

ORDINANCE NO. 12-214

AN ORDINANCE GRANTING A FRANCHISE TO Brighton, Tennessee, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF Brighton, Tennessee, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

Section 1. DEFINITIONS. When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural):

- (a) "City" means the City of Brighton, Tennessee.
- (b) "Council" means the governing body of the City.
- (c) "Grantee" means Athena Cablevision of Tennessee and KY., its successors and assigns, the grantee of rights under this ordinance.
- (d) "Person" means any natural person, company or entity of any kind.
- (e) "Franchise area" means that area within the corporate limits of the City as now or hereafter constituted.
- (f) "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley, court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

(g) "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.

(h) "CATV" means a cable television system.

(i) "Cable Television System" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

(j) "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.

(k) "Subscriber" means any person or entity receiving and paying for basic CATV service.

(l) "Basic Subscriber Revenues" means all remuneration received directly by the Company from subscribers in payment for regularly furnished basic CATV service, but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by Grantee.

Section 2. GRANT OF AUTHORITY. There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and

all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

Section 3. NON-EXCLUSIVE GRANT. The right to use and occupy said streets for the purposes herein set forth, shall not be exclusive in the Grantee.

Section 4. TERM OF FRANCHISE. The franchise and rights herein granted shall commence thirty (30) days from the final passage hereof and shall continue in force and effect for twenty-five (25) years after said effective date. Upon application by the Grantee to the City, the franchise may be renewed for subsequent twenty-five (25) year periods.

Section 5. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, poles, lines and equipment installed or erected by the Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets. The CATV system shall be constructed and operated in compliance with applicable governmental construction and electrical codes.

(b) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good condition as theretofore.

(c) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property, subject to City ordinances, and if public funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

(d) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided:

(i) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (ii) the Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.

(e) The Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

(f) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided:

(i) such use by the City does not interfere with the use by the grantee; and (ii) the City holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

Section 6. SAFETY REQUIREMENTS.

(a) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(b) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

Section 7. SYSTEM CONSTRUCTION AND EXTENSION.

(a) The Grantee is hereby authorized to extend the system within the franchise area to the extent that such extension is or may become technically and economically feasible.

(b) Whenever the Grantee shall have received written requests for service from at least fifteen (15) subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least twenty-five (25) subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.

(c) No person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 feet of cable) or when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

(d) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; but otherwise the Grantee shall not be obligated to construct CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the Grantee's plans and specifications. Developer may enter into a written agreement with the Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of fifty percent (50%) of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed three (3) years.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of

the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by Grantee.

Section 8. OPERATIONAL STANDARDS: FORCE MAJEURE.

(a) The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

(b) The Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargos, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship.

Section 9. LOCAL OFFICE; COMPLAINTS. The Grantee shall maintain a local business office or agent which subscribers may telephone during regular business hours without incurring added message or toll charges, so that complaints regarding cable

television operations may be promptly reported to the Grantee.

Section 10. RATES. The Grantee shall maintain on file with the City Clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City Clerk at least thirty (30) days in advance of the effective date thereof.

Section 11. FRANCHISE PAYMENTS. The Grantee shall pay the City, on or before each March 31st, a franchise fee of Three percent (3) of basic subscriber revenues received for cable television operations in the City for the preceding calendar year, and no other fee, charge or consideration. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the City. The Grantee shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year.

Section 12. INDEMNIFICATION OF CITY.

(a) The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits,

without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance for an amount of at least Three Hundred Thousand Dollars (\$300,000.) single limit liability from the time of commencement of construction of the CATV system.

All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars (\$1,000.) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

Section 13. PROCEDURES.

(a) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.

(b) The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures

as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard to its operations.

Section 14. PROCEDURE UPON TERMINATION. Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it hereby granted, the right to enter upon the streets or other property of the City, for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense, any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property.

Section 15. APPROVAL OF TRANSFER. The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this franchise to another without Council approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating, or assigning of rights in the system,

or the pledge of stock by the Grantee for the purpose of financing.

Section 16. MISCELLANEOUS PROVISIONS.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.

(b) The Grantee shall assume the cost of publication of this franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the City Clerk.

(c) The Grantee shall provide without charge one outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty and expense of the building owner.

(d) In the case of any 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. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.

The Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulation shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the State or other local or Federal laws or regulations.

Section 18. VIOLATIONS; PENALTIES.

(a) From and after the effective date of this ordinance, it shall be unlawful for any person to construct, install or maintain

within any public street in the City, or within any other public property of the City, or within any privately-owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.

(b) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.

(c) It shall be unlawful for any person, without the consent of the owner, wilfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

(d) Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100.00), imprisonment for a term of not to exceed thirty (30) days, or both.

Section 19. LINE SEVERING. If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will

cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee's property.

Section 20. SEPARABILITY. If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 21. EFFECTIVE DATE. This ordinance shall take effect and be in force thirty (30) days from and after its passage.

First Reading 4-4 83
Second Reading 4-18-83

Duly passed by the City Council May 2, 1983.

Lucy Marshall
Mayor
Luille Bridges
Recorder