

ORDINANCE NO. 1536
AN ORDINANCE OF THE CITY OF GOODLAND, KANSAS, GRANTING TO EAGLE COMMUNICATIONS INC., ITS SUCCESSORS, LESSEES AND ASSIGNS, FOR A TERM OF FIVE YEARS, THE RIGHT, AUTHORITY, POWER AND FRANCHISE TO ESTABLISH, CONSTRUCT, ACQUIRE, MAINTAIN, AND OPERATE A COMMUNITY ANTENNAE AND CLOSED CIRCUIT ELECTRONIC SYSTEM WITHIN THE CITY OF GOODLAND, KANSAS, AND ENVIRONS THEREOF, AND TO USE AND OCCUPY THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF GOODLAND, KANSAS, FOR SUCH COMMUNITY ANTENNAE AND CLOSED CIRCUIT ELECTRONIC SYSTEM, AND REPEALING PAST ORDINANCES IN CONFLICT.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GOODLAND, KANSAS:

Section 1. Definitions. For the purpose of this ordinance, the following terms, phrases, words, abbreviation, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense, words in the plural number include the singular number; provided that the word "shall" is to be construed as mandatory.

(a) **City** shall mean the City of Goodland, Kansas a municipal corporation, or its successors, and shall include that which is appropriate to the use of the term in context, the city in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(b) **Commission** shall mean the present governing body of the city or any future board constituting the legislative body of the city.

(c) **Franchisee** shall mean and include the right to conduct and operate a community antennae television system within said city subject to the terms and conditions hereinafter stated in the above-captioned ordinance.

(d) **Franchisee** shall mean the person, firm, or corporation to whom or which a franchise, as hereinabove defined, is granted by the commission under this ordinance, and the lawful successor, transferee, lessee, or assignee of the person, firm or corporation.

(e) **Street** shall mean any public street, roadway, highway, alley, or other public right-of-way now or hereafter subject to the jurisdiction and regulation of the city as provided by the laws of the State of Kansas, and any subsequent amendments thereof.

(f) **Community Antennae Television System** hereinafter referred to, as "CATV System" shall mean an electronic system with properties and facilities so constructed or presently existing as to be used for the interception and receipt of electro-magnetic radiation, and transmission and distribution of the same to subscribers by means of a cable and other related facilities.

(g) **Subscribers** shall mean any person, which receives from the franchisee herein named, the services of the franchisee's CATV System.

(h) **Person** shall mean any individual or association of individuals, or any firm, corporation or other business organization.

Section 2. Grant of Non-Exclusive Franchise. After a public hearing affording an opportunity to be heard to all interested parties, and after a review of the qualifications of EAGLE COMMUNICATIONS INC., and its reputation, whether or not it is adequately financed, and technically competent to provide CATV System service to the city, and after determining that the construction arrangements of EAGLE COMMUNICATIONS INC., are adequate and feasible, there is hereby granted unto EAGLE COMMUNICATIONS INC., a non-exclusive franchise to construct, erect, operate and

maintain a CATV System within said city, and in so doing to use the streets of said city by erection, installing, placing, burying, construction, repairing, replacing, reconstructing, maintaining and retaining in, on, upon, or across any such streets, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to a CATV System, and in addition, so to use, operate and provide for all or part of such facilities by a service offering obtained from any franchisee or operating utility company providing service within the city.

Section 3. Term of Franchise. The term of the franchise herein granted shall commence on the first day of the first month next following the date upon which the franchisee herein named accepts and agrees in writing to the terms and conditions set forth in this franchise ordinance and shall continue for a term of five years from said date. Franchisee shall indicate acceptance of this agreement, or lack thereof, by filing accordingly such written indication with the city clerk within 30 days of passing this ordinance. This franchise may be extended upon good faith negotiations for five subsequent terms of three years each by providing written notice to the city of its desire to extend the franchise no later than 180 days prior to the expiration of the initial term for any of the extensions thereof.

Section 4. Standards for Construction of Franchisee's Facilities. Any construction of facilities after the effective date of this ordinance shall comply with the following standards:

(a) The construction of the properties and facilities of said franchisee's CATV System shall conform, at least, to the standard of the National Electrical Code of the National Board of Fire Underwriters or the edition thereof which has been adopted by the city, at the time any such properties and facilities shall be constructed or reconstructed, provided further that said construction shall be in conformance with all laws and regulation of the United States of America and the State of Kansas and the City of Goodland, and any administrative agency thereof, having jurisdiction to regulate the construction of said CATV System

(b) All transmission and distribution structures, lines and equipment erected, or buried by the franchisee within the city shall be so located as to cause minimum interference with the proper use of streets, easements and swales, sidewalks, 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, easements, sidewalks, alleys or other ways and places.

(c) In case of disturbance caused by the franchisee of any street or paved area, the franchisee 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 existed.

(d) The franchisee shall have the authority to trim trees which are located upon and overhang the public streets and other public ways of said city, so as to prevent the branches of such trees from coming in contact with the franchisee's properties, and the trimming shall be done at all times in a workmanlike manner.

(e) The franchisee shall not place poles or other fixtures where the same will interfere with any existing gas, electric or telephone fixtures, water hydrants or mains, or sewer mains, and all such poles or other fixtures placed in any street shall normally be placed at the outer edge of the sidewalk and inside the curb line, and those placed in alleys shall be placed close to the line of the lot abutting on said alley, and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways.

Prior to any underground construction occurring on any street a permit shall be applied for requesting permission to install such services. Such application shall set forth the route, depth, location of the proposed cable and appurtenances. Upon approval of the permit by the city, the franchisee may commence

construction.

Underground construction on private property shall not require a permit under the terms and conditions described above.

Section 5. Operating Standards. The franchisee's CATV system shall be constructed, operated and maintained in accordance with the highest accepted standards of the Community Antennae Television industry and applicable city codes and ordinances as now exist, or may hereafter be adopted to insure that the subscriber receives the highest quality of service and shall at all times be in conformance with the FCC rules, regulations and proof of performance test provisions. The franchisee shall maintain an office within the city, which office shall be open during all usual business hours, shall have a listed telephone, and shall be operated so that complaints and requests for repair or adjustments may be received at all reasonable times.

Section 6. Additional Standards of Operations. The franchisee shall comply with the following additional standards of operations.

(a) The franchisee shall at all times make and keep full and complete plats, maps and records showing exact location of its facilities located within the streets of the city. A copy of such records shall be kept within the city and available for inspection by the city manager or his designated agent.

(b) The franchisee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the franchisee 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 franchisee may in all cases have the right of abandonment of its property, subject to city ordinances and approval, if federal or state funds are available to any utility company for the purpose of defraying the cost of any of the foregoing, such funds may be made available to the franchisee at the option of the city if the federal or state regulations permit.

(c) The franchisee shall, on the request of any person holding a building-moving permit issued by the city, temporarily raise or lower or remove its wires to permit the moving of building. The expense of such temporary removal, and of raising or lowering of wires shall be paid by the person requesting the same, and the franchisee shall have the authority at its option to require such payment in advance. The franchisee shall be given no less than 48 hours advance notice to arrange for such temporary wire changes.

(d) The franchisee will limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than 24 hours after notice has been given, except said time shall be extended when the performance of this obligation is prevented by an act of God or the same is otherwise made impossible because of circumstances over which the franchisee has no control; and that the franchisee shall provide its subscribers with facilities for receiving request and complaints for service. Should a subscriber have an unresolved complaint regarding cable television operation, the subscriber shall be entitled to file his written complaint with the city manager, who has primary responsibility for the continuing administration of the franchise and procedures for resolving complaints, and thereafter to meet jointly with representative of the franchisee within 30 days to fully discuss and resolve such matters. The franchisee shall notify each subscriber who shall have filed a written complaint of his rights to such a procedure if the complaint is not resolved to satisfaction of subscriber/company within 15 days.

(e) The franchisee 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. All structures and all lines, equip-

ment and connections in, over, above, 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. Indemnification of City. It is expressly understood and agreed by and between the city and the franchisee that the franchisee shall protect and hold the city harmless for all claims, action, suits, liability, loss, expense or damage of every kind and description, including investigation costs, courts costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person arising out of the negligence of the franchisee in the ownership, construction, repair, replacement, maintenance and operation of the CATV system, provided the city gives prompt notice of any such claims, actions, and suits, without limitations in writing. The franchisee shall maintain in full force and effect during the life of any franchise, public liability insurance in an insurance company with a national rating acceptable to the city. The insurances shall be in the sum of not less than \$500,000.00 for personal injury to any one accident and \$500,000.00 for property damage in any one accident. All such insurance may contain reasonable deductible provisions not to exceed \$1,000.00 for any type of coverage and the city shall be named as an additional insured. The city may require that any and all investigation of claims by any person against the city arising out of any use or misuse of privileges granted to the franchisee hereunder shall be made by, or at the expense of the franchisee or its insurer. The franchisee may bring its obligations to carry any insurance now or hereafter carried, by appropriate amendment, endorsement, or otherwise, provided, however, the interest of the city shall be as fully protected thereby as if the franchisee has obtained individual policies of insurance, and the city a named insured in any policy. The policy, or certificate of insurance, will be approved by the city attorney, and filed in the office of the city clerk; the city will receive prior written notice of any intent to cancel insurance by the issuing company.

Section 8. Extensions. The franchisee is hereby authorized to extend the existing system within the franchise area to the extent such is or may become economically feasible. The franchisee acknowledges the city from time to time may add or delete land to the city limits by annexation or deannexation to which franchisee is obligated to serve under this franchise, but said obligation to extend service shall only be in the city limits. The obligation shall occur whenever the franchisee shall receive written requests for services from at least 13 subscribers within 1,000 feet of its cable plant and the connections shall be solely for the usual connection and service fees for all subscribers, provided that such extension is technically feasible. The 1,000 feet shall be measured in extension length of franchisee's cable required for service located within the public way or easement and shall include length of necessary service drop to the subscriber's home or premise. No person in the franchisee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitations. When the distance from distribution cable to connection of service to subscribers is more than 150 feet or when a subscriber density exists less than the density specified hereinabove, service shall be made available on the basis of costs of materials, labor, and easements, plus ten percent, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas.

Section 9. Assignments. All provisions of this ordinance shall be binding upon the franchisee and all successors, lessees and assigns of the franchisee whether expressly stated herein or not, however, the 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 franchisee 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 franchisee 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 the 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 revocation. 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 the 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 limitation upon the rights the city might otherwise have, the city does hereby expressly reserve 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 Enforce the Terms and Conditions of this Franchise. The city's failure to notify, enforce, or remedy any noncompliance 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 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