

ORDINANCE NO. 0-79-21

AN ORDINANCE ENTITLED "AN ORDINANCE GRANTING TO THE CONWAY CORPORATION A FRANCHISE TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF CONWAY."

Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

City - shall be the City of Conway, Arkansas.

City Council - shall be the City Council of the City of Conway, Arkansas.

Corporation (Corp.) - shall be the Conway Corporation.

Cable Television System (CTS), or "System" - shall mean any facility which is operated to perform for hire, either in whole or in part, the service of receiving, amplifying, modifying or originating television, radio or other electrical signals for the purpose of transmitting or distributing such signals by wire, cable or other means to subscribing members of the public, except that such definition shall not include: (1) Any system which serves only the residence of one or more contiguous apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such dwellings; or (2) Any system commonly known as a master antenna system.

Bond Fund - A special fund out of which disbursements are to be made for paying the principal of, premiums, if any, and interest on any bonds or other indebtedness, the proceeds of which are used for the construction of the Cable Television System or an expansion or extension thereof.

Force Majeure - shall mean any cause or causes beyond control of Corporation, including, but not limited to, acts of God or the public enemy, failure of the Corporation's facilities, flood, earthquake, storm, lightning, fire, epidemic, war, embargo, riot, civil disturbances, strikes, picketing, lockouts or other labor disputes or disturbances, sabotage, or restraint or prevention of performance by act of any court, regulatory body or defense agency, which by the exercise of due diligence and foresight the Corporation could not reasonably have been expected to avoid.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY,  
ARKANSAS:

Section One. THAT there is hereby granted to the Conway Corporation, a corporation organized under order of the Circuit Court of Faulkner County, and under Certificate of Incorporation, issued by the Clerk of the Circuit Court of Faulkner County on the 7th day of May, 1929, the exclusive privilege of operating and maintaining a Cable Television System within the City of Conway, Arkansas for the purpose of supplying Cable Television Service to the City of Conway and to its inhabitants and to all persons and corporations doing business therein for a period beginning on June 1, 1979 and ending on May 31, 2004.

Section Two. The said Conway Corporation is hereby granted the exclusive right, privilege, and right of way to place, maintain, construct and operate Cable Television facilities in, through, over and under all streets, alleys, avenues, sidewalks and public grounds of said city, for the purpose of furnishing Cable Television Service, and is hereby granted the right of ingress and egress thereon for the purpose aforesaid during the term of this franchise, with the right to trim all trees in said streets, alleys, sidewalks and public grounds, that may come in contact with any of its facilities. It is hereby expressly provided, however, that the powers, rights and privileges in this section two of this ordinance granted to said Conway Corporation may, following prior approval of the City Council of the City of Conway, Arkansas, by resolution or ordinance adopted for that purpose, be by it granted and assigned to such other persons, firms or corporations, whether publicly, privately or otherwise owned and operated, to the extent and for the purpose designated in such grant or assignment.

Section Three. The said Conway Corporation shall at all times during the term of this franchise, operate and maintain efficient and properly equipped head-end equipment, together with a proper and sufficient distribution system to afford Cable Television Service to the inhabitants of Conway and all persons, firms and corporations doing business therein, unless prevented by force majeure.

The Grantee shall at all times employ ordinary care and shall

install and maintain devices or systems for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

The Grantee shall install and maintain its wire, cable, fixtures, and other equipment so as not to interfere with the equipment of any utility of the City, or any other entity lawfully and rightfully using the conduit, pole, underground or other part of the right-of-way.

The Cable Television System shall at all times conform to the construction and maintenance standards set forth below:

Methods of construction, installation, and maintenance of the City's cable television system shall comply with the National Electrical Safety Code 1975 (ANSI CI-1975) to the extent that such Code is consistent with local law affecting the construction, installation, and maintenance of electric supply and communications lines. To the extent that such Code is inconsistent with other provisions of this franchise or with local law, the latter shall govern.

Any tower constructed for use in the City's cable television system shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A as published by the Engineering Department of the Electronic Industries Association, 2001 Eye Street, N.W., Washington, D. C. 20006.

Installation and physical dimensions of any tower constructed for use in the City's cable television system shall comply with all appropriate Federal Aviation Agency regulations, including, but not limited to, Objectives Affecting Navigable Airspace, 14 C.F.R. 77.1 et. seq., February 1965.

Any antenna structure in the City's cable television system shall comply with Construction, Marking and Lighting of Antenna Structure, 47 CFR. 17.1 et. seq., September 1967. (FAA)

Each cable distribution system on the public streets shall comply with all applicable laws and ordinances and governmental regulations regarding clearances above ground, and separations from other utilities, both aerial and underground.

The Grantee shall at all times use 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.

The Grantee shall construct and operate the system and related facilities in accordance with all generally accepted related industry codes, standards and recommendations, that are applicable.

All conductors, cables, towers, poles and other components of the system shall be located and constructed by the Grantee in back of street curbs so as to provide minimum interference with access by adjoining property owners to the streets and public ways nor shall any pole or other fixture of the Grantee placed in the public way interfere with the usual travel in such public way.

Neither the Grantee, its officers nor its employees shall engage in the business of selling, leasing, repairing or installing television receivers, radio receivers or accessories for such receivers within the City of Conway during the term of this Franchise. This paragraph shall not preclude the selling, leasing, repair or installation of such converters or other devices as may be necessary to render the Subscribers' receiver capable of receiving all channels of the Cable Television System.

Section Four. The City of Conway shall, from time to time, make, adopt and enforce any and all necessary ordinances to protect the system and other property under the control of said Corporation and to protect said Conway Corporation in the sole and exclusive and unrestricted enjoyment of all privileges granted under this franchise.

Section Five. The said Conway Corporation shall, at all times during the term of this franchise, provide the City, any of its departments, and to any school or college in the City of Conway, as designated by resolution of the City Council, such one-way or

two-way access channels to the extent that, based upon the approved rate schedule in force, the value of these services plus cash payments to the City in consideration of this Franchise, shall equal 3 percent of the gross revenue of the system. This service and cash payment shall be in consideration for the granting of the exclusive franchise to use the public ways for the operation of a cable television system, subject to approval by the FCC.

The City shall have the right to inspect the Grantee's income records, the right of audit and the recomputation of any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within twelve (12) months following the close of each of the Grantee's fiscal years. Any additional amount due the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City, which notice shall include a copy of the audit report.

The City reserves the right to increase both the Franchise fee rate and the revenues on which such fee is based so as to increase Franchise payments in the event that the current Federal Communications Commission limitations as to the Franchise fee rate and the revenues on which such fee may be levied are eliminated or changed, as a result of superseding regulations or court action. Any change in Franchise fee rate or the revenues on which such fee is based shall be accomplished by amendment to this Franchise. Provided, however, that any change in Franchise Fee Rate shall be compensated by appropriate adjustments in subscriber fees (raised or lowered).

The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with the ordinances and Franchise.

The City of its authorized agent shall have access to all books of account and records of the Grantee for the purpose of ascertaining the correctness of any and all reports and shall be

given local access to all other records upon reasonable request.

Section Six. The rates charged for Cable Television Service shall be set by the Conway Corporation subject to the approval of the City Council. Said rates shall provide adequate revenues to cover the costs of operation and maintenance, bond fund and other debt service requirements, plant expansion and necessary and reasonable surpluses and reserves.

The said Conway Corporation shall make and enforce all such proper rules as to collection of delinquent bills and as to discontinuance of service to delinquent consumers as it may, in its opinion, deem necessary.

Section Seven. The provisions of this Franchise shall be accepted in writing by the said Conway Corporation within 30 days after the passage and publication of this ordinance, whereupon said Franchise shall be deemed to be in full force and effect.

Section Eight. All ordinances and parts of ordinances in conflict herewith be and the same are hereby repealed and this ordinance shall be in full force and effect from and after its passage and publication.

PASSED: May 8, 19 79.

APPROVED:

Bill Wright  
Mayor

ATTEST:

Doris Dunn  
City Clerk