

ORDINANCE NO. 172

AN ORDINANCE GRANTING A FRANCHISE TO CLEAR FORK CABLE SYSTEMS LIMITED ITS SUCCESSORS OR ASSIGNS TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM TO SERVE THE CITY OF WILLOW PARK, TEXAS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE AND PROVIDING FOR THE REGULATION AND USE OF SAID SYSTEM.

WHEREAS, the City of WILLOW PARK, Texas, desires to grant a franchise whereby the Grantee thereunder will provide cable television service to the citizens of Willow Park, Texas.

WHEREAS, the Clear Fork Cable Systems Limited is a cable television operator possessing the legal, financial and technical abilities to construct, operate and maintain a cable television system to serve the City of WILLOW PARK, Texas.

NOW THERE, BE IT ENACTED AND ORDAINED BY BOARD OF ALDERMEN OF WILLOW PARK, TEXAS, THAT THE FOLLOWING CABLE TELEVISION FRANCHISE ORDINANCE BE ENACTED AND THE SAME IS HEREBY ADOPTED AS FOLLOWS:

SECTION I.

Short Title. This ordinance shall be known and may be cited as the "Clear Fork Franchise Ordinance".

SECTION II.

Definitions. "City" is the City above. "Company" is the grantee of the right under this ordinance. "Cable Television System" and "System" shall refer to one and the same.

SECTION III.

Qualifications of Grantee and Grant of Authority. A hearing was held so all interested parties could participate in determining the legal, financial, technical and other qualifications of company to provide cable television service. The City hereby finds that the Company possesses the necessary qualifications and that the City hereby grants to the Company an exclusive franchise right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above and under the now laid or dedicated and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and all such other requirements for a quality cable television service, for the purpose of distributing television and radio signals, and other electronic impulses to the cable television system serving the public. The right so granted includes the right to use and occupy said streets, alleys, public ways and public places and all manner of

easements for the purposes herein set forth subject to City approval.

SECTION IV.

Franchise Term. The Franchise granted the Company herein shall terminate 20 years from date of grant, subject to renewal for periods of reasonable duration on the same terms and conditions as contained herein, or on such different or additional terms and conditions as may be specified by the City's Board of Alderman. The Company's application for franchise renewal shall be granted, provided (1) Company shows that its CTV service during the preceding franchise period has, in the judgement of the City's Board of Aldermen, served the needs and interests of its service area and (2) Company has not demonstrated a disregard of the law, pertinent regulations and the provisions of this ordinance. In the event Clear Fork Cable Systems Limited fails to continue service after the systems is installed, the city will notify Clear Fork Cable of the deficiency and allow them 90 days to correct the service interruption. In the event of failure to do so the Franchise will be declared cancelled.

SECTION V.

Payments to City. The Company shall, during the first year of operation under this Franchise, pay to the City annually, in advance \$500.00. Beginning the second year, the Company will pay \$500.00 or 3% of the Gross Subscriber Revenues collected for the preceding year by the Company, whichever is the higher. Starting the 5th year the Company will pay the franchise Fee on a quarterly basis, the fee will be for the Gross Subscriber Revenue collected in the City for the preceding quarter. Starting the third year the Company will furnish the City with a operating report and a financial report of the Company's operating status, for the previous year.

SECTION VI.

Records and Reports. The Company shall keep full, true, accurate and current books of account, which books and records shall be made available for inspection and copying by the Mayor or his authorized representative at reasonable times.

SECTION VII.

Rates. Attached to and made a part of this Franchise ordinance is Schedule A, a complete schedule of rates, which may be charged to subscribers of cable television service. As stated in Schedule A, no increase in rates listed may be made without the approval of the City, except as outlined below.

Should the grantee request an increase in rates, the following will be observed:

The grantee shall petition the City at a regularly scheduled meeting of the governing body. The City may call a public hearing on the grantee's request for rate increase. The hearing shall be set within sixty (60) days of the petition filed. If the City

decides not to call a public hearing within (60) days, or if the City fails to act upon petition within ninety (90) days following the public hearing held on the rate increase request, such rate shall be deemed to be approved.

SECTION VIII.

Liability, Indemnification, and Franchise Bond. The Company shall pay, and by its acceptance of this Franchise the Company expressly agrees that it will pay, all damages and penalties which the City may legally be required to pay as a result of the Company's negligence in the installation, operation or maintenance of the Cable Television System authorized. The City shall notify the Company's representative within thirty (30) days after the presentation of any claims or demand to the City., either by suit or otherwise, made against the City on account of any negligence or contract as aforesaid on the part of the Company. The Company further agrees as follows:

- (a) Company shall carry Workmen's Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000), which shall cover all operations to be performed by the Company as a result of this ordinance.
- (b) Company shall carry Comprehensive General Liability and Comprehensive Automobile Liability Insurance with combined bodily injury and property damage limits of not less than One Million Dollars (\$1,000,000).
- (c) Company's Workmen's Compensation, Automobile Liability Insurance Comprehensive and Comprehensive General Liability Insurance shall be written by an insurance company with a capital and/or surplus of not less than Three Million Dollars (\$3,000,000), and Company agrees to furnish the City with certified copies or certificates of insurance of said policies, which shall provide that insurance shall not be cancelled unless ten (10) days prior written notice shall first be given to the City.

SECTION IX.

System Construction, Maintenance and Procedures.

(a) Upon grant of this Franchise to construct and maintain a community cable television system in the City, the Company may enter into contracts with Light, Gas and Water franchise, any Public Utility Company or other owner of poles within the City, to whatever extent such contracts may be expedient and of advantage to the Company for use of poles or posts necessary for proper installation of the system, obtain right of way permits from appropriate County, State and Federal officials necessary to cross highways or roads under their respective jurisdictions to supply main trunk lines from the Company's receiving antennas, obtain permission from the Federal Aviation Authority to erect and maintain antennas suitable to the needs of the System and to its subscribers and obtain whatever other permits a City, County, State or Federal agency may require. In order that all subscribers shall receive the best possible service, Company shall install and

maintain its system to conform with the latest Maintenance Practices in the field of cable television. However, no public right-of-way shall be traversed, altered or utilized without the express written consent of the City.

(b) The Company's System shall meet or exceed all FCC specifications of engineering standards in effect as of the date of the Grant of this Franchise.

(c) The City acknowledges that the Company's System will serve all portions of the City. However, in the event that the City shall annex further territory as authorized by law, the Company shall extend energized trunk cable to the remaining portions of the City so annexed within one (1) year thereafter, unless additional time is granted by the City's Board of Aldermen upon the request of the Company. Extension of service shall not be required into an area which does not meet the requirements set forth in Section X.

(d) All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause no interference with the proper use of streets, alleys and other public ways and places, and to cause no interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or public ways and places.

(e) In case of any disturbance of pavement, sidewalks, driveways or other surfacing, the Company shall, at its own cost and expense in a manner approved by the City, replace and restore all paving, sidewalks, driveways or surface of any street or alley disturbed, in as good condition as before said work was commenced. The Company will also comply with any existing ordinances applicable to this Section.

(f) The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixture, water hydrant or main, and all such poles or fixtures placed in any street shall be placed at the outer edge of the sidewalk and inside the curb line, and those places in alleys shall be placed close to the line of the lot abutting on said alley, and then in such manner as not to interfere with the usual travel on said streets, alleys and public ways.

(g) The Company shall, on request of any person holding a building permit, issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting same, and the Company shall have the authority to require the payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(h) The Company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the City as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done at the expense of the Company and under the supervision and direction of the City.

(i) Implementation Schedule C attached shall be reviewed and any changes made during installation of the System shall be approved by the City's Board of Aldermen or representative.

SECTION X.

Line Extensions in City and Newly Annexed Areas.

(a) It shall be the obligations of the Company to serve all residents of the City, newly annexed area and new developments except to the extent that density of homes, adverse terrain or factors providing service impracticable, technically infeasible or economically noncompensatory. For purposes of determining compliance with the provisions of this Section, and to provide for a reasonable and nondiscriminatory policy governing extensions of cable service within the City, which policy was subject to public review in the public proceeding leading to the award of this Franchise, Company shall extend service to new subscribers, at the normal installation charge and monthly rate for customers of that classification, under the following terms conditions:

- (a) Where the new subscriber, or nearest subscriber of a group of new subscribers is located within 300 feet of existing trunk cable, and
- (b) Where the number of homes to be passed by such new extension cable plant bears the same proportional ratio to the total amount of new cable plant as the average number of homes passed per mile of existing cable plant.
- (c) In the event the requirements of subsection (a) and (b) are not met, the installation cost per subscriber shall be determined as set forth in Schedule B. attached hereto.

SECTION XI.

Compliance with Standards. All facilities and equipment of Company shall be constructed and maintained in accordance with the requirements and specifications of the National Electrical Safety Code and such applicable ordinances and regulations set forth by the City and/or any other local, State or Federal agencies.

SECTION XII.

Company Rules and Regulations. The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of State and Federal laws.

SECTION XIII.

Procedures. No renewal of this Franchise nor increase in rates and charges shall be effective except pursuant to a public proceeding affording due process. The Company shall be a party to any such proceedings and any other proceedings in which its rights, privileges or interests would be affected and shall be fully entitled to such due process rights as may be available under applicable laws, ordinances, rules or regulations.

SECTION XIV.

Approval of Transfer. The company shall not sell or transfer its System to another, nor transfer any rights under this Franchise to another without written approval by the City.

SECTION XV.

Compliance with FCC Rules and Regulations. The Company shall, at all times, comply with the Rules and Regulations governing CATV operations promulgated by the FCC. This shall include adherence by the Company to FCC rules regarding technical and engineering specifications involved in the construction of the CATV System and signal carriage therein.

SECTION XVI.

Publication Costs. The Company shall assume the costs of the publication of this Franchise as such publication is required by law. A bill shall be submitted to the Company for the publication at the time of acceptance of the Franchise and the delivering of the Franchise Fee.

SECTION XVII.

Activities Prohibited.

(a) The Company shall not allow its cable or other operation to interfere with television reception of persons not served by the Company, nor shall the System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents of the City.

(b) The Company 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 Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

(c) The Company covenants and agrees not to permit the showing of any X

RATED movies as defined by the M.P.A.A.

SECTION XVIII.

Theft of Services and Tampering.

(a) No person, whether or not a subscriber to the Cable System, shall willfully, maliciously or otherwise damage or cause to be damaged any wire, cable, conduit, apparatus, appurtenance, or equipment of a Franchise operating a Cable Television System within the City, or commit any act with intent to cause such damage or to tap, tamper with or otherwise connect any wire or device to a wire, cable, conduit, apparatus, appurtenance, or equipment of such Franchise with the intent to obtain an impulse or signal from the Cable System without authorization from or compensation to such Franchise, or to obtain cable television or other communications service with the intent to cheat or defraud said Franchise of any lawful charge to which it is entitled.

(b) Whosoever shall violate any provision of this Section shall be guilty of a misdemeanor and shall be liable to a penalty of not more than Two Hundred Dollars (\$200.00) for each and every offense. The penalties provided in this Section shall be enforced by appropriate proceedings instituted by the Company

SECTION XIX

Separability.

(a) If any Section, subsection,, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provisions and such holding shall not affect the validity of the remaining portions hereof.

(b) Should any provisions of this Franchise be inconsistent or at variance with any rule, regulation or policy, in whole or in part, of the Federal Communications Commission or any other agency having jurisdiction, such provisions shall be invalid but the remaining provisions hereof shall not be affected thereby.

SECTION XX.

Ordinances Repealed. All ordinances or parts thereof in conflict with the provisions of this ordinance are hereby repealed.

SECTION XXI.

BE IT FURTHER ORDAINED that this ordinance take effect from the date it shall have been passed by the appropriate authoritative body, and become effective as otherwise provided by law.

PASSED AND ADOPTED this 19th day of October 1981 .

CITY OF Willow Park

By: A V Rice

Mayor

ATTEST:

Elizabeth Cupp

City Secretary

We, the applicant, do hereby formerly accept the terms and conditions of this ordinance and by the acceptance thereof obligate myself to comply with each and every position contained therein.

Date: Nov. 2, 1981

Clear Fork Cable Systems Limited

By: Roy R Atkins