

Ordinance #430(A)

AN ORDINANCE GRANTING TO THE SWEET HOME TELEVISION CABLE CO. ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A COAXIAL CABLE SUBSCRIBER SYSTEM FOR THE TRANSMISSION OF ELECTRONIC SIGNALS FOR DISTRIBUTION THROUGHOUT THE CITY OF SWEET HOME, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY OF SWEET HOME AS FOLLOWS:

Section I. Purposes. The City of Sweet Home, a Municipal Corporation of the state of Oregon, hereinafter referred to as a City, hereby grants to the S. H. Television Cable Co., a corporation, hereinafter called the Grantee, and to its successors and assigns, which shall hereinafter be included in the word "Grantee", under the conditions and limitations prescribed, the right, privilege, authority and franchise to install, lay down, maintain, and operate in, over, upon, and under the streets, alleys and public highways of the City of Sweet Home (hereinafter referred to as streets), underground pipes and conduits with the necessary manholes and other appliances therefor and to erect poles with or without crossarms, and stretch wires and cables on all streets; and amplifiers or other appurtenances thereon, and to maintain and use the same for the purposes of erecting, operating and maintaining a coaxial cable subscription system for the transmission of electronic signals to be distributed to the subscribers, homes, and to such business and public establishments as may also desire this service. When it is practicable, the Grantee shall make use of poles jointly in conformity with such arrangements as may be with any power company and/or telephone company, and the owner of any other poles which may be upon the city streets used for the purpose of carrying wires; provided, however, that all work and construction hereby authorized shall be performed in a workmanlike manner and shall conform with the requirements of the National Electric Safety Code, and Laws of the State of Oregon, and ordinances of the City of Sweet Home. Provided, further, that before any new poles, wires, cables, amplifiers or other appliances be constructed or

installed under the franchise, the Grantee may be required to file with the City Council plans showing the location of such construction, to be approved by said City Council. Such construction or repair shall be done so as not to unreasonably obstruct or prevent the free use of said streets.

Section II. Excavations. It shall be lawful for the said Grantee to make all needful excavations in any of such streets, alleys, avenues, thoroughfares and public highways in said City for the purpose of placing, erecting, laying, and maintaining poles, or other supports or conduits for said wires, or to bury said cable, or repairing, renewing or replacing the same, after a permit for said excavation has been approved by the City Council said work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Sweet Home.

Section III. Restoration of Streets. Whenever the Grantee shall disturb any of the streets for the purpose aforesaid, he or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so, the City of Sweet Home shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by Grantee, the said City shall cause such repairs to be made at the expense of said Grantee.

Section IV. Obstructions. Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City of Sweet Home from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways within the City of Sweet Home in or upon which the poles, wires or other conductors of said Grantee shall be placed. But all such work or

improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.

Where tree trimming is necessary on public streets for the operation of the lines, wires, cables, and antennas or other appurtenances of the Grantee, such trimming shall be done by competent employess, agents, or contractors of the Grantee after approval of the City Manager and it shall be done without cost or expense to the City.

Section V. Compensation. In consideration of the rights, privileges, and franchise hereby granted, said Grantee shall pay to the City of Sweet Home, four percent (4 %) per annum of the gross local service receipts derived from the operation of said transmission service, provided that there need not be included in the gross income on which computation is made, any sums received by Grantee for any installation or connections. No expenditures, however, of any kind shall be deducted from the gross income in determining gross local service receipts. Payment of said 4 % shall be made on or before the 15th day of January for the preceeding calendar year.

The Grantee shall keep proper books and records covering the transmission of electronic signals, which books and records shall always be open to inspection of the City Manager and members of the City Council, as the City's interest may appear.

Section VI. Relocation of Wires. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables or wiring or other apparatus of the Grantee to permit the passage of any building, machinery, or other object, the said Grantee will perform such rearrangements on seven (7) days' written notice from the person or persons desiring to move said building, machinery or other objects. Said notice shall bear the approval of the City Manager, shall detail the route of movement of building, machinery or other objects, shall provide that the costs incurred

by the Grantee in making such arrangements of its aerial plant will be borne by the person or persons giving said notice. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, and the laws of the State of Oregon and the ordinances of the City of Sweet Home.

Section VII. Use of Poles. The City reserves to itself the right at any time to use the poles and other installations of Grantee erected or installed under the authority granted in this ordinance for any city-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Grantee's use thereof.

Section VIII. Insurance. Grantee 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 thereto with the City Recorder, a good and sufficient policy (or policies) covering bodily injury with limits of \$200,000 personal injury each person, \$500,000 personal injury each accident and property damage with limits of \$50,000 each accident and \$100,000 aggregate with said 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 the erection, construction, reconstruction, relocation, replacing, 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 Grantee hereunder which may in anywise cause liability by reason thereof.

Section IX. Term of Franchise. The rights, privileges and franchise herein granted shall cease and terminate twenty(20) years from the date of the passing of this ordinance, unless sooner terminated, as hereinafter provided. For the period commencing ten years after the adoption of this franchise, the terms and conditions, of this franchise, if it still be in effect, shall be subject to renegotiation between the parties and shall conform to such changes as the City may desire to make for the following ten year period, which changes shall be reasonable in the light of the then existing circumstances and those to be reasonably expected in the following ten year period.

The grantee shall at all times fully and faithfully perform all the terms, provisions and conditions of this franchise and furnish efficient service hereunder and maintain his property in good order throughout the entire term of this grant, and upon any default by the grantee hereunder and the continuance of such default for a period of 30 days from and after receipt of a notice from the city specifying such default, the city may terminate this franchise and all further rights of the grantee, its successors or assigns hereunder. Any default by the grantee in the performance of the terms and conditions of this franchise which shall result, in the judgement of the city, in a danger or hazard to the public shall be corrected within such reasonable time as the city may prescribe in its notice of default and failure to remove such default within the time prescribed by the city shall constitute grounds for the city to terminate this franchise and all rights of the grantee, its successors or assigns, hereunder.

Section X. Commencement of Service If service is not transmitted into the city so that service can begin to be provided within six months after the effective date of this ordinance, the City Council may at its option and in its sole discretion by ordinance or resolution terminate this franchise.

Section XI. Guarantee of Service Grantee shall furnish service within the City for three years from the commencement of service under this franchise and if the Grantee shall discontinue service within three (3) years from the commencement of service, then and in that event, the Grantee shall refund to any subscriber a pro-rata share of the connection charge originally collected from the subscriber, in accordance with the terms of the contract with the subscriber.

Section XII. Justified Service. The Grantee shall furnish service under this franchise within the city limits wherever there is demand, actual or potential, great enough to justify cost of installing cables and equipment.

Section XIII. Charges for Service. Said Grantee shall have the right to charge and collect reasonable compensation from all persons and corporations to whom said electronic transmission service shall be furnished (including installation charges), subject to the rules and regulations of legally constituted regulatory bodies of the State or Federal governments. The charges made for a subscriber's service, including installation and connection work, shall be subject to review by the Council, on request.

Before any new rate schedule is put into effect, the City Council shall review the proposed rates at a public hearing, which hearing shall be held after publication of notice at least ten days prior. After the hearing, the Council must approve the proposed rate schedule prior to its adoption by the company. The rate schedules shall be reviewed by the Council with the objective of approving rates which would provide a fair and reasonable rate of return to the company for providing a quality of service comparable to that in other areas.

Section XIV. Non-Exclusive Franchise. The rights and privileges herein granted shall not be deemed exclusive, nor shall the Grantee herein assign, transfer, mortgage or encumber said rights or privileges without the consent of the Council of the City of Sweet Home, given by resolution, which consent shall not be unreasonably withheld.

Section XV. Acceptance. The Grantee shall signify its acceptance of this franchise by filing written notification thereof with the City Recorder within thirty (30) days from the passage of this Ordinance.

Section XVI. Separability. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held 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 or constitutionality of the remaining portions thereof.

Section XVII. Emergency. In the interest of the public peace, health and safety, an emergency is hereby declared to exist and this Ordinance shall go into full force and effect immediately upon its passage and approval.

Passed by the Council and approved by the Mayor this 10th day of

September, 1963

Approved William J. Penney
Mayor

Attest:

Robert G. White
Recorder