

ORDINANCE NO. 50

AN ORDINANCE GRANTING A FRANCHISE TO TRI-STATE CABLE-VISION, INC., AN ARKANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF GOSNELL, ARKANSAS; PROVIDING CONDITIONS, REQUIREMENTS AND REGULATIONS THEREFOR; PRESCRIBING PENALTIES AND VIOLATIONS OF ITS PROVISIONS; AND FOR OTHER PURPOSES:

WHEREAS, the Federal Communications Commission has issued rules and regulations setting forth the requirements which must be in any franchise granted; and

WHEREAS, the legal, character, financial, technical and other qualifications together with the adequacy of the construction program of Tri-State Cablevision, Inc. has been approved by the franchising authority as part of a full public proceeding affording due process.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOSNELL, ARKANSAS:

Section 1. That Tri-State Cablevision, Inc., an Arkansas corporation, hereinafter called Grantee, its successors and assigns be, and is hereby granted by the City of Gosnell, Arkansas, hereinafter called City, the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, 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 signals and all other signals permitted by the FCC, either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of 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, easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or 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. 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, easements, public ways and places to any person at any time during the period of this franchise; provided, however, that nothing contained herein shall be deemed to require the granting of additional CATV franchises, if, in the opinion of the City Council, it is in the public interest to restrict such franchises to one or more.

Section 2. 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 power; 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 3. Grantee shall save the City, its officers, elected officials, employees or agents harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City, its officers, elected officials, employees or agents resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose 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 \$100,000.00 as to any one occurrence; and against liability due to injury to or death of person, \$100,000.00 as to any one person and \$300,000.00 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, its officers, elected officials, employees or agents on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City, its officers, elected officials, employees or agents is made by suit 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, its officers, elected officials, employees or agents, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. Failure by the City to notify Grantee properly in accordance with the foregoing of any such claim, suit, or demand against the City, its officers, elected officials, employees or agents shall release Grantee from its obligation to indemnify the City, its officers, elected officials, employees or agents as provided herein.

Section 4. (a) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and 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. The City shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits. 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 or rights-of-way 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, within forty-eight (48) hours after completion of Grantee's work, at its own cost and expense 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.

(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, easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the City, shall, within thirty (30) days, remove, relocate and relay the same at its own expense; provided, however, that where public funds are available 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, 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, easements and public grounds or places of the City shall be kept by Grantee at all times in a safe and substantial condition.

Section 5. This franchise is governed by and subject to all applicable rules, regulations and policies of the Federal Communications Commission, specifically including Part 76, and by the laws of the State of Arkansas. Should there be any modifications of the provisions of Part 76 of the Rules and Regulations of the Federal Communications Commission, specifically including Section 76.31, that must be incorporated into this franchise, the City and Grantee agree that such incorporation shall be accomplished 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. "Federal Communications Commission" or "FCC" is defined to mean 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.

Section 6. The Grantee shall maintain a suitable business office or agent in Gosnell, Arkansas, which office shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be re-

blished with all complaints receiving prompt action within no longer than two (2) days from the receipt of notice by the Grantee. The Mayor of the City will have primary responsibility for the continuing administration of the franchise and implementation of complaint procedures. Notice of the procedures for reporting and resolving complaints which have been agreed upon between the City and the Grantee will be given to each subscriber at the time of initial subscription to the cable system.

Section 7. The term of this franchise shall be for twenty (20) years from and after acceptance by Grantee as provided in Section 16. Should FCC certification be necessary in connection with implementation or continuation of the cable television service contemplated by this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification.

Section 8. Grantee shall have the option to renew this franchise for an additional period not to exceed twenty (20) years. Should Grantee desire to exercise this option, it shall so notify the City, in writing, not less than one (1) year prior to expiration of this franchise.

Section 9. If Grantee should violate any of the terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the City regulating the use by Grantee of the streets, alleys, easements or public ways of the City, and should Grantee further continue to violate or fail to comply with the same 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 thereby forfeit and annul all the rights and privileges granted by this 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 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.

Section 10. 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. Grantee

shall, within ninety (90) days from the surrender date, remove all cables, wires and other facilities from the city streets, lanes, avenues, sideways, alleys, highways, and other public places or easements and upon failure to remove such aforesaid facilities within the time limitation specified the City shall have the right to remove same and retain it as absolute property of the City.

Section 11. 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 per cent (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 12. The Grantee shall make available at least twelve (12) channels of satisfactory television reception to its subscribers and shall furnish, free of charge, service distribution and connection to each school of Gosnell School District No. 6 located within the corporate limits of the City of Gosnell, Arkansas and shall in addition provide one (1) service distribution and connection to the City Hall and to the fire station. Should additional fire stations be built or should the fire station be removed from the location of the City Hall within the franchise term, then a service distribution and connection shall be supplied to such fire station or fire stations within the corporate limits of the City of Gosnell.

Section 13. The Grantee agrees to work with the City if the City should, at the City's cost, obtain an emergency warning system so as to help set up such a system and to connect it into the cable television system so that it would then be possible for designated City officials to override the audio signal on all channels simultaneously to deliver emergency messages. This capability will be provided only if the City is capable of providing same but with the installation being provided by the Grantee.

Section 14. In consideration of the terms of this franchise, Grantee agrees to pay to the City a sum of money equal to three per cent (3%) of the annual gross operating revenues received by the Grantee for services rendered to customers within the City during each year of operation under this franchise. Such payments may be made monthly by the Grantee or payable in semi-annual payments on the last day of June and the last day of December of each year. This payment shall be in lieu of any business or occupational licenses or taxes but shall not be in lieu of ad valorem taxes assessed with respect to real or personal property of the Grantee within the City. "Annual Gross Operating Revenues" shall consist of receipts from customers located in the City for transmission of television signals by the company under contracts with such customers and does not include any other revenues derived by the company.

Section 15. As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

Section 16. 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 of the things prohibited by this Ordinance. Grantee agrees to provide service throughout the City of Gosnell with a period of twelve (12) months from the date of the acceptance by Grantee of this Ordinance. In the event of the failure of the Grantee to provide service for the City of Gosnell within a period of twelve (12) months, the City Council for the City of Gosnell shall have the right to declare this Ordinance and rights in the franchise granted thereunder forfeited. Should the Grantee at any time discontinue service for a period of sixty (60) days after the system has been instituted, the City of Gosnell shall have the right to declare this Ordinance and the rights and franchise granted thereunder forfeited, and make a written demand on the Grantee to proceed to remove their cables, wires and other facilities from the city streets, lanes, avenues, sidewalks, alleys, highways, easements and other places and from the premises of the Grantee's subscribers within thirty (30) days from the date of such demand. Should the Grantee fail to proceed with removal of same, after receipt of notice, the City shall have the right to remove same and retain it as the absolute property of the City, with the accounting therefor to the Grantee and the expense of such removal shall be charged to and paid by the Grantee, without credit for the value, if any.

Section 17. (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 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.

Section 18. 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 portions hereof.

Section 19. This Ordinance shall become effective upon acceptance by Grantee as provided in Section 16. The effective date shall be the date upon which the written acceptance provided for in Section 16 is received by the City Clerk.

Section 20. The City shall have access at all reasonable hours to all of the Grantee's customer and service records relating to the operation of the Grantee within the City. The following records and reports shall be filed with the City Recorder and in the local office of the Grantee: (a) An annual summary report showing gross operating revenues received by the company for services rendered to customers within the City for the transmission of television signals by the Grantee under contracts with such customers and such other information as the City shall request regarding the Grantee's gross operating revenues within the City.

Section 21. The Grantee shall pay the City of Gosnell's cost of publishing this Ordinance according to law.

Section 22. This Ordinance being necessary for the comfort, convenience and welfare of the City of Gosnell, Arkansas, and the inhabitants thereof, an emergency is hereby declared to exist and this Ordinance shall take effect and be in force after its passage.

Passed and approved this 6th day of February, 1979.

Carl B. L. Blatter
MAYOR

ATTEST:

J. J. Gray
CITY RECORDER