

public notice

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franchisee may not sell or transfer this franchise without the written consent of the city, which shall not be unreasonably withheld.

Section 10. Statutory Regulations. The franchise herein granted shall be subject to all of the provisions of Article 20 of Chapter 12, K.S.A. and amendments thereof, as may be applicable to this franchise.

Section 11. Franchise Payments. In consideration for the rights, privileges and franchise hereby granted, and as compensation to the city for the use of streets and places by the franchisee and in lieu of all occupation and license taxes, the franchise shall, on or before the 31st day of January and the 31st day of July of each year in which this franchise is effective, pay to the city a sum equal to \$0.75 per subscriber per month for the preceding six month period ending on the 31st day of December and 30th day of June, respectively, for a period of five years. Copyright tax, local and state sales tax and franchise tax may be an add-on to rates and may be automatically passed through to the subscriber. If passed on these costs shall be shown separately on billing to subscribers.

Section 12. Revocation of Franchise. The governing body of the city may revoke the franchise including, but not limited to the following grounds:

(a) Willful and material breach of any terms or conditions of this franchise;

(b) Misrepresentation of fact in the application for, or negotiation of this franchise;

(c) Insolvency of the franchisee, or inability of the franchisee to pay its just debts, or application of the franchisee for adjudication as a bankrupt. The city shall file with the franchisee a detailed list of the grounds alleged for revocation of the franchise. This notice shall include specific details of the acts, omissions, breaches, or other grounds asserted as warranting re-

vocation. The notice shall also include the time and date established for a public hearing to be held on the matter before the governing body. The franchisee shall have at least 60 days prior to the hearing and after the receipt of the notice during which it may remedy the acts, omission, breaches, or other grounds asserted as giving cause for revocation and which are stated in the notice. If prior to the time of the public hearing, the city determines that the franchisee has taken action during or making significant progress toward eliminating the causes and grounds asserted as giving cause to revoke, the city shall either cancel the hearing or postpone the hearing for a reasonable time to a certain date, whichever is appropriate. Any evidence offered by the city, the franchisee, subscribers or any other interested person or entity, whether oral or written, shall be received by the governing body if it tends to substantiate or disprove the causes or grounds for revocation stated in the notice. The governing body shall determine based on all admissible evidence submitted to it at the hearing, whether or not to revoke the franchise. Upon a finding that the grounds for revocation as stated in the notice have been substantiated by a preponderance of the evidence, the governing body shall revoke the franchise, subject to judicial reviews sought by the franchisee. Revocation shall be accomplished by the passage of an ordinance and delivery of a certified copy of it to the franchisee.

Section 13. Procedure Upon Termination. Upon termination of the franchise, if he franchisee shall not have acquired an extension of renewal thereof and accepted the same, or if it shall not have sold its property in place, it shall promptly remove all its property within 360 days after termination at its sole expense. In so removing the property, the franchisee shall refill, at its sole expense, any excavation so that it shall leave the streets in as good condition as that prevailing prior to the franchisee's removal of

its property.

Section 14. Use of Facilities. It shall be the duty of the franchisee to negotiate and make any and all contracts and agreements with the owners of poles, towers, conduits, or other facilities for use by the franchisee in the provision of cable television service under this ordinance.

Section 15. Rights of the Franchisee. The Franchisee shall have the authority to promulgate such reasonable rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable the Franchisee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to each and all of its customers. The Franchisee shall, upon request of the City, provide to the City a copy of such rules, regulations, terms and conditions and a copy of any changes as may be made during the term of the franchise. Such rules, regulations, terms and conditions of Business shall include rates charged for various levels of service and the number of channels carried for viewing along with various levels of service to subscribers and changes made for installation.

Section 16. Rights Reserved to the City. Without limitations upon the rights the city might otherwise have, the city does hereby expressly reserves the following rights, power, and authorities:

(a) The franchisee 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 regulations as the city shall hereafter by resolution or ordinance provide;

(b) The right of reasonable regulation of the erection, construction or installation of any facilities by the franchisee and to reasonably designate where such facilities are to be placed within the public ways and places;

(c) The right to grant other CATV franchises in the city.

Section 17. City's Failure to En-

force the Terms and Conditions of this Franchise. The city's failure to notify, enforce, or remedy any non-compliance by the franchisee of any of the terms and conditions of this franchise ordinance shall not constitute a waiver of the city's rights hereunder, and the franchisee shall continue to perform its obligation as herein provided.

Section 18. Amendments to Franchise. The city may amend this franchise, from time to time to enable the franchisee to take advantage of any developments in the field of transmission of television and radio signals which will afford an opportunity to more effectively, efficiently, or economically serve its customers, and to enable the franchisee to conform to the rules and regulations of the Federal Communications Commission as they may be amended from time to time.

Section 19. Emergency Use of Franchisee's System. Franchisee agrees to include within their system the capability for a remotely activated emergency system whereby a designee of the city in time of emergency, may introduce a scrolling or audio message on all system channels simultaneously.

Section 20. Franchisee is without Remedy Against the City. The franchisee shall have no remedy or recourse whatsoever against the city for any loss, cost, expense, or damage arising from and of the provisions or requirements of the franchise ordinance, because of the enforcement thereof by the city for any loss, cost, expense, or damage arising from any of the provisions or requirements of the franchise ordinance, or because of the enforcement thereof by the city, or for the failure of the city to have the authority to grant all, or part, of the franchise herein granted; provided that the franchisee expressly acknowledges that it accepted the franchise that it has not been induced to enter into this franchise upon any understanding of promise, whether given verbally or in writing by or on behalf of the city, or by any other

person concerning any term or condition of this franchise not expressed herein; provided further that the franchisee acknowledges by the acceptance of this franchise that it has carefully read the provisions, terms and conditions hereof.

Section 21. Miscellaneous Provisions.

(a) Whenever, under the terms of this franchise ordinance, either party hereto shall be required or permitted to give notice to the other, such notice shall be in writing, and if to be served upon the city, it shall be delivered either by first class United States mail addressed to office of the city clerk of the city or by personal delivery of the same to the person, of his duly authorized agent for receiving the same, and if the notice be addressed to the franchisee, the same shall be delivered by either first class United States mail addressed to the General Manager of the franchisee, or by personally delivering the same to such person as hereinabove provided.

Section 22. Severability. If any section, paragraph, sentence,

clause, or phrase 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 validity of any portion of this ordinance shall not abate, reduce, or otherwise affect any consideration of other obligation required of the franchisee.

Section 23. Effective date. This ordinance shall take effect and be in force from and after its publication in the Goodland Daily News, but not before sixty (60) days after its final passage all pursuant to K.S.A. 12-2001(b)(6).

PASSED AND ADOPTED by the Governing Body of the City of Goodland, Kansas this 2nd day of July, 2001.

Tom Rohr, Chairman of the City Commission of the City of Goodland, Kansas
ATTEST:
Mary P. Volk
City Clerk
Published in The Goodland Daily News on July 6, 2001.

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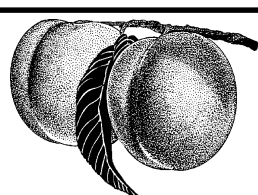
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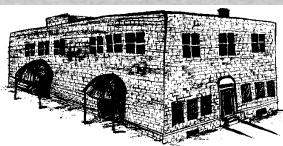
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