

Alleghany County, NC
Lizabeth Reeves Roupe
Filed for Registration 06/06/2006 at 01:10pm
Ordinance Book 1 Page 371-378

FILED
ALLEGHANY COUNTY
LIZABETH REEVES ROUPE
REGISTER OF DEEDS

FILED	Jun 06, 2006
AT	01:10:00 pm
BOOK	00294
START PAGE	0652
END PAGE	0659
INSTRUMENT #	01701

FRANCHISE ORDINANCE AGREEMENT

AN ORDINANCE BY THE COUNTY OF ALLEGHANY NORTH CAROLINA CONSENTING TO THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE COUNTY AND ALLEGHANYCABLEVISION

A Franchise Agreement between the County and Alleghany Cablevision, granting a franchise to construct, maintain, and operate a cable television system, as defined under applicable federal, state and local law, throughout the County of Alleghany and setting forth terms and conditions herein.

WITNESSETH

WHEREAS, the County of Alleghany, North Carolina ("County"), pursuant to the police powers of the County of Alleghany, North Carolina, is authorized to grant one or more nonexclusive revocable Franchises to operate, construct, maintain and reconstruct a cable television system within the unincorporated areas of the County; and

WHEREAS, the County seeks to promote the development of advanced communications capabilities on a competitive basis within the County, while at the same time ensuring customer service; and

WHEREAS, the County's does not have a Cable Television Franchise Agreement with AlleghanyCablevision and desires to establish said Franchise;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY THAT THE CABLE SERVICE FRANCHISE AGREEMENT BETWEEN THE COUNTY AND CHARTER IS APPROVED AS FOLLOWS:

SECTION 1: GRANT OF FRANCHISE

1.1 Grant

AlleghanyCablevision ("Grantee") is hereby granted a franchise to construct,

reconstruct, operate and maintain a Cable Television System within the Streets and Rights-of-Way of the County, subject to the terms and conditions of this Franchise Agreement (“Franchise”). Grantee shall provide and operate a Cable Communications System within the Franchise Area, which shall include all unincorporated areas of Alleghany County, as established in this Franchise Agreement.

1.2 Right of County to Issue and Renew Franchise

Grantee acknowledges and accepts the right of County to issue a Franchise Agreement subject to applicable federal and state law.

1.3 Franchise Term and Renewal

(a) This Franchise Agreement shall take effect and be in full force from and after the final passage hereof, subject to acceptance by the Grantee as provided by the Ordinance and the same shall continue in full force and effect for a period of ten (10) years beginning with the date of acceptance.

(b) Any renewal of this Franchise Agreement shall be done in accordance with applicable, state and federal law.

1.4 Effective Date.

The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on signature page of this Agreement, however franchise fees will be paid to the County effective May 1, 2006 (note that franchise fees will be paid 45-days after the end of the quarter; payment date for May and June 2006 will be August 15, 2006).

1.5 Written Notice

All notices, reports or demands required to be given in writing under this Franchise Agreement shall be deemed to be given when delivered personally to the Person designated below, or when five (5) days have elapsed after it is deposited in United States mail in a sealed envelope, by regular mail or registered or certified mail, postage prepaid thereon, or on the next business day if sent by express mail or overnight courier addressed to the party to which notice is being given, as follows:

If to County: County Manager
 County of Alleghany
 90 South Main Street
 Sparta, North Carolina 28675-9643

If to Grantee: AlleghanyCablevision

Sparta, NC 28675

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

1.6 Additional Franchises

Any additional franchise agreements adopted by the County shall not contain terms and conditions more favorable or less burdensome than the terms hereof.

1.7 Binding Contract

This Franchise shall constitute a legally binding contract between the County and Grantee, and as such, cannot be amended, modified or changed by the County without the consent of Grantee in any manner whatsoever, whether by ordinance, rule, regulation or otherwise, to impose on Grantee more stringent or burdensome requirements or conditions; provided, however, that nothing herein contained shall preclude the County from the proper exercise of its police powers and/or its powers of eminent domain.

1.8. Books and Records

The Grantee upon request will furnish necessary books and records of sales to conduct an audit of the Franchise Fees.

1.9 Grantee's Representations and Warranties

- (a) Grantee has examined all of the provisions of this Franchise Agreement and agrees to all of the provisions of this Franchise Agreement, as it exists as of the effective date of the Grantee's Franchise Agreement except:
- (b) Grantee recognizes, unless otherwise agreed herein the right of the County to adopt such additional regulations of general applicability, as it shall find necessary in the exercise of its police power.

SECTION 2. GENERAL REQUIREMENTS

2.1 Franchise Fee.

- (a) Grantee shall pay to the County on a quarterly basis in accordance with the terms of this Franchise, a Franchise Fee totaling five percent (5%) of Grantee's Gross Revenues.

"Gross Subscriber Revenues" shall include those revenues derived from cable services including basic, extended, premium, digital, and pay-per-view movie and special event program service. Gross receipts from providing cable service do not include receipts from advertising, commissions, program carriage fees, billing and collection services, charges for bad checks, late fees, uncollected debts, information services, or internet access charges To the extent the scope of gross revenues is limited by federal law or judicial action, the definitions herein shall be so amended.

- (b) Payments due Grantor under this section shall be computed quarterly, for the preceding quarter. Each quarterly payment shall be due and payable no later than forty-five (45) days after the end of the preceding quarter. Each payment shall be accompanied by a brief report by a Grantee showing the basis for the computation and shall be certified as correct by an officer of the Grantee.

2.2 Indemnification

- (a) Grantee agrees to indemnify, hold harmless, release and defend County, its officials, officers, agents and employees from and against any and all lawsuits, claims, actions, demands, damages, disability, losses, expenses including reasonable attorney's fees and other defense costs or liabilities of any nature that may be asserted by any person or entity, excluding Grantee, from any cause whatsoever, excepting damages arising solely from the negligence or malfeasance of the County or its officials, officers, Councils, commissions, agents, or employees, arising out of or in any way connected with the operations, expressly authorized herein, the exercise of the Franchise pursuant to this Franchise, and/or the activities of Grantee, its subcontractors, employees and agents hereunder. Grantee shall be solely responsible and save County harmless from all matters relative to payment of Grantee's employees including, but not limited to, compliance with Social Security and tax withholdings.
- (b) This indemnification obligation is not limited in any way by a limitation of the amount or type of damages or compensation payable by or for Grantee under Workers' Compensation, disability or other employee benefit acts, acceptance of insurance certificates required under this Franchise, or the terms, applicability or limitations of any insurance held by Grantee.
- (c) County does not, and shall not, waive any rights against Grantee which it may have by reason of this indemnification, because of the acceptance by County, or the deposit with County by Grantee, of any of the insurance policies described in this Franchise.
- (d) This indemnification by Grantee shall apply to all damages and claims for damages of any kind suffered by reason of any of the operations referred to in this Section, regardless of whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.
- (e) Grantee shall immediately notify the County Manager of any and all claims raised against the Grantee or Grantee and County jointly, and shall provide the County with a copy of the same.
- (f) In order for the County to assert its rights to be indemnified and held harmless, the County must:
 - (1) Promptly notify Grantee of any claim or legal proceeding that gives rise to such right;
 - (2) Afford Grantee the opportunity to participate in and fully control any compromise, settlement, resolution or disposition of such claim or proceeding; and

- (3) Fully cooperate in the defense of such claim and make available to Grantee all such information under its control relating thereto.

2.3 Compliance with Applicable Laws and Ordinances

- (a) Grantee shall conform to all generally applicable laws, rules and regulations of the United States and the State of North Carolina in the construction and operation of its Cable System and all generally applicable rules and regulations of the FCC.
- (b) Grantee shall not refuse to hire or employ or bar nor discharge from employment nor discriminate against any person in compensation or terms, conditions or privileges of employment because of age, race, creed, color, national origin or sex.
- (c) Any right, power, protection, privilege or immunity which is provided, granted or imposed on Grantee under or by virtue of the federal Cable Acts or the federal Telecommunications Act of 1996, as may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Grantee notwithstanding any contrary provision of this Franchise, and the acceptance of the terms and conditions of this Franchise shall not be construed as a waiver or release by Grantee or County of any right, power, protection, privilege, immunity or obligation under the above Acts, the laws or Constitution of the United States or the laws and Constitution of the State of North Carolina.

2.5 Extension of Service

Grantee may build cable plant and serve any unincorporated area of the County where economically feasible and in accordance with the Grantee's business plan.

SECTION 3: SUPPORT FOR LOCAL CABLE RELATED NEEDS

3.1 Access Channel In accordance with Section 611 of the Cable Act (47 U.S.C. Section 531) the Grantee agrees to provide to the County the following access channel:

- (a) Community Access Channel which is defined as a channel for use by the local community which may include, but not limited, to local sports, local news, religious programming, school projects and other programming that may be determined beneficial to the community by the non-profit Board of Directors.
- (b) The Community Access Channel will be administered by a non-profit Board of Directors selected by the County Board of Commissioners.
- (c) The Community Access Channel will be physically located at the discretion of the non-profit Board of Directors.

3.4 Emergency Use of System

The Grantee shall comply with Section 624 of the Communications Act of 1934 (47 USC 544) as may be amended from time-to-time.

3.5 Federal Rights

Any right, power, protection, privilege or immunity which is provided, granted or imposed on Grantee under or by virtue of the Federal Cable Acts, as may be amended or interpreted from time to time after the date hereof, shall remain inviolate and shall be available to Grantee notwithstanding any contrary provision of this Franchise, and the acceptance of the terms and conditions of this Franchise shall not be construed as a waiver or release by Grantee or County of any right, power, protection, privilege, immunity or obligation under the above Acts, the laws or Constitution of the United States or the laws and Constitution of the State of North Carolina.

SECTION 4: REGULATION

4.1 Transfers No consent of the County shall be required for any transfer to an entity controlling, controlled by or under the same common control as Grantee.

4.2 Revocation

(a) Grantor reserves the right to revoke the Franchise, and all rights and privileges pertaining thereto, in the event that:

(1) A Grantee substantially violates any material provision of this Franchise Agreement;

(2) A Grantee attempts to evade any of the material provisions of this Franchise Agreement;

(3) Grantee practices an act of fraud or deceit upon the Grantor;

(4) A Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;

(5) A Grantee violates any orders or rulings of any regulatory body having jurisdiction over the Grantee relative to this Franchise and after notice thereof, shall continue the violation and not remedy the same within sixty (60) days.

(6) Revocation procedures shall be in accordance with federal statutes.

4.3 Customer Service Standards Grantee shall at all times comply with the the customer service and consumer protection provisions of the Federal Communications Commission.

4.4 Technical Standards The technical standards used in the operation of a System shall comply, at a minimum, with the technical standards promulgated by the FCC relating to Cable Systems pursuant to the FCC's rules and regulations found in Title 47, Sections 76.601 to 76.617, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

4.5 Compliance with Laws The construction, installation, and maintenance of the Cable System shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and construction standards of the State of North Carolina, the Occupational Safety and Health Administration, the National Electrical Safety Code, National Electrical Code and the FCC, to the extent applicable, as well as all other laws, rules, regulations and ordinances that are generally applicable and promulgated pursuant to the County's lawful police power.

4.6 Insurance shall be effectuated by Grantee in a manner that is consistent with the laws, ordinances and standards of the State of North Carolina.

4.7 Force Majeure In accordance with the Ordinance, in the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise Agreement is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified County within thirty (30) days of its discovery of the occurrence of such an event, and provided such notice is reasonable under such circumstances. In the event said notice is not given, then the delay permitted under this Section shall be thirty (30) days from the date of discovery of the event causing said delay. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, acts of God, civil emergencies and labor unrest or strikes, untimely delivery of equipment, inability of Grantee to obtain, without cost, access to an individual's property, and inability of Grantee to secure all necessary permits to utilize utility poles and conduit so long as Grantee made all reasonable efforts to ensure that required equipment, parts, components, personnel and proprietary activity was ordered, hired, paid for, scheduled, checked, approved and/or facilitated.

IN WITNESS WHEREOF, County and Grantee have executed this Franchise the 20th day of April, 2006 after having read and adopted this Franchise at two regularly scheduled meetings of April 17, 2006 and April 20, 2006.

COUNTY OF ALLEGHANY, NORTH CAROLINA

(sig: Eldon Edwards)
Eldon Edwards, Chairman

ATTEST:

(sig: Karen Evans)
Clerk to the Board

(county seal)

FOR ALLEGHANYCABLEVISION

(sig: George L. Sheets)
its:

Date: May 15, 2006