergency or disaster, the Grantee shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period.

Section 17. Transfers and Change of Control.

(a) All of the rights and privileges and all of the obligations, duties and liabilities created by the Franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld; provided, however, that transfers or assignments of the Franchise from the Grantee to its managing general partner Northland Communications Corporation ("NCC") or to an affiliate of NCC shall be permitted without the prior approval of the City.

(b) Notwithstanding anything to the contrary contained herein, the City hereby approves the encumbrance of the Franchise and the assets of the Cable System and the hypothecation and assignment of same for security purposes in connection with the financing and refinancing, from time to time, of the Cable System, the Grantee's operations and the Franchise by the Grantee.

Section 18. Filings and Communications with Regulatory

Agencies. Upon the written request of the City, Grantee shall provide the City with copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or other federal or state regulatory commission or agency having jurisdiction with respect to any matters directly affecting cable television operations authorized pursuant to this Ordinance.

Section 19. Termination. If the Grantee should violate any of the material terms, conditions or provisions of this Ordinance and should the Grantee fail to comply with the same, or commence reasonably appropriate actions to effect such compliance, for a period of one hundred twenty (120) days after the Grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply and the specific nature of such violation or failure to comply, then the City shall have the right to commence proceedings to terminate the Franchise granted by this Ordinance; provided that such termination shall be declared only by written decision of the City after appropriate proceedings affording the Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the City may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than termination of the Franchise or excuse the violation or failure to comply upon a showing by the Grantee of mitigating circumstances. In the event that termination of the Franchise is imposed upon the Grantee, it shall be afforded a nine (9) month period within which to sell, transfer, or convey its Cable System to a qualified purchaser at fair market value. During this period which shall run from the effective date of the final, non-appealable order or decision of a court of competent jurisdiction imposing termination, the Grantee shall have the right to operate the System pursuant to the provisions of this Ordinance.

Section 20. Safety Requirements.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain in use methods and devices commonly accepted in the cable television industry 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 state and national electrical codes, and in such a manner that they will not unreasonably 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 and repair.

Section 21. Additional Regulations. The City reserves the right to adopt, in addition to the provisions included in this Ordinance, such additional reasonable regulations as it shall find necessary in the exercise of its police power; provided, however, that such regulations are not economically burdensome, are not in conflict with the privileges granted by this Ordinance, and provided, further that any such regulations shall not require the Grantee to redesign or reconstruct its plant and facilities.

Section 22. Inspection and Administration. The City, or its authorized designee shall have the right, at its expense, to inspect all pertinent books, records, maps, plans, financial statements, and other like materials of the Grantee relating to this Ordinance. Such materials will be made available by the Grantee in its office within normal business hours, upon receipt of reasonable notice from the City.

Section 23. Separability. If any section, sentence, clause or phrase of this Ordinance is for any reason determined to be illegal, invalid, or unconstitutional, such invalidity shall not effect the validity of this Ordinance and any portions in conflict shall be repealed.

Section 24. Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

IN WITNESS WHEREOF, this Ordinance is passed and adopted in accordance with the notice and procedure requirements of the laws of the State of Texas governing the activities of cities, and in accordance with the notice and procedure requirements prescribed by the City of Frankston.

Signed and approved by the Mayor of the City of Frankston this 13th day of February, 1996

Attest:


CITY CLERK


MAYOR