

Amended by OEO
84 A, 94, 116, 119, 121

ORDINANCE NO. 77-3 84

AN ORDINANCE GRANTING TO PRICKETT'S RADIO AND TELEVISION A FRANCHISE FOR THE USE OF STREETS, ALLEYS AND PUBLIC EASEMENTS WITHIN THE CITY OF GARIBALDI FOR THE OPERATION OF CABLE TELEVISION COMMUNICATIONS SYSTEM.

THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

FRANCHISE. The City of Garibaldi, hereinafter called the City, grants to Prickett's Radio and Television, hereinafter called Grantee, the non-exclusive right, privilege and franchise to erect, construct, relocate, reconstruct, and operate and maintain in, under, upon and over the present and future streets, alleys and other public easements, ways and places of the City, poles, wires, cables, underground conduits and all other necessary convenient appurtenances, fixtures and equipment for the purposes of supplying television, radio and other cable communications services to the City and its inhabitants.

TERM. This franchise shall become effective 30 days after the enactment if the Grantee shall, within the 30 day period, file with the City Recorder its unconditional written acceptance of all provisions contained in this franchise. If the Grantee shall fail to file its unconditional written acceptance within the 30 day period, then this ordinance shall be of no further force or effect. If the franchise is accepted by the Grantee as provided herein, the rights and privileges herein granted shall terminate at the end of fifteen (15) years from the date of acceptance; however, the franchise fee and the subscription rates may be open for negotiation annually.

Upon expiration of the franchise, the Grantee shall be given consideration by the City for a new franchise provided the Grantee has performed under the conditions or obligations imposed under this franchise. The Grantee shall apply to the City for a new franchise at least six months prior to the expiration of the term.

REGULATION USE OF PUBLIC EASEMENTS. The relocation, installation, maintenance and improvements of poles, fixtures, cable and underground conduits, and the making of excavations and openings in public easements, shall be subject to the ordinance and regulations of the

as they exist or may hereafter be enacted or amended. All such poles, fixtures, cable and conduits shall be so installed as to interfere as little as possible with traffic and other public uses and shall be maintained by the Grantee in safe condition and in accordance with good engineering practice.

Whenever Grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order immediately upon the completion of said work and upon failure of such restoration being made by said Grantee, its successors, and assigns, the said City shall cause such repairs to be made at the expense of said Grantee, its successors and assigns.

The Grantee shall, at the request of any person holding a building moving 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 the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes. Grantee shall at its sole cost and expense, remove any of Grantee's poles, cable and wires in compliance with the directions of the City Manager or City Engineer when the same is required by reason of the City's making street, sewer or other types of improvements.

Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the City of Garibaldi from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways with the City of Garibaldi in or upon which the poles, wires or other conductors of said Prickett's Radio and Television shall be placed. But all such work or improvements shall be done, if possible, so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.

Where tree trimming is necessary on public streets or places for the operation of the lines, wires, cables, and antennas or other appurtenances of the Grantee, such trimming shall be done by competent

employees, agents, or contractors of the Grantee after application for and granting of a written permit by the City Manager or such other person or officer as the City Council may from time to time designate, and it shall be done without cost or expense to the City.

In consideration of the rights, privileges, and franchise hereby granted, said Grantee, Prickett's Radio and Television, its successors and assigns, shall pay to the City of Garibaldi, from and after APR 1 1977, and until its expiration, 1 1/2 per cent per annum of the gross local service receipts derived from the operation of said antenna system. Payment of said 1 1/2 per cent shall be made on or before the 15th day of each month following each quarterly period. Quarter year periods shall extend from January 1, through March 31, inclusive, April 1 through June 30 inclusive, July 1 through September 30 inclusive and October 1 through December 31 inclusive. No expenditures of any kind shall be deducted from the gross income in determining gross local service receipts, save and except federal or state charges, if any, exclusive of income tax. The City or its authorized agent shall at all times be extended the right to ascertain if the 1 1/2 per cent is being paid.

INDEMNITY AND INSURANCE. Grantee shall indemnify and hold the City, its officers, agents and employees harmless from all expense, cost, damage and liability arising from any negligent act or omission or condition negligently created by the Grantee in the conduct of this operation under this franchise. The Grantee shall maintain public liability insurance naming the City as co-insured in the amount of not less than \$300,000.00 for any number of claims arising out of any single accident or occurrence, \$100,000.00 to any claimant for other claims arising out of a single accident or occurrence, and \$50,000.00 to any claimant for any number of claims for damages or destruction of property arising out of a single accident or occurrence.

COMPLAINT PROCEDURES. Complaint procedures for investigation and resolution of all complaints regarding the quality of service,

equipment malfunctions, billing practices, procedures and problems and other similar matters shall be as follows:

1. Grantee shall maintain a local business office which shall be located within ten miles of the corporate limits of the City. Grantee shall also maintain a locally listed telephone by which complaints, requests for repairs or adjustments can be made at any time; local telephone means a telephone number located in the free telephone calling area;

2. Any subscriber having a complaint may contact the business office of the Grantee by telephone or in person and the Grantee shall cause the complaint to be written up on a report form which shall contain the date, time, name and address and description of the nature of the complaint. Records of the subscriber complaints shall be maintained for a period of at least five years;

3. After receiving a complaint, the Grantee shall proceed without delay to attempt the resolution of the complaint by supplying information, repairs or other adjustments which are reasonably called for by the complaint;

4. In the event that the person making a complaint is not satisfied with the explanation or service provided by the Grantee, then the Grantee shall provide the complaining party with the opportunity to discuss the problem with a person in a managerial supervisory position who will have the duty to expedite the handling of such a problem;

5. If the subscriber is unable to resolve the complaint or problem with the Grantee after following the foregoing procedure, such subscriber shall then notify the City by notifying the City Recorder, and the City will then attempt to investigate and resolve such complaint or problem or to take such other action as shall be appropriate. All such complaints shall be made to the City within 30 days from the date of occurrence;

6. The Grantee shall have the obligation of disseminating the procedure for resolving complaints provided for in this franchise in a manner likely to come to the attention of the Grantee's subscribers. Compliance shall be sufficient if the complaint procedures are furnished to and attached to each customer's coupon or payment book.

RATES. Rates charged by the Grantee to subscribers are hereby established, and shall be determined and regulated as follows:

1. A schedule of subscriber rates and charges for regular installations and regular subscriber services provided by the Grantee are attached to this ordinance and incorporated herein by reference; and such rates and charges are hereby designated as the initial rates which the Grantee shall charge subscribers within the City for regular installation of equipment and regular subscriber services;

2. No change in regular rates to subscribers shall be made or charged except as authorized by the City under the terms and provisions of this ordinance. Grantee may apply for rate change at any time;

3. Before a determination is made concerning any proposal

to change the rates, a public hearing shall be called and held within forty-five (45) days after submission of the proposal; provided, however, that not less than thirty days' notice is given of the time and place of such hearing by publication in one or more newspapers of general circulation within the City. The hearings shall be held before the City Council. The Council may delegate to a committee any functions conferred in this ordinance for the investigation of rates;

4. The City Council shall have the right during such hearings procedure to receive from the Grantee reasonable financial information, such as financial statements, directly relating to its regular cable business in the ^{Bay} ~~City~~ area which has reasonable bearing upon such rates and charges for regular subscriber services. The City may require production of such financial information prior to calling or holding a public hearing on such rates and the City may defer calling any hearing until fifteen (15) days after the production of such financial information;

5. At the public hearing on rates provided for herein, the Grantee shall have the right to present testimony, documents and other evidence relating to its rates and interested persons may appear and present evidence or make statements concerning rates and charges of the Grantee;

6. The rate hearing shall be conducted as expeditiously as possible, but may be recessed from time to time for the purpose of affording a fair and reasonable opportunity for the presentation of evidence and for the purpose of acquiring additional information and evidence having reasonable bearing upon such rates and charges as set forth in paragraph four hereof. However, the hearing should not exceed sixty (60) days in length from the date the first hearing was scheduled;

7. Rates and charges for regular subscriber services shall be just, reasonable and adequate and shall be fair to the Grantee and to the subscribing public;

8. The party initiating a proceeding for a change in rates shall be required to pay the costs, if any, of advertising and reporting the rate hearings;

9. Within sixty days of the conclusion of the rate hearings provided for in this ordinance, the City Council shall render a decision and may authorize a change in the rates if it is found that the existing rates are either unfair to the Grantee or to the subscribing public as based on the standards herein provided. Grantee may implement the rates proposed if no decision is made within sixty (60) days of the conclusion of the hearing;

10. In the event of an increase in a franchise fee, an increase in the taxes paid by the Grantee for operation of a television cable system, and any increase in pole rental, a rate increase hearing may take place upon the request of the Grantee. The above occurrences shall, by themselves, constitute sufficient reason, without more, for a rate increase hearing.

QUALITY OF SERVICE. Quality of service shall be as follows:

1. Grantee shall provide continuous and efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum

use of the system;

2. The Grantee shall provide its subscribers with not less than the minimum visual signal level and other signal quality requirements as may be established by the Federal Communications Commission; and at least once each year during the term of this franchise, the Grantee shall conduct tests of the performance of Grantee's system to determine whether such system is delivering to subscribers the minimum visual signal levels and other signal quality requirements established by the FCC, and the Grantee shall provide the City with a copy of the test results as soon as they are available. The City reserves the right to conduct its own tests of Grantee's facilities, and for such purpose, the City or its designated representatives, shall have the right of access to such facilities for reasonable periods and at reasonable times.

FRANCHISE VALUATION. The City shall be entitled to disregard any value given to this franchise in any rate making proceeding. However, Grantee shall be entitled to reasonable return on his investment and business.

ASSIGNMENT, TRANSFER OR CHANGE OF CONTROL. The franchise hereby granted shall not be assigned or transferred without the consent of the City evidenced by ordinance duly passed and approved. Any consent hereunder shall not be unreasonably withheld, but reasonable conditions may be imposed on the assignment to protect the subscribing public. This section shall not be so construed as to prohibit the Grantee from effecting such reorganization as may be necessary for the procuring of capital to meet increased demands due to the growth of this City, or increased business of the Grantee, in the City or elsewhere, or assignment or transfer to any corporation formed by Grantee or a parent company. If there shall be any transfers of stock, the City shall be immediately notified in writing of the nature of the transfer and the identity of the transferee. Violation of this section may terminate the rights, privileges and franchise granted by this ordinance. Any sale or transfer of stock which results in a new controlling interest shall be subject to the above restrictions on assignment, transfer or change of control.

TERMINATION OF FRANCHISE. This franchise may be terminated by the City prior to its expiration as follows:

1. The City may terminate this franchise in the event that a violation or failure to comply with the material terms of this franchise shall continue and persist thirty (30) days after the City has mailed or delivered a written notice to the Grantee describing such violation. For purposes of this provision, a violation shall not include a condition which is not the fault of the Grantee, or one arising out of Grantee's

excusable neglect of any condition so long as Grantee uses its best efforts to correct any such condition;

2. Termination and cancellation of this franchise shall become effective under the provisions of a resolution of the City Council adopted after holding a public hearing upon not less than thirty (30) days' written notice mailed or delivered to the Grantee and published in a newspaper of general circulation in the City. The Grantee shall be given the opportunity to present evidence and be heard at such hearing.

FEDERAL COMMUNICATION COMMISSION MODIFICATIONS. Any modifications of the provisions of the rules of the Federal Communications Commission which are legally adopted shall be incorporated into this franchise within six months of the adoption of the modification, or at the time of renewal of the franchise, whichever occurs first.

OFFICIAL RESPONSIBLE FOR ADMINISTRATION. The City Recorder shall be the official of the City who will have primary responsibility for this administration of this franchise and implementation of the complaint procedures described above.

FOR CERTIFICATE OF COMPLIANCE. The Grantee herein shall within a reasonable time after acceptance of this franchise apply for a certificate of compliance with the Federal Communication Commission. A reasonable time means any time less than six months. The Grantee shall file a copy of the certificate of compliance with the City on or before March 31, 1977, unless extended in writing by the City.

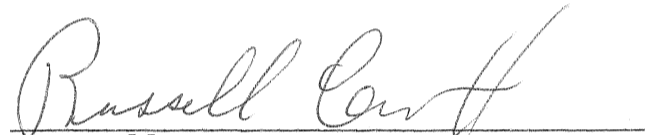
INSTALLATION OF SERVICE. Installation of cable television distribution system shall be commenced within six months from the date that the FCC issues the Grantee permission to televise within the City. The franchisee shall accomplish significant construction within one year after receiving the FCC certificate of compliance. Significant construction means at least seventy percent (70%) coverage of the City. During the second year of operation, the franchisee shall complete an additional thirty percent (30%) coverage of the City. If the FCC does not grant permission to televise within the City by March 31, 1977, the franchise may be terminated by the City. The construction shall be in accordance with the map of the City of Garibaldi attached to the Grantee's application for franchise in which the cable lines were drawn.

The Grantee shall provide a minimum of five channels within the first year with one educational station and subject to the stations remaining in operation. Grantee also promises to provide FM coverage within one year from the date of this franchise subject to the permission of the FCC.

Grantee shall be required to furnish service to anyone within the city limits of the City if a request is made for such service. In the event any subscriber is in a remote or inaccessible location, Grantee shall have the right to charge subscriber in accordance with the rate schedule. The Grantee promises to make additional expansion of the cable television system at a reasonable pace and in accordance with the development of the City and the extensions of the City water lines and City sewer service.

ADOPTED by the City Council this 28 day of MAR,
1977.

APPROVED BY the Mayor this 28 day of MAR,
1977.


Russell Curnutt

ATTEST:


Harold H. White City Recorder