

AN ORDINANCE GRANTING A FRANCHISE TO THE GALAXY CABLEVISION, L.P., ITS SUCCESSORS AND ASSIGN, TO OPERATE AND MAINTAIN A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE COUNTY, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OR FRANCHISE, PROVIDING FOR COUNTY REGULATIONS AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM, AND PRESCRIBING PENALTIES FOR VIOLATION OF THE FRANCHISE PROVISIONS.

BE IT ORDAINED BY THE FISCAL COURT OF LYON COUNTY, KENTUCKY, AS FOLLOWS:

SECTION 1. Short Title. This ordinance shall be known and may be cited as the Galaxy Franchise Ordinance.

SECTION 2. Definitions. For the purpose 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.

- (1) "County" is the County of LYON, KENTUCKY.
- (2) "Court" is the Fiscal Court of Lyon County, Kentucky.
- (3) "Community Antenna Television System", herein-after referred to as "CATV System" or "System", means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee; but does not include the operation of a pay TV system.
- (4) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (5) Grantee is Galaxy Cablevision, L.P., a company or anyone who succeeds said company in accordance with the provision of this Franchise.

SECTION 3. Grant of Non-Exclusive Authority

- (a) There is hereby granted by the County to the Grantee 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 County, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the County of a CATV System for the interception, sale and distribution of television and radio signals.
- (b) Territorial Area Involved: This License and permit is related only to the territorial limit as more specifically described in Exhibit "A", a copy of which is attached hereto and incorporated herein. This License and permit specifically does not grant a franchise for any other areas in the County of Lyon besides those designated in Exhibit "A".

- (c) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall be non-exclusive, and the County reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this License and Permit.
- (d) Grantee shall be responsible for any damages caused by grantee to any existing utility easements.

SECTION 4. Compliance with Applicable Laws and Ordinances.

The Grantee shall, at all times during the life of this License and Permit, be subject to all lawful exercise of the police power by the County and to such reasonable regulations as the County shall hereafter provide.

SECTION 5. Territorial Area Involved. This License and Permit is related to the present territorial limits of the County and to any area henceforth added thereto during the terms of this License and Permit.

SECTION 6. Liability and Indemnification.

- (a) This grantee shall pay and by its acceptance of this License and Permit the grantee specifically agrees that it will pay all damages and penalties which the County may legally be required to pay as a result of granting this License and Permit. These damages and/or penalties shall include, but shall not be limited to, damages arising out of copyright installation, operation, or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this License and Permit.
- (b) The grantee shall pay and by its acceptance of this License and Permit specifically agrees that it will pay all expenses incurred by the County in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the County Attorney of his assistance or any employees of the County.
- (c) The grantee shall maintain, and by its acceptance of this License and Permit specifically agrees that it will maintain throughout the term of this License and Permit liability insurance insuring the County and the grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:
 - (1) \$500,000 for bodily injury or death to any one person, within the limit, however, of \$500,000 for bodily injury or death resulting from any one accident.

- (2) \$500,000 for any property damage resulting from any one accident.
- (3) \$500,000 for infringement of copyrights, and,
- (4) \$500,000 for all other types of liability.

SECTION 7. Color TV. The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

SECTION 8. Signal Quality Requirements. The Grantee shall:

- (a) Produce a picture whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of art allows.
- (b) Transmit signal of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
- (c) Limit failures to a minimum by locating and correcting malfunctions promptly.
- (d) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

SECTION 9. Operation and Maintenance of System.

- (a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible, such interruptions, insofar as possible, shall be preceded by notice and shall occur during the periods of minimum use of the system.

SECTION 10. Carriage of Signals. The Grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission. All FCC regulations shall be complied with by the Grantee.

SECTION 11. Emergency Use of Facilities. In the case of any emergency or disaster, the Grantee shall make its facilities available to the County for emergency use.

SECTION 12. This License and Permit authorizes only the operation of a CATV System as provided for herein, and does not take the place of any other license, or permit which might be required by law of the Grantee.

SECTION 13. 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) The Grantee shall install and maintain its wires, cable, fixtures, and other equipment in accordance with the requirements of the National Electrical Safety Code Promulgated by the National Bureau of Standards and the underwriters, and in such manner that they will not interfere with any installation of the County or of a public utility serving the County.
- (c) All structures and all lines, equipments, and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the County, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good repair.

SECTION 14. New Development. It shall be the policy of the County liberally to amend this License and Permit, upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically to serve its customers. Provided, however, that this Section shall not be construed to require the County to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

SECTION 15. Conditions on Street Occupancy.

- (a) All transmissions and distribution structures lines, and equipment erected by the Grantee within the County shall be so located so 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 join 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 and in a manner approved by the Judge/Executive, replace and restore such street, sidewalk, alley, public way, or paved area in as good a condition as before the work involving such disturbance was done.

- (c) If at any time during the period of this License and Permit, the County 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 County, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.
- (d) Any poles or other fixtures placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.
- (e) The Grantee shall, on the request of any person holding a building moving permit issued by the County, 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 forty-eight (48) hours advance notice to arrange for such temporary wire changes.
- (f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks, and public ways and places of the County so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the County, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.
- (g) In all sections of the County where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

SECTION 16. Preferential or Discriminatory Practices Prohibited. The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage.

SECTION 17. Removal of Facilities Upon Request. Upon termination of service to any subscriber the Grantee shall promptly remove all its facilities and equipment from the premises of such subscribers upon his request.

SECTION 18. Transfer of License and Permit.

Except for a mortgage or assignment to secure a loan to construct and operate said system in LYON KENTUCKY, Grantee shall not sell, lease, sublet or transfer its system and the privileges granted herein without first notifying the Fiscal Court of Lyon County, Kentucky.

SECTION 19. Filings and Communications with Regulatory Agencies. Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other agency having jurisdiction in respect to any matters affecting CATV operation authorized pursuant to this License and Permit, shall also be submitted simultaneously to the Fiscal Court of Lyon County, Kentucky.

SECTION 20. County Rights in License and Permit.

- (a) The right is hereby reserved to the County or the Fiscal Court to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- (b) The County shall have the right, during the life of this License and Permit, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any county use on the condition that such wire and pole fixtures do not interfere with the CATV operations of the Grantee.
- (c) The County shall have the right to supervise all construction or installation work performed subject to the provisions of the License and Permit and make such inspections as it shall find necessary to insure compliance with terms of this License and Permit and other pertinent provisions of Law.

SECTION 21. Maps, Plats, and Reports. The Grantee shall file with the County Clerk true and accurate maps or plats of all existing and proposed installations.

SECTION 22. Forfeiture of License and Permit.

- (a) In addition to all other rights and power pertaining to the County by virtue of this License and Permit or otherwise, the County reserves the right to terminate and cancel this License and Permit and all rights and privileges of the Grantee hereunder in the event that the Grantee:
 - (1) Violates any provision of this License and Permit or any rule, order, or determination

of the County or Fiscal Court made pursuant to this License and Permit, except where such violation, other than of Section 23, or subsection (2) below, is without fault or through excusable neglect.

- (2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt.
 - (3) Attempts to evade any of the provisions of this License and Permit or practices any fraud or deceit upon the County, or
 - (4) Fails to complete construction and commence operation under this License and Permit according to provisions in Section 25.
- (b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the County's rights under this License and Permit or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the Fiscal Court or its representative shall be conclusive. Provided, however, that before this License and Permit may be terminated and cancelled under this Section, the Grantee must be provided with an opportunity to be heard before the Fiscal Court.

SECTION 23. County's Right of Intervention. The Grantee agrees not to oppose intervention by the County in any suit or proceeding to which the Grantee is a party.

SECTION 24. Further Agreement and Waiver by Grantee. The Grantee agrees to abide by all provisions of this License and Permit, and further agrees that it will not at any future time set up as against the County or Fiscal Court the claim that the provisions of the License and Permit are unreasonable, arbitrary, or void.

SECTION 25. Duration and Acceptance of License and Permit.

- (a) This License and Permit and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and effect for a term of 15 years, provided that within 5 days subsequent to the date of the passage of this Ordinance the Grantee shall file with the County Clerk its unconditional acceptance of this License and Permit and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a Notary Public or other officer authorized by law to administer oaths.
- (b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this License and Permit whatever.

(c) The Grantee shall have a right of renewal of this License and Permit upon such terms as the County and Grantee may agree upon, subject to such state or Federal regulations as may be in effect as of the time of renewal.

SECTION 26. Number of Channels. The Grantee's cable distribution system shall be capable of carrying at least (20) television channels.

SECTION 27. Publication Cost. The Grantee shall assume the entire cost of publication of this License and Permit if such publications is required by law. Such amount is payable upon the Grantee's filing of acceptance of this License and Permit.

SECTION 28. Separability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 29. Effective Date of License and Permit. This ordinance and the License and Permit granted herein shall become effective upon approval by the Fiscal Court of Lyon County.

SECTION 30. Franchise Fees. In consideration of the terms of this franchise, Grantee agrees to pay the County a sum of money equal to three percent (3%) of Grantee's basic annual sum shall be payable one-half (1/2) thereof at the end of each semi-annual period. The semi-annual anniversary shall be the last day of June and the last day of December of each year, and each semi-annual payment shall be paid within sixty (60) days thereafter. In any event, Grantee may choose to pay the franchise fees on a monthly basis as long as this payment is before the semi-annual due date.

Done this 2 day of November, 1989.

James O. McTinnery
Lyon County Judge/Executive

ATTEST:

Jane Ale. Jew
Lyon County Court Clerk

First Reading: November 2, 1989
Second Reading: February 8, 1990
Published: MARCH 7, 1990
Considered: MARCH 8, 1990
Passed: April 17, 1990