

ORDINANCE NO. 1272

AN ORDINANCE GRANTING A FRANCHISE TO TELEPROMPTER OF MOBILE CABLE TV CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY TELEVISION SYSTEM IN THE CITY OF PRICHARD, ALABAMA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: PROVIDING FOR CITY REGULATIONS AND USE OF THE SYSTEM: AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

BE IT ORDAINED BY THE BOARD OF CITY COUNCIL OF THE CITY OF PRICHARD, ALABAMA, as follows:

Section 1. Short Title. This Ordinance shall be known and may be cited as the "Prichard Cable Television 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) "City" is the City of Prichard, Alabama.
- (2) "Company" is the grantee of rights under this Franchise, TelePrompter of Mobile Cable TV Corporation.
- (3) "Council" is the Council of the City of Prichard.
- (4) "Person" is any person, firm, organization, partnership, association, corporation, company or organization of any kind.
- (5) "Systems" shall mean the entire installation.

Section 3. Grant of Authority. There is hereby granted by the City to the Company 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 City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a community television system for the interception, sale and distribution of television signals.

- (1) Non-Exclusive Grant. The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall be non-exclusive with the grantee herein.

Section 4. Compliance with Applicable Laws and Ordinances. The Company shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation as the City shall hereafter by resolution or ordinance provide.

Section 5. Company Liability - Indemnification. It is expressly understood and agreed by and between the Company and the City that the Company shall save the City harmless from all loss sustained by the City on account of any suit, judgement, execution, claim or demand whatsoever, resulting from the construction, operation or maintenance on the part of the Company of its television system in the City. The City shall notify the Company immediately after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any activity as aforesaid on the part of the Company. The Company shall carry and pay the cost of the following insurance, in at least the amounts indicated below for each injury to or death of persons and injury to or destruction of property as a result of any accident arising out of the conduct of business or use of premises or any operations which are necessary or incidental thereto, the same to include the City as a named insured.

- (1) \$100,000.00 for property damage to any one person
- (2) \$200,000.00 for property damage in any one accident
- (3) \$100,000.00 for personal injury to any one person
- (4) \$300,000.00 for personal injury in any one accident

Section 6. Service Standards. The Company shall maintain and operate its system and render efficient service in accordance with the rules and regulations as are, or may be, set forth by the City and as provided for in Section 11 of this Ordinance.

- (1) Notice of Interruption for Repairs. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Company shall do so at such times as will cause the least amount of inconvenience to its customers, and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

Section 7. Company Rules. The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws or rules of the State of Alabama, the United States, and the City.

Section 8. Condition on Street Occupancy.

- (1) The Company shall enter into a separate contract with the Electric Power Board and/or Southern Bell Telephone and Telegraph Company as to the use of their poles or posts within the City and also comply with the City Ordinance, so far as street occupancy is concerned.
- (2) The Company system, poles, wires and appurtenances shall be located, erected and maintained so that none of it shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or hinder unnecessarily or obstruct the free use of the street, alleys, bridges or other public property.
- (3) Construction and maintenance of the transmission distribution system, including house connections, shall be in accordance with the provisions of the National Electric Safety Code of the National Board of Fire Underwriters, prepared by the National Bureau of Standards, the National Electrical Code of the National Board of Fire Underwriters and such applicable Ordinances and regulations of the City, affecting electrical installations which may be presently in effect or may be enacted by the City. Installations and house drop hardware shall be uniform throughout the City, except the Licensees shall be free to change their hardware and installation procedure as the art progresses.
- (4) Whenever the activities of the Company shall damage any surface, pavement or sidewalks, the Company shall at its expense restore all such surface, pavement or sidewalks to the satisfaction of the City. In the event any street or way is altered by the City requiring the alteration or removal of any part of the Company's system, the Company shall bear the cost of

such alteration or removal.

Section 9. Original Installation. The Company shall, unless additional time is granted, start the original installation for cable television service within twenty-four (24) months from the effective date of this Franchise.

Section 10. Approval of Transfer. The Company shall not sell or transfer its plant or system to another, nor transfer any rights under this Franchise to another without Council approval. Provided, that no sale or transfer shall be effective until the vendee, assignee, or lessee has filed in the office of the City 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 condition thereof.

Section 11. City Rights in Franchise.

- (1) City Rules. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and 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, and shall not be in conflict with the laws of the State of Alabama.
- (2) Picture Quality. The antenna, receiving and distribution equipment shall be installed and maintained so as to provide pictures on subscribed receivers throughout the system essentially of the same quality as those received at the antenna site.
- (3) Supervision and Inspection. The City shall have the right to supervise all construction or installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to insure compliance with governing ordinances.
- (4) Procedure after Termination. At the end of the term of this Franchise the City shall have the right to determine whether this Franchise shall be extended for an additional period.

Section 12. Payments to the City. The Company shall pay to the City, in addition to any and all privilege licenses and ad valorem taxes or other charges hereafter levied by the City, a sum of 5% percent of the annual gross operating revenues received by it within the City during each year of operation under this Franchise. "Operating Revenues" shall include all receipts from sales of TV signals within the City and all receipts from installation charges within the City. Said payments shall be made semi-annually at intervals of from six to twelve months of the date of the grant of this Franchise. An annual summary report showing gross revenues received by the Company from its operations within the City during the preceding year and such other information as the City shall request with respect to operations hereunder shall be furnished on or before February 1 of each year or at any other time upon request of the City and thirty days notice.

Section 13. Rates. Rates charged by the Company for service hereunder shall be fair and reasonable and designed to meet all necessary cost of the service, including a fair rate of return on the set valuation of its properties devoted thereto, under efficient and economical management. The Company agrees that it shall be subject to all authority now or hereafter possessed by the City, or any other regulatory body having competent jurisdiction, to fix just, reasonable and compensatory television signal distribution rates. When this Franchise takes

effect, the Company shall have authority to charge and collect not to exceed the following schedule of rates, which shall remain in effect until changed or modified in accordance with the general standards set out in this Section.

(1) Rate Schedule.

- (a) Installation Charges: During the first two (2) years of operation the Company shall make a \$12.50 charge for installation.
- (b) Service Charges: The monthly charge cannot exceed \$5.00 per month for the first two (2) years of operation, after which time any increase must be approved by the City Council, and not to exceed $\frac{1}{2}$ of said sum for each additional set or outlet in the same building.

Section 14. Free Connections and Service. Upon request, Licensees shall furnish, free of charge, outside connections and service to all hospitals, parochial or public schools located within the City, and to Municipal Buildings when other connections are being made within the particular area; provided, however, any and all inside wiring or work shall be done at the expense of the hospital, school or City, as the case may be, and provided that a service cable runs in reasonable proximity to such buildings.

Section 15. Records and Reports. The City shall have access at all reasonable hours to all of the Company's plans, contracts and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder. The following records and reports shall be filed with the City and in the local office of the Company:

- (1) Company Rules and Regulations. Copies of such rules, regulations, terms and conditions adopted by the Company for the conduct of its business.
- (2) Gross Revenue. An annual certified audit showing gross revenues and depreciated plant value received by the Company from its operations within the City during the preceding year and such other information as the City shall request with respect to properties and expenses related to the Company's service within the City.

Section 16. Terms of Franchise. Upon continuing and complete performance by the Company of each and every term of this agreement, the permission herein granted shall continue for a term of twenty (20) years; and at the expiration of twenty (20) years, this permission shall renew itself automatically so long as complete performance of the terms hereof is continued by the Company for successive periods of five (5) years each.

Section 17. 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 said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 18. Penalties:

- (1) The Company shall file a satisfactory construction bond with the City in the amount of One Hundred Thousand and no/100 (100,000.00) Dollars conditioned upon the Company's satisfactory performance of its obligations hereunder to construct the system.

(2) If the Company shall fail to comply with any of the provisions of this Franchise, or default in any of its obligations in this agreement and shall fail within thirty (30) days after written notice from the City to correct such default or non-compliance, the City may, at its option, forthwith terminate the rights granted under this Franchise. In the event that the City terminates this agreement, in whole or in part, the Company shall within thirty (30) days remove its facilities, and in the event that the Company does not remove its facilities within thirty (30) days, the City may do so, the removal costs to be borne, in any event, by the Company.

(3) Failure to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Section 19. Channels Available. The Company shall install a system capable of distributing twelve channels. The Company shall carry a minimum of five (5) commercial television channels, which shall include all of the major television networks and one educational channel provided that satisfactory reception of such channel is available. Channels for the community antenna television system as contained in this Franchise shall not be used for the transmission of Pay Television or any other communications which are not broadcast programs obtained off the air, except as specified as follows:

- (1) Fill-in music reproduced on the Company's equipment located at its studio or received off the air on the Company's system and furnished without additional charge.
- (2) Weather information furnished as an incidental part of community antenna service to all subscribers without additional charge.
- (3) Occasional local events of public interest and occasional closed circuit television programs furnished as an incidental part of community antenna service to all subscribers without additional charge.
- (4) One channel or band is to be reserved for the use of the City. The City will pay for any special equipment necessary to feed into the system, such as TV cameras, fire alarm boxes, etc., and will pay for the maintenance for such special equipment. These may be used by the lessee until such time as the City requires its use.

Section 20. Activities Prohibited. The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the cable, nor shall it interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City. The Company shall not perform repair service to television sets and shall not permit any of its employees, installers or servicemen to perform such services on their own.

Section 21. Non-Duplication Clause. The Company will at all times carry all local channels and in the event a program is duplicated, the Company will black-out the out of town station carrying the duplicate program. The program will be carried solely over the local station.

Section 22. Publication. This Ordinance shall be in full force and effect upon its adoption and publication as provided by law, which publication shall be at the expense of the Company.

ADOPTED this 11th day of December, 1970

APPROVED:

V. O. Capps
V. O. CAPPS, MAYOR

ATTEST:

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BERNIECE H. CENTANNE, CITY CLERK