

ORDINANCE NO. 643

AN ORDINANCE AMENDING ORDINANCE NO. 533 GRANTING TO SANTIAM CABLE TELEVISION NON-EXCLUSIVE FRANCHISE FOR THE OPERATION OF A CABLE COMMUNICATIONS SYSTEM, AND REPEALING APPENDICES "A" AND "B."

THE CITY OF STAYTON ORDAINS AS FOLLOWS:

SECTION 1: Section 5 of Ordinance No. 533 is amended to read:

Section 5: Services Provided

- (1) Basic Service: Company shall provide its subscribers within the City with good quality television and radio reception, station selection, and other system services within the limits of its technical facilities; and

Company shall make available to its subscribers all signals, stations, and state of the art services available within the limits of the system's technical facilities and provide at least those services being provided as of October 1, 1987, and in accordance with F.C.C. "must-carry rules" adopted March 26, 1987. A converter may be necessary for some super band channels.

- (2) Performance Standards: The technical standards for system performance shall be equal to or better than those provided in Appendix A, attached hereto. Those standards contained in Appendix A that exceed Federal Communications Standards shall be maintained throughout the life of this franchise. With respect to visual signal levels and other signal quality requirements not contained in Appendix A, the Company shall maintain the minimum standards established by the F.C.C.

The City may, as it deems necessary, in the event of receiving complaints, order special testing of the system. The cost of the special testing, if

done by sources other than the Company, shall be borne equally by the City and the Company; if testing is performed by the Company, the cost shall be borne by the Company.

- (3) Modifications and Improvements: Company shall maintain and improve the technical facilities of its system according to generally accepted practices and standards in the cable television industry.

Company agrees not to make or permit any change in system station selection (programming or scheduling), except as is necessary on an emergency basis to provide uninterrupted service to the community, without thirty (30) days' prior written notice to the City through the Cablevision Commission.

- (4) Control Keys: Company shall provide at its cost a key-operated parental control locking device for any of the pay channels.
- (5) Service to Institutions: Upon request, the Company shall make single installations of its cable communication system facilities to each fire and police station, public school, City Hall, and public library within the franchise territory on terms provided in Section 6(2), except no standard installation fee shall be imposed for such installations. No monthly service charge shall be made for distribution of service to these locations.
- (6) Public Access: Company may maintain a studio within the franchise territory with facilities and equipment for access program origination, and shall also maintain at least one high quality video camera, one video tape recorder with playback capacity, and other equipment deemed necessary by the Cablevision Commission for the operation of the public access channel. Equipment of the public access channel shall be made available at no charge to individuals that are acceptable to the Cable Communications Commission.

The Company's studio and equipment, where available in accordance with the prior paragraph, shall be made available upon reasonable request (a minimum of 48 hours in advance unless arrangements are made with Company's representative in special circumstances) to authorized representatives of the city or to persons or groups wishing to ordinate programming, except that in event of public emergency, the City shall not be required to give any notice.

Reasonable charges acceptable to the Commission may be levied for use of the aforesaid studio, studio facilities, and equipment, and Company shall be entitled to reimbursement from the party responsible for damages to any property of the Company.

Company shall maintain all studio facilities and shall maintain equipment in satisfactory condition both electronically and mechanically without charge to users, except as provided above. User shall supply performers, production crew, special properties, graphics, etc.

Subject to the foregoing, the Company shall prepare and make available to users rules governing the use of its studio, facilities, and equipment, such rules to be subject to the approval of the Cable Communications Commission, whose approval shall not be unreasonably withheld. In addition to any other rights of appeal granted under this Ordinance, any person or group may appeal to the Cable Communications Commission from any decision by Company concerning use of public access channels, use of facilities provided for local origination programming, and concerning priority of public access programming over other programming. The Cable Communications Commission at its discretion may accept the appeal and the commission's decision shall be final and binding on the Company.

In the case of any emergency or disaster, the Company shall, upon request of the City, make

available its facilities for emergency use during the emergency or disaster period at no cost to the City. The system shall be designed so that viewers on all channels can receive immediate notice of the emergency cablecast.

SECTION 2: Section 6 of Ordinance No. 533 is amended to read:

Section 6: Extension of Service

- (1) Scope: Company shall install its service to all applicants within the city boundaries of Stayton, as they are now or hereafter may be constituted, pursuant to its schedule of charges (see attached schedule, Appendix B).

If applicant lives beyond city limits, the customer or customers may be required to pay the basic installation fee plus a charge of one-half the expense for extension of said trunk. The present-day figure of \$1.00 (one dollar) per foot constitutes the expansion expense.

- (2) Service to Individual Subscribers: Where a subscriber can be served from the Company's system without extension of a trunk cable, the Company shall serve the potential subscriber upon request on the following terms and conditions:
- a) The dwelling unit shall be connected to cable at the standard installation charge if the connection can be made with an aerial drop and does not exceed 150 feet;
  - b) If the aerial connection drop exceeds 150 feet, the potential subscriber may be charged the actual cost of the distance exceeding 150 feet plus standard installation charge, and Company may request advance payment of such installation;

- c) If the requested installation is to be placed underground, the potential subscriber must pay for furnishing an open trench as specified by the Company, backfilling, and restoring to original conditions, and Company may request advance payment for such work;
- d) The potential subscriber shall arrange for all necessary easements over or under private property.

(3) Underground Extension of System

- a) Installation of System: In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Company reasonable notice of such construction or development including a copy of any final plat and of the particular date on which open trenching will be available for Company's installation of conduit, pedestals and/or vaults, and laterals which are to be provided at Company's expense. Company shall also provide specifications as needed for trenching.
- b) Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner, except that if Company fails to install its conduit, pedestals and/or vaults, or the laterals within two (2) working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the two-day period, the cost of new trenching is to be borne by Company.

- (4) Aerial Extension of System: In any area where utility lines are permitted aboveground, Company shall extend its system and provide service upon request pursuant to Section 6(2) herein, where the potential subscriber can be served by extension of

distribution cable past occupied dwelling units equivalent to a density of 22 dwelling units per mile of cable contiguous to the activated system. Such density shall be computed on the basis of dwelling units which can be served on either side of the cable.

- (5) Extension of Service by Agreement: Nothing herein shall be construed to prevent Company from serving areas not covered under this Section upon agreement with developers, property owners, or residents. Any such agreement shall be in writing and filed with the Commission.

SECTION 3: Section 8 of Ordinance No. 533 is amended to read:

Section 8: Rates for Installation and Services

- (1) Schedule of Rates: Company shall keep on file with the Commission a current schedule of subscriber rates and charges which shall not be increased except as provided by this Ordinance. Company may, without approval or additional filing, temporarily reduce any such rates and charges in connection with its marketing or other business purpose. The current rate scheduled is attached as Appendix B.
- (2) Advance Charges: Company may require subscribers to pay for each month of basic service in advance at the beginning of each month.
- (3) Prohibition of Discriminatory or Preferential Practices: The Company shall not, in its rates or charges, or in making available the service or facilities of its system, or in its rules or regulations, or in any other respect, make or grant discriminatory preference or advantages to any subscriber or potential subscriber to the system, or to any user or potential subscriber to the system, and shall not subject any such persons to any prejudice or disadvantage, provided nothing herein shall prevent Company from establishing

different rates for uniform classes of subscribers or reducing rates as permitted by Section (8)1 herein, unless approved by the Commission.

- (4) Disconnections, Failure to Pay: There shall be no charge for disconnection from the system. If a subscriber has failed to pay a properly due monthly subscriber fee within fifteen (15) days after the due date of the fee, Company may cause disconnection of the subscriber's cable installation after ten (10) days' prior written notice; however, upon payment in full of the delinquent monthly subscriber's fee, the reconnection charge, plus the first and last months' service charge, the Company shall reinstate the subscriber's service.
- (5) Subscriber Refunds: If any subscriber terminates for personal reasons any monthly service prior to the end of a prepaid period, a proportional amount of any prepaid monthly service fee, corresponding to the number of days remaining in the prepaid period, shall be refunded to the subscriber by the Company, if the amount equals \$1.00 or more.
- (6) Rate Change Procedures
  - a) The Commission is hereby empowered to review rate, programming, and scheduling change notices made by the Company for all cable television services.
  - b) Company agrees to submit to the Commission advance notice to change Company's rates for services. Notices shall be in writing to the Commission. Company further agrees rate changes will not be effective until thirty (30) days from the date the notice was submitted to the Commission.

SECTION 4: Section 10 of Ordinance No. 533 is amended to read:

Section 10: Payment to City

- (1) Franchise Fee: As compensation for the permit granted herein and in consideration of permission to use the streets and public ways of the city in the franchise territory for the construction, operation, maintenance, and reconstruction of a cable communications system within the franchise territory, the Company shall pay to the City an annual amount equal to three percent (3%) of the Company's gross annual revenues as defined in Section 2(7) herein.
- (2) Payment Schedule: Payments due the City under this provision shall be computed quarterly for the preceding quarter as of March 31st, June 30th, September 30th, and December 31st. Each quarterly payment shall be due and payable no later than sixty (60) days after the dates listed in the previous sentence. Duplicate statement to be presented to the Commission at the time of payment.
- (3) Late Penalty: The Company shall furnish to the City with each payment of compensation required by this Section a written statement, under oath, executed by an authorized agent of the Company, showing the amount of gross annual revenues of the Company within the franchise territory for the period covered by the payment computed on the basis set out in Subsection (1) of this Section. The compensation for the period covered by the statement shall be computed on the basis of the gross annual revenues so reported. If the company fails to pay the entire amount of compensation due the City, through error or otherwise, within the times allotted for payment in Subsection (2) above, the amount of the fee due for that quarter and not timely paid shall be subject to a late penalty of an additional ten percent (10%) plus interest of one percent (1%) per month on the amount of fee due and unpaid from the date due until it is paid together with the late penalty.
- (4) Verification of Amount Due: No acceptance of any payment shall be construed as an accord that the



amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this franchise.

All amounts paid shall be subject to audit and recomputation by the City, and all records required to conduct such an audit shall be made available to the City at the expense of the Company.

- (5) Compensation Not a Credit Against Certain Taxes and Fees: Nothing contained in this franchise shall give the Company any credit against any nondiscriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on the Company, or against any permit fees or inspection fees required by the construction codes or other ordinances of the City which are or may hereafter be adopted.

SECTION 5: Section 11 of Ordinance No. 533 is amended to read:

Section 11: Performance bond and Liability Insurance

- (1) Performance Bond: Upon the filing of the acceptance required under Section 16(1) hereof, the Company shall file with the City and shall thereafter annually, during the entire term of such franchise, maintain in full force and effect a corporate surety bond or other adequate surety agreement in the amount of \$10,000.00. The bond or agreement shall be so conditioned that, in the event that Company shall fail to materially comply with any one or more of the provisions of such franchise, then there shall be recoverable jointly and severally from the principal and surety any damages or loss, or costs suffered or incurred by the City as a result thereof, including attorney's fees and costs of any action or proceeding, including the full amount of any compensation,

indemnification, cost of removal, or abandonment of any property or other costs which may be in default, up to the full principal amount of such bond. Such condition shall be a continuing obligation during the entire term of such franchise and thereafter until Company shall have satisfied in full any and all obligations to the City which arise out of or pertain to said franchise. In lieu of the bond agreement, Company may deposit cash with the City or in a federal or State of Oregon bank or savings and loan association on terms and conditions approved by the City and the Company. Neither the provisions of this Section nor any damages recovered by the City thereunder, nor any withdrawal from any cash deposit shall be construed to excuse faithful performance by the Company or to limit the liability of the Company under this Ordinance for damages, either to the full amount of the bond or otherwise.

- (2) Proof of Performance Bond: Upon the effective date of this franchise, Company shall furnish to the City proof of a cash deposit as provided in Subsection (1), or shall furnish a bond, as required in Subsection (1), containing the following endorsement:

It is hereby understood and agreed that this bond may not be canceled nor the intention not to renew be submitted until thirty (30) days after receipt by the City by registered mail of a written notice of such intent to cancel or not renew.

- (3) Public Liability Insurance: Company shall indemnify and save the City free and harmless from any and all liability, loss, cost, damage, or expense from accident or damage, either to itself or to persons or property of others which may occur by reason of the exercise of the rights and privileges herein granted, and shall, for the purpose of carrying out the provisions of this Section and prior to commencing construction of any

kind, have in full force and effect, and file evidence thereof with the City, a good and sufficient policy (or policies) covering \$1,000,000.00 combined single limit liability for bodily injury, property damage, and personal injury liabilities with the policy (or policies) to be executed by an insurance company (or companies) authorized and qualified to do business in the State of Oregon and conditioned to indemnify and save harmless the City from and against any and all claims, actions, suits, liability loss, cost, expense, or damage of any kind or description which may accrue to or be suffered by the City or by anyone by reason of erection, construction, reconstruction, relocation, replacement, readjustment, repair, maintenance, or operation of the coaxial cable and appurtenances thereto, or by reason of anything that has been done or may be done by the Company hereunder which may in any way cause liability be reason thereof.

- (4) Reimbursement of Costs: The Company shall pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Subsection (3) above. These expenses shall include all out-of-pocket expenses such as consultants or attorney fees.
- (5) Notice of Cancellation or Reduction in Coverage: The insurance policies mentioned above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Company under the terms of this Ordinance and shall contain the following endorsement:

It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by the City of Stayton by registered mail of a written notice of such intent to cancel or reduce the coverage.

(6) No Waiver of Performance Bond: Neither the provisions of this franchise nor any insurance accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Company under the franchise for damages, either to the full amount of the bond or otherwise. Nor shall maintenance of this insurance pursuant to this Section be construed to impose liability to third parties on Company for loss expense or damages otherwise allocated under provisions of this Ordinance.

SECTION 6: Appendix A of Ordinance No. 533 is hereby repealed.

SECTION 7: Appendix B of Ordinance No. 533 is hereby repealed.

APPROVED BY THE COMMON COUNCIL THIS 4th DAY OF APRIL, 1988.

Signed by the Mayor this 20th day of May, 1988.

  
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WAYNE L. LIERMAN, MAYOR

ATTEST:

  
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DAVID W. KINNEY, CITY ADMINISTRATOR