

ORDINANCE NO. 289

AN ORDINANCE GRANTING A FRANCHISE TO RICO TELEPHONE CO., ITS SUCCESSORS AND ASSIGNS TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF RICO, COLORADO:

BE IT ORDAINED by the Board of Trustees of the Town of Rico of the State of Colorado that:

Section 1. DEFINITIONS. For the purpose of this Ordinance, unless the context otherwise requires, the following terms, phrases, abbreviations and their derivatives shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular and words in the singular number include the plural.

- (A) "Town means the Town of Rico, Colorado.
- (B) "Board" means the governing body of the Town.
- (C) "Grantee" means Rico Cable Television, its successors and assigns the franchisee under this Ordinance.
- (D) "Persons" means any person, company or entity of any kind.
- (E) "Franchise Area" means that area within the corporate limits of the Town as now or hereafter constituted.
- (F) "Street" means the surface of and the space above and below any public street, way, place, right-of-way, road, highway, freeway, bridge, tunnel, lane, path, bike--path, alley, court, sidewalk, parkway, drive communications or utility easements, by whatever name called, or hereafter existing as such within the permit area.
- (G) "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the Town.
- (H) "CATV" means a cable television system.
- (I) "Cable Television System" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, radio, television or other electronic or electrical signals to and from persons, subscriber and locations in the permit area.
- (J) "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.
- (K) "Subscriber" means any person or entity receiving and paying for basic CATV service.
- (L) "Gross Annual Basic Subscriber Revenues" means any and all remuneration received directly by the Grantee from subscribers in payment for furnished CATV ser-

vices, but shall not include:

- (i) any taxes on services furnished by the Grantee city, state or other governmental unit, political subdivision and collected by the Grantee; and
- (ii) installation charges.

Section 2. GRANT OF AUTHORITY.

(A) Grant of Authority. There is hereby granted by the Town to the Grantee the right and privilege to engage in business of operating and providing a CATV system in the Town, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the CATV system; and in addition so to use, operate and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the Town.

(B) Non--exclusive Grant. The right to use and occupy said street for the purpose herein set forth, shall not be exclusive in the Grantee, and the Town reserves the right to grant a similar use in said streets to any other person.

(C) Term of Franchise. The franchise and rights herein granted shall commence thirty (30) days from the final passage hereof and shall continue in force and effect to fifteen (15) years after said effective date. Upon application by the Grantee to the Town, the permit may be renewed for subsequent fifteen (15) year periods, following a full public proceeding affording due process providing Grantee has faithfully performed all conditions of said franchise and providing such renewal would be in the public interest.

Section 3. CONDITIONS OF STREET OCCUPANCY.

(A) All transmission and distribution structures, poles, lines and equipment installed or erected by the Grantee within the permit area shall be so located as to cause minimum interference with the proper use of streets and other public ways and with the right and reasonable convenience of property owners to adjoin any of said streets and other public ways. The CATV system shall be constructed and operated in compliance with all applicable Town, State and National Construction and Electrical Codes. The Grantee shall install and maintain its wires, cables, fixtures and other equipment in such manner that they will not interfere with any installations of the Town or any public utility.

(B) In the case of disturbance of any street or paved area, the Grantee shall, at its own expense and in a manner approved by the Town, replace and restore such street or paved

area in as good condition as before the work involving said disturbance was done.

(C) If at any time during the period of the franchise the Town shall lawfully elect to alter or change the grade or location of any street, sidewalk, alley or other public way, the Grantee, upon reasonable notice by the Town shall move, relay and relocate its poles, wires, cables, underground conduits, man-holes and other fixtures at its own expense.

(D) Any poles or other fixtures placed in any public way by the Grantee shall be placed in such manner as not to interfere with the usual travel on such public way.

(E) The Grantee shall at its expense protect, support temporarily disconnect, relocate in the same street or other public place or remove from the street or other public place, any property of the Grantee when required by the Town by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes or any other type of structures or improvements by the Town; provided, however, that the Grantee shall in all such cases have the rights and obligations of abandonment of property of the Grantee subject to Town Ordinances.

(F) The Grantee shall on the request of any person holding a building permit issued by the town temporarily raise or lower its wires to permit the moving of building provided: (1) the expense of such temporary raising or lowering of wires is paid by said person including, if required by the Grantee, making such payment in advance; and (2) the Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.

(G) The Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the Town, such trimming may be done by it or under its supervision and direction at the Grantee's expense.

(H) Subject to any applicable state or federal regulations or tariffs, the Town shall have the right to make additional use for any public purpose of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street provided: (1) such use by the Town does not interfere with the use by the Grantee; and (2) the Town holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use by said Town of said poles or conduits.

Section 4. Safety Requirements.

(A) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

(B) All structures and all lines, equipment and connection in, over, under and upon all streets or public ways of the Franchise Area shall be kept and maintained in a safe and suitable condition and in good order and repair.

Section 5. System Construction and Extension.

(A) The Grantee is hereby authorized to extend the system within the franchise area.

(B) Grantee, whenever it shall receive requests for service from at least ten (10) subscribers within 1320 cable feet of its aerial cable or at least fifteen (15) subscribers within 1320 cable feet of its underground cable shall extend its system to such subscribers at no cost to the subscribers for system extension other than the usual connection and service fees for all subscribers. In areas having a subscriber density less than herein specified, the householders therein may demand and receive service upon payment to Grantee of the costs of extending services to that area and should such area later contain at least ten (10) subscribers, then Grantee shall refund the cost of said extension to such householder. The 1320 feet shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary service drop to the subscriber's home or premises.

(C) No person, firm or corporation in the Grantee's service area shall be arbitrarily refused service. However, in recognition of the capital costs involved, for unusual circumstances, such as requirement for underground cable to connection of service to subscribers or a subscriber density less than the density specified herein, in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of material, labor and easements.

(D) In the event additional adjacent territory is incorporated within the Town's limits by annexation or otherwise Grantee's rights and duties under this Ordinance shall be deemed to include such additional territory.

(E) In subdivisions or other areas of the Town where the installation of underground utilities is presently requires or may be required in the future, the Grantee shall not be required to provide its cable television service thereto, unless the landowner/developer of such subdivisions or areas agrees in writing to pay for the Grantee's actual cost of installation of underground cable television trunk lines, including any rock

excavation, as a non-refundable expense.

In lieu of payment of the actual cost of installation of underground cable television trunk lines a landowner/developer may advance a deposit of One Dollar (\$1.00) per lineal foot of frontage for each lot in the subdivision or other area which shall be refunded to the landowner/developer on a per lot basis when a dwelling until is built on the lot. At the time sixty-five percent (65%) of the lots for which a deposit was made are occupied by a refunded. The above deposit per lot shall be adjusted in accordance with changes in the cost of living based upon the Consumer Price Index for all Urban Consumers - United States Average published by the Bureau of Labor Statistics of the U.S. Department of Labor.

If the landowner/developer elects to make said deposit he shall also pay the actual expense of rock excavation and disposal based on rock removal per cubic yard which expense shall be added to said deposit and shall be refundable as set forth above.

It is expressly understood and agreed by and between the Grantee and the Town that the Grantee shall hold the Town harmless from all loss sustained by the Town on account of any suit, judgement, execution, claim or demand whatsoever resulting from negligence on the part of Grantee in the construction, operation or maintenance of its system in the Town. The Town shall notify the Grantee's representative in the Town or at its principal place of business within a reasonable time for the presentation of any claim or demand either by suit or otherwise made against the Town on account of any negligence as aforesaid on the part of the Grantee.

Section 6. Operational Standards.

The Grantee shall be responsible for any interruptions of signals or service arising from any act of God, strikes, riots, acts of a common enemy or for any other reason beyond the control of the Grantee. The Grantee shall deliver signals to the terminals of the subscriber's set as specified by FCC Rules and Regulations.

Section 7. Local Office and Complaints.

The Grantee shall maintain a local telephone number which subscribers may telephone during regular business hours without incurring added message or toll charges so that complaints regarding cable television operations be promptly reported to the Grantee. The Grantee shall notify each subscriber at the time of initial subscription to the service of the Grantee of the procedure for reporting and resolving such complaints.

Section 8. Preferential or Discriminatory Practices.

The Grantee shall not as to rates, charges, service facilities, rules, regulations or in any other respect make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage provided that nothing in this permit shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any consumer coming within such classification would be entitled and provided further that connection and service charges may be waived or modified during promotional campaigns of Grantee.

Section 9. Rates.

The Grantee shall maintain on file with the Town Clerk a schedule setting forth all rates and charges to be made to subscribers for CATV service including connection and service charges. Notice of changes in rates and charges shall be filed with the Town Clerk at least ninety (90) days in advance of the effective date thereof. No approval of any rate changes by the Board shall be required. Grantee shall not increase rates more than twice in any calendar year.

Section 10. Indemnification of Town.

(A) The Grantee shall at all times protect and hold the Town harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description including investigation costs, court costs and attorney's fees which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system. The Town shall give the Grantee reasonable notice of any such claims, actions and suits without limitation in writing.

(B) The Town shall not and does not by reason of this Ordinance or granting of this Franchise assume any liability of the Grantee whatsoever for injury to persons or damage to property. The Grantee shall maintain in full force and effect during the life of any franchise, public liability and property damage insurance in a solvent insurance company authorized to do business in the State of Colorado at no less than the following amounts:

(C) The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried by appropriate amendment, endorsement or otherwise provided, however, the interest of the Town shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

Section 12. Procedures.

(A) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the Town in regard to the operations of the Grantee's cable television system shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the Town.

(B) The notice required by this Section shall state clearly the action or proposed action to be taken the time provided for response and the person or persons in authority to whom such responses should be addressed and such other procedures as may be specified by the Town. If a hearing is to be held, the public participation will be allowed and the procedures by which such participation may be obtained. The Grantee shall be a necessary party to any hearing conducted in regard to its operation.

Section 13. Revocability of Franchise.

(A) In case of the failure to the Grantee to perform and carry out any of the stipulations and agreement herein set forth in any substantial particular and with respect to which redress is not otherwise herein provided by the Town, acting by and through its Mayor and Board, may, after notice given the Grantee of such determination, the grantee shall have three (3) months time in which to remedy the conditions. After the expiration of such three (3) month period and failure to correct such conditions, the Mayor and the Board may declare the franchise forfeited and, thereupon, the Grantee shall have no further right or authority hereunder.

(B) The Grantee upon notification by the Town of franchise terminating, shall be given notice also of the time limit in which it shall, at its own expense, remove any poles, wires, cables and related appurtenances that shall have been erected and shall leave the streets, alleys and public ways and places in as good condition as they were prior to said installation. In the event of such franchise termination, the Grantee shall be given no less time than 90 days and an option of continuance for another 90 days, upon request, to provide adequate time for salvage, sale or other means of disposal of assets.

Section 14. Procedure Upon Termination.

Upon expiration of the permit, if the Grantee shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted the right to enter upon the streets or other property of the Town for the purpose of removing therefrom any or all of any or all of its property or otherwise. In so removing said property, the Grantee shall refill at its expense any excavation that it shall make and

shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property.

Section 15. Approval of Transfer.

The Grantee shall not sell or transfer its plant or system to another, other than a parent company or a wholly-owned subsidiary of the Grantee nor transfer any rights under this franchise to another without Board approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has filed in the office of the Town Clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Board approval shall not be unreasonably withheld provided the assignee shall have the performance and financial ability at lease equal to the Grantee and neither this Section nor other Sections of this franchise shall precede the mortgaging, hypothecating or assigning of rights in the system or the pledge of stock by the Grantee for the purpose of financing. This Section shall apply to voluntary transfers as well as involuntary transfers by operation of law.

Section 16. Miscellaneous Provisions.

(A) When not otherwise prescribed herein, all matters herein required to be filled with the Town shall be filed with the Town Clerk.

(B) The Grantee shall assume the cost of publication of this Franchise Ordinance. A bill for publication costs shall be presented to the Grantee by the Town Clerk.

(C) The Grantee shall provide without charge an outlet of basic CATV service to the Rico Public Library. The distribution of the cable facility inside such building and the extent thereof shall be at the option, duty and expense of the building owner.

(D) In the case of any emergency or disaster, the Grantee shall, upon request of the Town, make available its facilities to the Town for emergency use during the emergency or disaster period.

(E) A public access channel shall be made available to the citizenry of Rico by the Grantee. Grantee will provide modulator and available channel only. Each party hereby agrees upon 48 hours, prior notice, to provide the other party with maps or other pertinent information regarding the location of utility, facilitate repair work performed by either part.

Section 17. Compliance with Applicable Laws and Ordinances.

The Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the policies power by the Town. The Town reserves the right to adopt from time to time, in addition to the provisions herein contained, such ordinance as may be necessary to the exercise of police

power. Such regulation shall be reasonable and not in derogation of the rights herein granted nor in conflict with the laws of the State or other local or Federal laws or regulations.

Section 18. Violations, Penalties.

(A) From and after the effective date of this Ordinance it shall be unlawful for any person to construct, install or maintain within any public street in the Town or within any other public property of the Town or within any privately-owned area within the Town which has not yet become a public street on any tentative subdivision map approved by the town, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained and unless such franchise is in full force and effect.

(B) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise with any part of the permitted CATV system within this Town for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound or other transmission without payment to the Grantee.

(C) It shall be unlawful for any person without the consent of the Grantee willfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals pictures, sound or other transmission.

(D) Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100.00), imprisonment for a term of not to exceed thirty (30) days or both.

Section 19. Line Severing.

If at any time the Grantee's cable and/or other equipment is disturbed, damaged or severed, the cost of repair shall be paid by the party responsible for said damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. Prior to commencement of construction of the Cable Television System by Grantee, Grantee will furnish the Town Clerk with suitable maps showing the location and method of installation of all of Grantee's overhead and underground lines.

Section 20. Non-Grantee Installation and Construction.

In the event that any person, firm or corporation should desire to have a building, structure or other project designated wired, equipped and/or constructed by a person, firm or corporation other than the Grantee, for the purpose of having such building, structure or project under the subscription to the cable television system owned by the Grantee, any plans, designs

and completed project relating to the distribution of TV signals shall be subject to inspection and approval by the Grantee before cable CATV service to any building, structure or project if the design, construction, cable or equipment is incapable of enabling the facilities to meet required technical standards in accordance with FCC Regulations. Whenever facilities for connection to the cable system have been provided and satisfactorily completed in any building, structure and/or project by any persons, firm or corporation, other than the Grantee except a charge for installation fee shall be assessed by the Grantee except a charge for installation of a primary drop cable, associated equipment and labor to activate CATV service into the facility. Nothing in this Section shall be deemed to preclude payment of monthly service charges.

Section 21. Signal Quality Requirements - Technical Standards.

(A) Grantee agrees to furnish a minimum of eleven (11) channels and one (1) pay television channel for public viewing.

(B) The Grantee will render efficient service make repairs promptly and interrupt service only for a good cause and the shortest time possible. Such interruptions occur during periods of minimum use of the system.

(C) The Grantee shall conduct performance tests in accordance with the requirements of Section 76.601 or any successor section of FCC rules, as these requirements may apply from time to time.

(D) The Grantee further agrees to use reasonable efforts based upon reasonable need, the state of the art and the economics and practicability involved to improve and upgrade its system (including without limitation, the increasing of channel capacity, the furnishing of improved converters that may be required and the institution of two way transmission) within the "reasonable need," "the state of the art" and "the economics and practicability" shall be interpreted to conform, so much as is reasonably practical and possible to the interpretation accorded to these terms by the FCC as its rules may apply or be extended from time to time to these terms.

Section 22. General.

(A) Grantee shall carry on its Cable Television System a minimum of one television station broadcast from Colorado.

(B) Prior to commencement of construction of the Cable Television System by Grantee, Grantee shall file with the Town Clerk a performance bond in favor of the Town, in the amount of Twenty-Five Thousand Dollars (\$25,000.00) insuring that Grantee will construct the system within the time and in the manner required by this Ordinance. At such time as the system is fully constructed, the amount of the bond shall be reduced to Ten Thousand Dollars (\$10,000.00) and thereafter, said bond shall insure the performance by Grantee of its duties and obligations set forth in Section 3 (B), (C), (D), (E), 13(B) and 14 of this

Ordinance. The bonding company shall be licensed and authorized to do business in Colorado with underwriting limits sufficient to cover the amount of the bond.

(C) Effective Date This Ordinance shall take effect and be in force thirty (30) days from and after its passage.

(D) Service Upon the effective date of this Ordinance /Franchise, Grantee will commence with all the work necessary to bring cable TV service to the Town of Rico. First service must be installed and operable by January 1, 19____ and within eighteen (18) months from the effective date of this Ordinance total cable TV service must be installed to all areas of the Franchise Area.

(E) Federally Required Modifications Any modification resulting from amendment of Section 76 of the Rules & Regulations of the Federal Communications Commission shall be incorporated into this franchise as of the date such modification become obligatory under FCC Regulations or in the event of no obligatory date being established within one year of adoption or at the time of permit renewal, which ever occurs first.

(F) Severability If any part of this Ordinance is for any reason held invalid by decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligations required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

PASSED by the Board of Trustees of the Town of Rico, Colo., this 5th day of November, 1990.

ATTEST:

TOWN OF RICO:

By: Linda Yellowman
Town Clerk

Joe Konyndyk
Mayor