

5 City of Conway
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City of Conway, Arkansas
Ordinance No. O-08-111

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312303

AN ORDINANCE GRANTING TO CONWAY CORPORATION A FRANCHISE TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF CONWAY; REPEALING THE CURRENT FRANCHISE ORDINANCE; ABOLISING THE CITIZENS CABLE COMMITTEE; AND FOR OTHER PURPOSES

WHEREAS, Conway Corporation and the City of Conway, Arkansas wish to modernize and extend the franchise agreement for the Cable Communication System in the city of Conway, Arkansas; and

WHEREAS, Conway Corporation was originally granted a franchise to operate a cable television system within the City of Conway in Ordinance O-79-21:

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

SECTION ONE. Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

City – shall be the City of Conway, Arkansas.

City Council – shall be the City Council of the City of Conway, Arkansas.

Corporation (Corp.) – shall be the Conway Corporation.

Cable Communication System-shall mean the facility consisting of a set of closed transmission paths and associated signal, generation, reception and control equipment that is designed to provide cable service which includes video programming.

Cable Service – shall mean the transmission of video programming or other programming service, to subscribers and the subscription interaction, if any, which is required for the selection and use of such video programming or other programmer service.

Force Majeure – shall mean any cause or causes beyond control of Corporation, including, but not limited to, acts of God or the public enemy, failure of the Corporation’s facilities, flood, earthquake, storm, lightning, fire, epidemic, war, embargo, riot, civil disturbances, strikes, picketing, lockouts or other labor disputes or disturbances, sabotage, or restraint or prevention of performance by act of any court, regulatory body or defense agency, which by the exercise of due diligence and foresight the Corporation could not reasonably have been expected to avoid.

SECTION TWO. There is hereby granted to the Conway Corporation, a corporation organized under order of the Circuit Court of Faulkner County, and under Certificate of Incorporation, issued by the Clerk of the Circuit Court of Faulkner County on the 7th day of May, 1929, the privilege of operating and maintaining Cable Service within the City of Conway, Arkansas for the purpose of supplying video and other services to the City of Conway, to its inhabitants and to all persons and corporations doing business therein for a period that began on June 1, 1979 and ending on December 31, 2025.

SECTION THREE. Conway Corporation is hereby granted the right, privilege, and right of way to place, maintain, construct and operate Cable Communication facilities in, through, over and under all streets, alleys, avenues, sidewalks and public grounds of said city, for the purpose of furnishing video and other services, and is hereby granted the right of ingress and egress thereon for the purpose aforesaid during the term of this franchise, with the right to trim all trees in said streets, alleys, sidewalks and public grounds, that may come in contact with any of its facilities.

SECTION FOUR. Conway Corporation shall at all times during the term of this franchise, operate and maintain efficient and properly equipped head-end equipment, together with a proper and sufficient distribution system to allow video and other services to the inhabitants of Conway and all persons, firms and corporations doing business therein, unless prevented by force Majeure. Expansion of the system to newly annexed areas shall be completed within three (3) years of annexation.

The Grantee shall at all times employ ordinary care and shall install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

The Grantee shall install and maintain its wire, cable, fixtures, and other equipment so as not to interfere with the equipment of any utility of the City, or any other entity lawfully and rightfully using the conduit, pole, underground or other part of the right-of-way.

SECTION FIVE. The City of Conway shall, from time to time, make, adopt and enforce any and all necessary ordinances to protect the system and other property under the control of said Corporation and to protect said Conway Corporation in the unrestricted enjoyment of all privileges granted under this franchise.

SECTION SIX.

A. The Grantee shall pay to the City of Conway a franchise fee equal to five (5) percent of the gross revenues from subscription fees of the System for video services, unless the rate used to calculate other video service providers' annual fee is lower than 5%. In that event, the franchise fee paid by Grantee shall be calculated using the lower rate used to calculate other video service providers' annual fee. Gross revenues shall not include (a) any tax, fee or assessment of any kind imposed by the City or other governmental entity on a cable operator or subscriber, or both, solely because of their status as such; or (b) net unrecovered bad debt. The franchise fee shall be due and payable 30 days after the close of the preceding calendar month.

B. The City of Conway agrees that all amounts paid by the franchisee as fees may be added to the price of video services and collected from the Grantee customers as 'external costs'. All amounts paid as franchise fees may be separately stated on customer's bills. Video service includes the transmission to subscribers of video programming. The fee does not apply to non-video revenues or the non-video revenues of a bundled product containing video and non-video offerings.

The City shall have the right to inspect the Grantee's income records, the right of audit and the recomputation of any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. Any additional amount due the City as a result of the audit shall be paid with thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report.

The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with the ordinances and Franchise.

The City or its authorized agent shall have access to all books of account and records of the Grantee for the purpose of ascertaining the correctness of any and all reports and shall be given local access to all other records upon reasonable request.

SECTION SEVEN. The rates charged for Cable Television Service shall be set by Conway Corporation. Said rates shall provide adequate revenues to cover the costs of operation and maintenance, bond fund and other debt service requirements, plant expansion and necessary and reasonable surpluses and reserves.

Conway Corporation shall make and enforce all such proper rules as to collection of delinquent bills and as to discontinuance of service to delinquent consumers as it may, in its opinion, deem necessary.

SECTION EIGHT. Ordinance 0-80-1 which created the Citizens Programming Committee is hereby repealed.

SECTION NINE. All ordinances and parts of ordinances in conflict herewith are hereby repealed and this ordinance shall be in full force and effect on the 1st, day of January, 2009.

PASSED: September 23rd, 2008

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett
City Clerk/Treasurer