

ORDINANCE NO. 102

AN ORDINANCE CREATING AND AWARDING A CABLE COMMUNICATION FRANCHISE IN THE CITY OF STOCKTON AND HILLSDALE AND WARREN TOWNSHIPS UNDER THE JOINT POWERS AGREEMENT DATED NOVEMBER 12, 1977, AND RULES GOVERNING THE OPERATION OF SAME.

DEFINITIONS 1. "Board" is the Minnesota Cable Communications board.

2. "FCC" is the Federal Communications Commission of the United States.

3. "Franchisor" is the City of Stockton

4. "Franchisee" is Stockton Telo-Communications

5. "Class 1V Channel" means a signaling path provided by a Cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

6. "Non-Voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

7. The word "shall" is mandatory.

8. The word "may" is permissive.

GRANT OF AUTHORITY

The City Council of Stockton ordains that a cable communications franchise for the installation, operation and maintenance of a cable communications system within the City of Stockton and townships of Warren and Hillsdale is granted to the Stockton Tele-Communications provided, however that said franchise shall be subject to the following terms and performance conditions:

RULE

REF.

4.202 A. 1. COMPLIANCE WITH MINNESOTA CABLE COMMUNICATIONS BOARD'S FRANCHISE STANDARDS.

The franchise shall at all times be in compliance with the rules of the Minnesota Cable Communications Board.

4.202 B. 2. COMPLIANCE WITH STATE AND FEDERAL LAWS

The franchisee and the franchising authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable as they become effective.

#### 4.202 C. 3. CERTIFICATE OF CONFIRMATION

The franchise shall cease to be of any force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchisee may operate his cable communications system while the Board is considering the application for the renewal of his certificate of confirmation.

#### 4.202 D. 4. FRANCHISE TERMS.

The franchise shall have an initial franchise term of fifteen (15) years and any renewal term if granted, by the franchising authority shall be limited to fifteen (15) years.

#### 4.202 E. 5. RENEGOTIATION OF FRANCHISE TERMS

Renegotiation between the franchisor and franchisee shall occur one (1) year before the end of the franchise term unless franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applicants for a franchise.

#### 4.202 F. 6. FRANCHISE EXCLUSIVITY

This franchise agreement is non-exclusive.

#### 4.202 G. 7. SALE OR TRANSFER OF THE FRANCHISE, SALE OR TRANSFER OF STOCK.

Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except at the approval of the franchising authority which approval shall not be unreasonably withheld, and that such sale or transfer is completed pursuant to Board rules, Chapter 12.

#### 4.202 H. 8. RATES AND RATE CHANGE PROCEDURE

- a. Subscriber rates: See appendix A
- b. Rate change procedure: See appendix A
- c. Residential subscriber contracts: See appendix B

#### 4.202 I. 9. FRANCHISE ADMINISTRATOR

The City Clerk shall be responsible for the continuing administration of this franchise.

#### 4.202 J. 10. LIABILITY INSURANCE

The franchisee shall indemnify and hold harmless the franchising authority at all times during the term of the franchise and shall maintain throughout the term of the franchise liability insurance in the amount of:

Limits of Liability

Coverages

25 thousand dollars each person

50 thousand dollars each occurrence      Bodily Injury Liability

10 thousand dollars each occurrence      Property Damage Liability

insuring both the franchising authority and the franchisee with regard to all damages and penalties which they may legally be required to pay as a result of the exercise of the franchise.

#### 4.202 K. 11. PERFORMANCE BOND

At the time the franchise becomes effective and at all times thereafter until the franchisee has liquidated all of its obligation with the franchising authority, the franchisee shall furnish a certificate of deposit or any other type of instrument approved by the franchising authority in the amount of \$ 1,500.00.

This amount is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion, reduce the amount of the certificate of deposit or instrument.

#### 4.202 L. 12. LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES

Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected grading, regarding, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

#### 4.202 M. 13. PUBLIC HEARING RE: FRANCHISEE 'S CREDENTIALS

The franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in a full public hearing proceeding affording reasonable notice and a reasonable opportunity to be heard.

#### 4.202 N. 14. CHANNEL CAPACITY

The franchisee shall construct a cable system with a channel capacity available for immediate or potential use, equal to a minimum of 72 MHx of bandwidth (the equivalent of 12 television broadcast channels).

#### 4.202 O. 15. CONSTRUCTION SCHEDULE

Within 90 days of the granting of the franchise, the franchisee shall apply for all necessary permits, licenses, certificates and authorizations; that energized trunk cable shall be extended substantially throughout the authorized area within one year after receipt of all necessary governmental permits, licenses, certificates and authorizations; and that persons along the route of the energized cable will have individual "drops" as desired during the same period of time; the requirement of this provision may be waived by the franchising authority only upon occurrence of unforeseen events or acts of God.

#### 4.202 P. 16. AUTHORIZATION TO COMMENCE CONSTRUCTION

The franchisee shall obtain a permit from the proper municipal authority before

commencing construction of any communications system, including the opening or disturbance of any street, sidewalk, driveway or public place. If the franchisee fails to meet the conditions of the permit, upon reasonable notice to franchisee, and time to cure has been granted the city shall have the right to make repairs at the expense of the franchisee.

#### 4.202 Q. 17. COMPLIANCE WITH APPLICABLE CODES

All wires, conduits, cable and other property and facilities of the franchisee shall be located, constructed, installed and maintained in compliance with applicable codes. The franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

#### 4.202 R. 18. RELOCATION OF WIRES, ETC.

The following procedure shall be used by the franchisee and franchising authority for the relocation or removal of the franchisee's wires, conduits, cables and other property located in said street, right-of-way, or public place whenever the franchising authority undertakes public improvements which affect the cable equipment. The City shall give reasonable notice to franchisee.

#### 4.202 S. 19. TECHNICAL STANDARDS

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission's rules and regulations relating to cable communications systems are incorporated by reference. The results of any tests required by the Federal Communications Commission shall be filed within 10 days of the conduct of such tests with the franchising authority and the Board.

#### 4.202 T. 20 SPECIAL TESTING

In the event that special testing is required to determine the source of technical difficulties, FRANCHISING AUTHORITY: When special testing results prove the franchisee responsible, the franchisee shall bear the cost of any special testing. When special testing results prove the franchisee is not responsible, the franchising authority shall determine whether the responsible party or the franchising authority shall assume the cost of special testing.

#### 4.202 U. 21 NON-VOICE RETURN CAPABILITY

The franchisee shall provide a cable communications system having the technical capability for non-voice return communications.

#### 4.202 V. 22 SUBSCRIBER PRIVACY

No signals of a Class 1V cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewed at the option of subscriber. No penalty shall be invoked for a

subscriber's failure to provide or renew such authorization. The authorization shall be revokable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type of classification of class 1V cable communications activity planned for the purpose.

1. No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of such subscribers or any lists that identify the viewing habits of subscribers shall be sold or otherwise made available to any party other than to the company and its employees for internal business use, and also to the subscriber subject of that information unless the company has received specific written authorization from the subscriber to make such data available.

2. Written permission from the subscriber shall not be required for the systems conducting system wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provision set forth in 4 MCAR - 4.202 V. 1.

#### 4.202 W. 23 SUBSCRIBER COMPLAINTS

All complaints by the franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes and any other matters relative to the cable communications system shall be investigated and resolved by the franchisee. If after a reasonable time, a complaint reported to the franchisee has not been investigated and resolved, the complainant may report said unresolved complaint to the city clerk. If the complaint remains unresolved after investigation by the city clerk, the city clerk may report said complaint to the Council. The Council may negotiate with the franchisee and may order resolution of complaint, if necessary.

#### 4.202 X. 24. REPAIRS AND COMPLAINTS

The franchisee shall provide at least a telephone number for the reception of subscriber complaints and shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments and installations shall be borne by the franchisee unless otherwise provided for in this ordinance. Provided however, if said damage to franchisee's equipment is malicious the perpetrator responsible for the damaged equipment shall be responsible for the cost of repairs to said equipment.

#### 4.202 Y. 25. TERMINATION

The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchise in the event that the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause for termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days subsequent to receipt of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee shall have a period of thirty days, beginning the day next following the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board, pursuant

to Minn. Stat. - 238.14. During such thirty day period and until the Board Determines the appeal, if an appeal is taken, the franchise shall remain in full force and effect, unless the term thereof sooner expires. If the Board approves of the action of the municipality, the franchise shall terminate immediately; if the Board approves of the action of the municipality, the franchise shall remain in full force and effect during the term thereof unless sooner terminated in accordance with law or these Rules. Any such appeal to the Board is a contested case to which the Board is not a party.

#### 4.202 Z. 26. ABANDONMENT

The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the franchising authority and the Board. No cable communications company may abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

#### 4.202 AA. 27 REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE

Upon termination or forfeiture of a franchise, the franchisee shall remove its cable, wires, and appliances from the streets, alleys and other public places within the franchise area if the franchising authority so requests. Upon reasonable notice to franchisee and time to cure has been granted by franchising authority, the franchising authority shall have the right to remedy the situation at the expense of franchisee.

#### 4.202 BB. 28 MUNICIPAL RIGHT TO PURCHASE SYSTEM

If the franchise or cable system is offered for sale, the franchising authority shall have the right to purchase the system.

#### 4.202 CC. 29 ACCESS CHANNELS

1. The franchisee shall provide to each of its subscribers who receive all, or any part of, the total services offered on the system reception on at least one specially designated access channel. Franchisees providing subscribers only alarm services or only data transmission services for computer operated functions shall be exempt from this requirement. The specially designated access channel may be used by Local educational authorities and Local government on a first come, nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the Local educational authorities or Local government, the franchisee shall lease time to commercial or noncommercial users on a first come, nondiscriminatory basis if the demand for such time arises. The franchisee may also use this specially designated access channel for Local origination during those hours when the channel is not in use by Local educational authorities, Local government, or commercial or noncommercial users who have leased time on the specially designated access channel. The VHP spectrum shall be used for the specially designated access channel required in this subdivision.

2. The franchisee shall establish rules pertaining to the administration of the specially designated access channel. The operating rules if established by the franchise governing the specially designated access channel shall be filed with the Minnesota Cable Communications Board within 90 days after any such channels are put into use.

3. Nothing in this standard shall be construed so as to preclude the installation of converters by the system on a voluntary basis, or as a result of an agreement arrived at through negotiation between the parties to a franchise, or by a potential access user who wishes to install converters in order to make use of an additional channel or channels.

4.202 DD. 30. THEFT OF SERVICE

Any person tampering, interfering with the system or intercepting system signals without authorization shall be liable for penalties and damages as per Minn. Stat.-609.52 (1977).

4.202 EE. 31 LINE EXTENSION POLICY

a. Whenever grantee shall receive a request for service from at least fourteen subscribers within 1320 cable feet of its trunk cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers; provided that such extension is technically and physically feasible.

b. No person shall be refused service arbitrarily. However, for unusual circumstances, such as requirements for underground cable or where there is more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscribers or a density of less than fifty subscribers per mile of trunk or distribution cable, in order that existing subscribers shall not be unfairly burdened, service may be made available on the basis of a capital contribution in aid on construction including the cost of material, labor and easements.

4.202 FF. 32 DESCRIPTION OF THE SYSTEM PROPOSED FOR CONSTRUCTION

Franchisee proposes to construct a cable communications system which is described as having 12 channel capacity, with 6 channels energized immediately. The system will be two-way capable as prescribed by Board Rules..The system will feature a single headed, main trunk and feed design. Only modern electronic solid state equipment will be used. The overhead cable will be lashed, installed according to the construction standards of the industry, as will the antennas, tower, and headed facility.

Effective upon publication,  
passed the Stockton Council this 9th day of June, 1982.

Stockton Telo-Communications  
Dan Wolfe 6-9-82

Hadwin Lee Henry, Sr  
Mayor

Attest: Ruth Elaine Brown  
Clerk

## APPENDEX A RATES

The initial subscriber rates shall be as follows:

| <u>Class of Service</u>                    | <u>Rate per Month</u> | <u>Installation fee</u>  |
|--|-----------------------|--|
| Residential and/or<br>Commercial (1st set) | \$ 10.00              | \$ 80.00   |
| Residential and/or<br>Commercial (2nd set) | \$ 2.50 per set       | \$ 10.00<br>(or \$ 5.00 if installed<br>at same time as 1st set) |
| Reconnect charges                          | \$ 40.00              |  |
| Disconnect charges                         | \$ 5.00               |  |

## RATE CHANNEL PROCEDURE

Change in rates shall be made by written notice to the franchising authority. If within 30 days of receipt of such notice the Council has not scheduled a public hearing, the change in rates as proposed shall become effective. In the event the city council determines a public hearing should be held, such a hearing shall be held within 30 days of such determination and within 10 days notice of such hearing being published in the Legal Publication of the city. After a hearing has been held, within 10 days the City shall set new rates as the city deems to be reasonable and necessary for the continuation of the franchisee's operation. In the event that it is found necessary to evaluate a rate increase, the franchising authority may audit the franchisee's books.

## APPENDIX B RESIDENTIAL SUBSCRIBER CONTRACT

- DEFINITIONS:
1. "Install Fee" is the initial charge to subscriber for running line into home.
  2. "Reconnect charge" is the charge to subscriber, who has already had cable installed to home, has disconnected and is now reconnecting, or just moved to a residence where cable was previously installed and is now reconnecting.
  3. "Disconnect charges" - in extreme conditions, where subscriber repeatedly connects and disconnects, this charge is in effect for disconnecting cable.

## BILLING PROCEDURE

Normal quarterly billing, three months in advance plus installation fee due upon installation of cable to home.

Twelve months paid in advance entitles subscriber to a 5% discount, saving \$ 6.00 or more.

CONTRACT EFFECTIVE UPON INSTALLATION OF CABLE TO HOME

Date information was taken\_\_\_\_\_

Information taken by\_\_\_\_\_

Subscriber Name\_\_\_\_\_

Address\_\_\_\_\_

Subscriber Number\_\_\_\_\_

Date cable installed to home and contract in effect\_\_\_\_\_

Contract On Hold\_\_\_\_\_