



Legislation Text

File #: ORD-01:823, **Version:** 1

AN ORDINANCE GRANTING A FRANCHISE TO TCA CABLE PARTNERS, A DELAWARE GENERAL PARTNERSHIP (d/b/a COX COMMUNICATIONS), ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF JONESBORO, ARKANSAS AND SETTING FOR THE CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE (**NOTE: THIS FRANCHISE WAS TAKEN OVER BY CEBRIDGE BY RES-06:356 ON FEBRUARY 7, 2006**)

BE IT ORDAINED by the City Council of the City of Jonesboro, Arkansas:

SECTION 1 - TITLE

This Ordinance shall be known and may be cited as Jonesboro Cable TV Ordinance.

SECTION 2 - PREAMBLE

This Ordinance was passed after the City Council, acting through its appointed committee, solicited and received comments from interested parties and upon careful consideration of Grantee's qualifications, including its legal character, financial and technical qualifications, and the adequacy and feasibility of its undertakings.

SECTION 3 - DEFINITIONS

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below.

- (A) "City" is the City of Jonesboro, a municipal corporation organized and existing under the laws of the State of Arkansas.
- (B) "Grantee" is TCA Cable Partners, a general partnership organized and existing under the laws of the State of Delaware and authorized to conduct business in the State of Arkansas, and it is the grantee of rights under this franchise. Grantee does business as, and provides service under the name, "Cox Communications".
- (C) "City Council" is the City Council of the City of Jonesboro or its designated representative.
- (D) "Federal Communications Commission" or "FCC" is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.
- (E) "Person" is any individual, firm, partnership, association, corporation, company, or organization of any kind.
- (F) "Gross Subscriber Revenues" shall include any and all compensation or receipts derived by grantee from the operation of its cable system to provide cable service within the city limits including but not limited to basic and expanded basic service, digital, premium and pay-per-view service, installation, disconnection and re-installation charges, income from advertising and leased channels, and revenue from other cable services, as that term is defined in 47 U.S.C. '522(6). It shall not include any receipts from sale of equipment, converter rentals or any customer paid taxes imposed upon the services furnished by the grantee.

SECTION 4 - GRANT OF AUTHORITY

Subject to the compliance by grantee with its obligations under this agreement, there is hereby granted by the City to grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, public utility easements, public ways and public places now laid out or dedicated throughout the entire City as now constituted or as may become subject to the City's jurisdiction during the period of this franchise, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the transmission of television and other communication signals including those required by the FCC or other regulatory entity, either separately or upon

or in conjunction with any public utility maintaining the same in the City, with all the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under, and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of as by leasing and licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. Grantee shall utilize existing light, power, or telephone poles when economically and technically feasible and shall pay an annual rental when required to the entity owning such poles, and if such entity is the City Water and Light System, that System shall be considered as a separate entity from the City of Jonesboro for the purpose of this agreement. The rental shall be as agreed upon between the grantee and the entity concerned. The rights herein granted for the purposes herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets, alleys, public utility easements, public ways and places to any person at any time during the period of this franchise; provided, however, that in the event the City grants authority to a third party to provide multi-channel video services within the City and such authority contains terms that are more beneficial or less burdensome than those contained in the Franchise, Franchisee may adopt the more beneficial or less burdensome terms and conditions by notifying the City in writing, and such terms and conditions shall supersede those contained herein.

SECTION 5 - POLICE POWER

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police powers; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with the laws of the State of Arkansas, the laws of the United States of America, or the rules, regulations and policies of the FCC.

SECTION 6 - INDEMNIFICATION

Grantee shall indemnify and save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, whether litigated or not, against the City arising out of the operation and maintenance by grantee of the cable television system in the City except that grantee shall not incur any such liability for libel, slander, obscenity, incitement, invasions of privacy, false or misleading advertising or similar causes of action for any program carried on any channel or channels designated for public, educational or governmental use. The indemnification provided by the grantee hereunder shall include reasonable attorney's fees. Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Arkansas. The amounts of such insurance to be carried for liability due to property damage shall be \$500,000 as to any one occurrence; and against liability due to injury or death of person, \$500,000 as to any one person and \$2,000,000 as to any one occurrence. The City shall notify grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City arising out of the operation and maintenance of grantee's cable television system. Where any such claim or demand against the City is made by suite or other legal action, written notice thereof shall be given by the City to grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever is the shorter period. Failure by the City to notify grantee properly in accordance with the foregoing of any such claim, suit or demand against the City shall release Grantee from its obligation to indemnify the City as provided herein unless it is shown that the failure to so notify is due to an unavoidable casualty or misfortune.

SECTION 7 - CONSTRUCTION AND MAINTENANCE

(A) All structures, lines and equipment erected by grantee within the City shall be so located and maintained as to cause minimum interference with the proper use of streets, alleys, public utility easements and other public ways and places and to cause minimum interference with the rights and reasonable convenience of property owners, and so as not to endanger or interfere with the lives of persons or to interfere with any improvements the City shall deem proper to make. Grantee shall comply with all lawful ordinances of the City now or hereafter in force. Existing poles, posts, conduits, and other such structures of any electric power system, telephone company, or other public utility located in the City shall be made available to grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. If other utilities elect to go underground in a specific area of the City, grantee will also place its cables underground. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of grantee's cable television system, grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system.

(B) In case of any disturbance by grantee of pavement, sidewalk, driveway or other surfacing, grantee shall, at its own expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced within thirty (30) working days after the disturbance is completed.

(C) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any street, alley, public utility easement, or other public way requiring the relocation of grantee's facilities, then in such event grantee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense; provided, however, that where public funds are allocated for such relocation pursuant to law, grantee shall not be required to pay the cost.

(D) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and grantee shall have the authority to require such payment in advance.

(E) Grantee shall have the authority to trim trees upon and overhanging all streets, alleys, public utility easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with grantee's facilities.

(F) All poles, lines, structures and other facilities of grantee in, on, over and under the streets, sidewalks, alleys, public utility easements and public grounds or places of the City shall be kept by grantee at all times in a safe and substantial condition.

SECTION 8 - FCC RULES APPLICABLE

This franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission, the Cable Communications Act of 1984, and the Cable Television Consumer Protection and Competition Act of 1992, as amended by the Telecommunications Act of 1996, and by the laws of the State of Arkansas. Should there be any modifications of the provisions of the Rules and Regulations of the Federal Communications Commission or state or federal law, that are inconsistent with this franchise, the City and grantee agree that this franchise shall be appropriately amended within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

SECTION 9 - FRANCHISE TERMS

This franchise shall take effect, and be in full force from and after the acceptance by the grantee as provided in Section 15, and the same shall continue in full force and effect for a term of 15 years, provided that there will be a review of the terms hereof and the grantee and grantor's performance hereunder at the end of each three (3) year period. Such review shall take place within three (3) months after the end of each three (3) year period, and as a result of such review, the parties may negotiate any matters pertaining to this franchise, including but not limited to the following items:

(A) Grantee's failure to provide basic cable TV service to a resident of the City who desires such service, if there is evidence to that effect.

(B) The nature and/or quality of grantee's service if a substantial number of credible complaints relating thereto have been received.

(C) The grantee's handling of complaints, changes, charges or other dealings with subscribers if such conduct has been marginal or worse.

(D) The City's failure to comply with any terms of this Agreement in a timely, businesslike manner.

(E) Major technical advances in cable television and the telecommunications industry in general, to the extent such advances are applicable to the services provided pursuant to this Franchise.

Any matter subject to negotiation shall be resolved by agreement and incorporated herein by written agreement

SECTION 10 - FORFEITURE

If grantee should violate any of the terms, conditions, or provisions of this franchise or if grantee should fail to comply with any lawful provisions of any ordinance of the City regulating the use by grantee of the streets, alleys, public utility easements or public ways of the City, and should grantee further continue to violate or fail to comply with the same system after termination of the Franchise for cause at an equitable price. If grantee has for a period of thirty (30) days after grantee shall have been notified in

writing by the City to cease and desist from any such violation or failure to comply so specified, then grantee may be deemed to have forfeited and annulled and shall hereby forfeit and annul all the rights and privileges granted by the franchise; provided, however, that such forfeiture shall be declared only by written decision of the City Council after an appropriate public proceeding before the City Council affording grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the City Council may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this six (6) month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise. Pursuant to 47 U.S.C. '547(b), the City may purchase the not removed its facilities within twelve (12) months from the effective date of the final order or decision imposing forfeiture, including any appeal, the City shall have the right to dismantle grantee's facilities at grantee's expense.

SECTION 11 - SURRENDER RIGHT

Grantee may surrender this franchise at any time upon filing with the City Clerk of the City a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of grantee in connection with this franchise shall terminate. If grantee has not removed its facilities from the City's right-of-ways within twelve (12) months of said written notice, the City has the right to dispose of said property as it deems appropriate or to retain same as the absolute property of the City without accounting therefore to the grantee and the expense of such removal shall be charged to and paid by grantee, without credit for the value, if any.

SECTION 12 - TRANSFERS

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the franchise by grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the City Council.

SECTION 13 - FRANCHISE FEES

In consideration of the terms of this franchise, grantee agrees to pay the City a sum of money equal to five percent (5%) of grantee's gross subscriber revenues per annum, as defined in Sub-Section F of Section 3 of this agreement. Such sum shall be paid pro-rata four (4) times per year with payment due within forty-five (45) business days of the end of each quarter. It is further agreed that if during the term of this agreement an increase over five percent (5%) in such franchise fees is allowed by law or regulation, the grantee and the City shall within 120 days of the effective date of the change in the law or regulation enter into negotiations to determine if a change in the franchise fee due herein is appropriate.

The above mentioned franchise fees are in lieu of privilege licenses and similar taxes but not such taxes as ad valorem or vehicle license fees.

SECTION 14 - RECEIVER SALES PROHIBITED

As a condition of this franchise, grantee agrees that it shall not engage in the business of sales, leases, rentals or repair of television or radio receivers, either directly or indirectly; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other devices as may be used in furnishing any programming or services via grantee's cable television system.

SECTION 15 - ACCEPTANCE

This Ordinance shall become effective when accepted by grantee and shall then be and become a valid and binding contract between the City and grantee; provided, however, that this Ordinance shall be void unless grantee shall, within ninety (90) days after the final passage of this Ordinance, file with the City Clerk of the City a written acceptance of this Ordinance and the franchise herein granted,

agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all the things prohibited by this Ordinance.

SECTION 16 - LOCK DEVICES

Grantee shall upon the request of a subscriber supply a device by which that subscriber can prohibit viewing of programming on channels and at times specified by the subscriber. Grantee may charge for this device.

SECTION 17 - RATE FOR BASIC SERVICE

Grantee's rates shall be established pursuant to federal law and FCC regulations.

SECTION 18 - UNLAWFUL ACTS

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over grantee's cable system without full payment to grantee or its lessee.

(B) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over grantee's cable system.

(C) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this Section.

(D) In the event of conviction in any court, grantee may terminate service to the subscriber and/or household until said conviction is reversed by a higher court.

SECTION 19 - FREE SERVICES AND PUBLIC-EDUCATIONAL-GOVERNMENTAL CHANNELS

The grantee shall furnish, free of charge, one (1) service connection and complimentary expanded basic service to each of the following locations: each public school located within the corporate limits of the City of Jonesboro, the public library, City Hall, the Justice Complex, each fire department station within the corporate limits of the City of Jonesboro, the Dean B. Ellis Library and the Carl R. Reng Student Center at Arkansas State University. In addition, grantee shall provide one (1) complimentary cable modem and associated residential service to each public school within the corporate limits of the City of Jonesboro, the public library, City Hall, the Justice Complex, and the Central Fire Station. Cable modem service shall be provided on the same terms and conditions as grantee's basic residential service offering.

In addition to the above, after an upgrade of the cable system is complete such that the number of active channels is more than 70, or December 31, 2003, whichever occurs sooner, the Grantee shall provide:

(1) One (1) channel on the basic service (basic tier) for non-commercial educational access programming produced by the Radio-Television Department of Arkansas State University. This channel shall be solely for the use of Arkansas State University, except that said department of ASU may relinquish use of such channel to the grantee at times when channel is not being used by the Department of Radio-TV of Arkansas State University. Any such use by the grantee shall not be inconsistent with the goals and purposes of Arkansas State University and shall not be such as to bring discredit upon or otherwise impair the image of Arkansas State University.

(2) One (1) channel on the basic service (basic tier) for non-commercial public access programming and shall provide suitable studio facilities (to include not less than two cameras as well as adequate switching, monitoring, lighting and audio equipment) to permit production and transmission of programs to the public by interested, not-for-profit groups and organizations and individual citizens. The City shall establish appropriate rules and procedures for use of this access channel notwithstanding, however, that such groups and individuals shall have the right to appeal the application of said rules and procedures through appropriate avenues established by City ordinance. Grantee shall provide qualified personnel, in a number no less than one (1), to assist groups and individuals who wish to make use of the public access channel, in use of the same. At grantee's discretion the cost of the studio, equipment, and personnel may be passed through to Grantee's subscribers as a line item on subscriber bills as permitted by federal law and FCC regulation.

(3) One (1) channel on the basic service (basic tier) for non-commercial governmental access programming. The City shall establish appropriate rules and procedures for use of the governmental access channel. Throughout the term of this franchise, grantee shall continue to provide the City the ability to air live non-commercial public, educational, and governmental access programming from the City Council chambers located in the Huntington Building at 900 W Monroe Ave., Jonesboro, AR, that can be viewed on the governmental access channel.

SECTION 20 - INSURANCE

Grantee shall at all times during the existence of this franchise, carry:

- (A) The liability insurance set forth in Section 6 of this Ordinance;
- (B) Workers' Compensation insurance in compliance with the laws of the State of Arkansas;
- (C) Automobile liability insurance on all vehicles owned by grantee with limits of not less than \$100/\$300,000.00 and automobile liability property damage insurance with a limit of not less than \$100,000.00

SECTION 21 - RESERVED

SECTION 22 - EQUIPMENT

Subject to applicable FCC regulations which specify "must carry" stations to the grantee, the grantee shall provide at its expense all equipment and facilities except converters necessary to provide subscribers in the City a basic program of not less than 20 channels. The quality, both visual and aural, of the programs transmitted to subscribers by grantee, shall meet FCC and CATV engineering standards and be essentially the same as if the subscriber were located in the normal viewing area of the original broadcast, subject only to such degradation as may be caused by the subscriber's TV set, the satellite relay or other equipment beyond the control and not the responsibility of grantee. Grantee shall not be charged with default hereunder for failures caused by storms, lightning, earthquakes, and other acts of God or nature. However, grantee shall use its best efforts to recover and restore service as soon as possible in case of disruption from such causes.

Where subscribers are without service due to acts of God or nature for more than 24 hours, upon notice to grantee the subscriber shall receive a credit for the period during which he or she did not receive service.

SECTION 23 - FINANCIAL RECORDS

Grantee shall maintain accurate books and records of its operation covered by this agreement. Such books and records shall be adequate to permit a qualified accountant to prepare a report showing grantee's income, profit or loss, return on investment, margin of profit on sales, expenses as determined by prorating all subscribers in grantee's system, and other financial data sufficient to make a fair determination of the amount of grantee's gross receipts and their sources, what they are used for and whether grantee is or should be with competent management, making a reasonable profit under this agreement.

Once each three (3) years, during the review period as set forth therein, grantee shall cause to be conducted at grantee's expense an independent audit of its books and records by a CPA satisfactory to the City, and a copy of the audit report shall be furnished to the Mayor who shall treat the report as private, confidential information of the grantee. The City may not unreasonably withhold its concurrence in the selection of the CPA selected by the grantee for this purpose.

The grantee shall provide the City with a certification of revenues attested to by an officer of the grantee which shall accompany each payment as set forth in Section 13 of this franchise.

SECTION 24 - GRANTEE'S OFFICE

Grantee shall maintain an office in the City, with a telephone, at which bills may be paid, services may be requested, records and accounts will be kept, and complaints may be registered, Grantee will respond promptly within normal business hours to requests for service and to service complaints. The term "service complaints" refers to complaints relating to faulty TV reception by subscribers. Other complaints will be promptly investigated by grantee within normal business hours, and the complaining party notified of the result of such investigation.

SECTION 25 - NOTICE OF CHANGES

Grantee agrees to give subscribers notice in advance of the effective date of any substantial change in its service, installation or other charges except in case of any emergency.

SECTION 26 - COMPLAINT COMMITTEE

The Mayor's office shall establish a Complaint Committee of two City officials and one of grantee's subscribers (three individuals) to consider complaints pertaining to grantee's cable TV system, its operation, service, charges, etc. Such complaints may be lodged with the City Clerk. The Committee may act on the complaint as filed, and in any event will refer it to grantee if the complaining party has not previously given grantee a chance to resolve the matter. The Committee may request the complaining party or parties to come to a Committee meeting and furnish additional details. The Committee may invite a representative of grantee to participate in the information-gathering phase of any complaint. The Committee shall work informally with grantee's representatives to try to resolve a complaint, but may also refer the matter in writing and in reasonable detail to the Mayor's office for formal presentation to the grantee.

If said Committee is unable to arrive at an agreement with grantee pertaining to a complaint, after the above procedures have been adhered to, they shall, with a majority vote of the Committee, instruct grantee to correct said complaint. Failure to do so will result in a fine of Twenty-five Dollars (\$25.00) per day commencing the seventh (7th) day after grantee has been notified by the Committee.

SECTION 27 - SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or state court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof.

SECTION 28 - EFFECTIVE DATE

This Ordinance shall become effective upon acceptance by the grantee. The effective date shall be the date upon which the written acceptance provided for herein is received by the City Clerk.

SECTION 29 - REPEAL OF CONFLICTING ORDINANCES

All ordinances and/or parts of ordinances in conflict herewith are hereby repealed to the extent of said conflict. Specifically, Ordinance Number 1919 is hereby repealed.

PASSED AND APPROVED this 21st day of May, 2001