

**AN ORDINANCE GRANTING A FRANCHISE TO CONSTRUCT, OPERATE AND
MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE COUNTY OF
MCDOWELL, NORTH CAROLINA**

The Board of Commissioners of the County of McDowell, North Carolina ordains:

Section 1. Granted Term

Subject to the terms and conditions of the McDowell County Cable Television Ordinance, which is incorporated herein fully by reference, and to the terms and conditions of this ordinance, US Cable Television Group, L.P., its successors and assigns, is hereby granted from and after the acceptance hereof, the right, privilege and franchise to construct or have constructed, operate and maintain a cable television service within the cable television service district of the County of McDowell described in Attachment A hereto, for the purpose of providing cable television service to the residents of the County within said area, and for that purpose, to erect, install, construct on, across, beneath and along any street or road all necessary cable and other equipment and facilities as may be necessary or appurtenant to the cable television system, subject to present and future ordinances of the County relating thereto. The cable television system herein franchised shall be used solely for the purposes authorized by the Cable Television Ordinance of the County. The initial term of said franchise shall be fifteen (15) years from acceptance thereof by the grantee. "The ordinance O.D. January 2, 1992 1986 pursuant to which grantee has operated its cable television system is hereby superseded".

Section 2. Renewal and Non-Exclusivity

- A. The franchise herein granted shall be subject to renewal pursuant to the provisions of the County's Cable Television Ordinance and applicable federal and state law.
- B. The franchise herein granted shall be non-exclusive, and the County reserves the right to grant similar franchises to any person or persons at any time during the present franchise or any extension thereof. In the event the County so awards or grants any additional franchise, and said franchise contains terms more favorable to the grantee therein, then this ordinance shall be deemed amended as of the effective date of said other franchise, to include herein, and to give the grantee herein the benefit of, said more favorable terms.

Section 3. Subject to Applicable Laws

- A. The grantee hereunder shall be subject to all laws and ordinances relative to use of all public facilities, to construction, maintenance and operation of cable television systems, and, as appropriate, planning, land use and development, and zoning ordinance.
- B. By acceptance hereof, grantee covenants and agrees to perform and keep all acts, covenants and obligations imposed, represented or promised by the provisions of this ordinance, the County's Cable Television Ordinance, and its proposal and application to

the County. Any substantial failure to do so shall be grounds for termination of the franchise herein granted, subject to procedures and provisions of applicable law.

Section 4. Additional Matters of Agreement

- A. Section 3-1-63 (B & E) of the McDowell County Cable Television Ordinance is hereby amended from a density per mile of cable plant of forty (40) residences to twenty-five (25) residences per mile applicable to US Cable Television Group, L.P.
- B. The Cable Construction schedule illustrated on attachment B and C and titled Phase I and Phase II will be incorporated as a part of this ordinance. Phase I of the construction schedule will be completed within sixty (60) days of receipt of pole attachment agreements, easements, and rights-of-way by Grantee. Phase I and II will be completed "August 31, 1993" or within sixty (60) days of receipt of pole attachment agreement, easements, and rights-of-way by Grantee.
 - 1. For service areas with a density less than that required by the McDowell County CATV Ordinance (25 homes per mile) the system may be further extended upon request of one or more of the prospective subscribers in such area based upon the following cost calculation: The cost of wiring such areas shall be calculated by taking the capital cost for extending such service divided by the number of subscribers in such areas minus the costs of extending service to the subscriber in an area that meets the 25 homes per mile, or fractional proportion thereof, density requirement specified above. The resulting cost shall equal the per subscriber contribution relating to line extension of cable service in the particular area of the county as depicted in the following formula:

$$\frac{C}{LE} - \frac{CA}{P} = SC$$

- a. **C** – equals the cost of construction of new plant from the termination of existing cable plant; as determined by the Grantee and based on prevailing cost estimates;
- b. **CA** – equals the average cost of construction per mile for similar construction as determined by the Grantee;
- c. **P** – equals the 25 dwellings per mile;
- d. **LE** – equals the number of dwelling units both requesting service and paying a cost contribution for construction in the line extension area;
- e. **SC** – equals the per subscriber contribution in aid of construction in the line extension area.

2. In those areas where the Grantee is not obligated to provide service Grantee shall, within 30 days following a request for service, conduct a survey to determine the number of homes in the immediate service area and shall inform each potential subscriber of the contribution in aid of construction policy, as calculated according to section (A) above, that will be charged. Grantee will apply for pole attachment agreements, easements, and rights-of-way within thirty (30) days of receiving from all prospective subscribers within the line extension area a Contribution in Aid of Construction in accordance with the foregoing formula. Cable television service(s) shall be made available and fully activated to all requesting subscribers who made a Contribution in Aid of Construction within sixty (60) days of receipt of pole attachment agreements, easements, and rights-of-way by Grantee.
3. During the two year period commencing with the completion of any particular line extension constructed in accordance with (A) above, Grantee shall pay a pro-rate refund to any previous subscribers who made a contribution in aid of construction, as new subscribers are added to that particular line extension. The amount of refund shall be determined by application of the line extension formula in section (A) above, reducing the per capita contribution in aid of construction each time a new subscriber is added.
4. If the Grantee is denied free access to any private streets and ways, Grantee shall not be required to provide service to residences along such streets and ways unless reasonable access thereto is available for placement of trunk and feeder lines along public ways. Grantee shall not be required to extend service to residences located along public ways where such extension requires use of a privately owned easement for placement of trunk and feeder lines to which the Grantee has been denied access after reasonable efforts to obtain such access.
5. For new un-built or unoccupied housing developments, apartment buildings, mobile home parks and similar developments (the "Development") the system shall be further extended upon request of the owner of the Development, upon payment to Grantee of the costs of material and labor necessary to extend the system to the Development (the "Total Project Cost"). The Total Project Cost will then be divided by the number of home lots or apartments units (as the case may be) to determine a "per lot" contribution in aid of construction dollar amount ("Per Lot Contribution in Aid of Construction Amount"). For five years from the payment of the Total Project Cost, within sixty (60) days after the resident of the lot (or apartment) subscribes to cable television service from the Grantee, the Grantee shall pay to the developer the respective Per Lot Contribution in Aid of Construction Amount.

Section 5. Revocation and Penalties

In addition to Section 3-1-54 "Revocation of Franchise" McDowell County hereby establishes a penalty in the amount of \$100.00 per day for each day that the construction schedule noted in Section 4 is exceeded.

Section 6.

The franchise will not be effective until accepted by grantee within the time and in the manner provided by the County's Cable Television Ordinance.

The ordinance shall be effective when duly adopted as by law provided.

This day 20th day of July, 1992.

s/Jack A. Wood

Chairman of the Board of Commissioners of
McDowell County, NC

s/Carrie Padgett

Clerk to the Board of
Commissioners
McDowell County, NC