

A BILL FOR AN ORDINANCE ESTABLISHING)
A NON-EXCLUSIVE FRANCHISE FOR LIBERTY)
COMMUNICATIONS, INC.)

ORDINANCE BILL NO. 1
for 1986
ORDINANCE NO. 1985

THE PEOPLE OF THE CITY OF LEBANON DO ORDAIN AS FOLLOWS:

Section 1. GRANTING CLAUSE. The City of Lebanon, hereinafter called the City, does hereby grant to the LIBERTY COMMUNICATIONS, INC., an Oregon corporation, hereinafter called the grantee, a non-exclusive right, privilege and authority and franchise to operate in, over, upon and under the streets and alleys, and public highways of the City of Lebanon, and to stretch wires and cables on poles or underground or on other fixtures on all streets and alleys and to erect other appurtenances and to maintain and use the same as a coaxial cable subscription system for television signal distribution to subscribers' homes and to business establishments within the City.

Section 2. DURATION. Until such time as the franchise rights as granted by Ordinance #1206 as amended by Ordinance #1737 expire, grantee shall not be subject to the provisions of this Ordinance.

This franchise granted by the Council shall cease and terminate April 5, 2001. The grantee herein shall have an option for an additional ten (10) year renewal of said franchise upon giving notice to the City of the exercise of said option six (6) months prior to the termination date herein.

At the expiration of the term of this franchise, the City at its election, may purchase and take over to itself the entire property of the Grantee situated in or under the street and public places of the City, at fair market value of the system as an ongoing concern.

Section 3. NON-EXCLUSIVE. The rights, privileges and franchise herein granted shall not be deemed exclusive and the right is hereby reserved to the City to grant to any other persons, companies, corporations or associates similar rights.

Section 4. PLAN CONSTRUCTION. All work, erections, erection of poles and appliances and laying of wires and the operation and maintenance of the grantee's system shall be done in compliance with the applicable laws, rules, regulations, ordinances or orders which may, during the continuance of the franchise, be adapted from time to time by the city, county, state and/or federal governments, provided, however, that such laws, rules, regulations, ordinances or orders do not materially interfere with the rights and privileges granted herein. Any act done by any contractor, subcontractor or by the grantee or by any agent of the grantee shall, for the purpose of this franchise be deemed to be the act of the grantee.

Section 5. STANDARDS OF CONSTRUCTION. All poles, cables, wires, antennas or other appurtenances shall be constructed and erected in a workmanlike manner. All construction hereby authorized shall conform to the requirements of the National Electrical Code of the State of Oregon and the City.

Section 6. CITY'S RIGHTS AND JURISDICTION.

(A) Nothing in this Ordinance shall be construed to prevent the City from sewerage, planking, bridging, grading, altering, or otherwise improving any of the streets of the City. This Ordinance shall further not be so construed as to deprive the City of any rights and privileges which it has now or which may be conferred upon it to regulate the use and control of streets. The City shall further have, at all times, the right to make use of the poles of said grantee for wires, cable, or conductors for any and all City owned wire systems, provided that such use does not conflict with grantee's present or future use. The City shall hold harmless the grantee from any said use of grantee's poles.

(B) In the event any of the grantee's poles, cables, wires or other appurtenances interfere with any future use that the City desires to make of its streets or alleys, the grantee shall, at its own expense, promptly relocate such poles, cables, wires or other appurtenances upon being notified to do so. Whenever the grantee shall disturb any of the streets for the purpose aforesaid, it shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so, the City shall have the right to fix a reasonable time limit within which such repairs and restoration of street shall be completed, and upon failure of such repairs being made by said corporation, the said City may (in addition to any other rights or remedies it has herein) cause such repairs to be made at the expense of the said grantee.

Section 7. REMOVAL OF CABLE. Whenever any person has obtained permission of the proper city officials to use any of the streets of said City for the purpose of moving any building, the said grantee, upon reasonable notice from such person and his agreeing to pay the actual costs thereof, shall raise or remove any and all of the said wires or cables which may obstruct the moving of such building so as to allow the unobstructed passage of the same; and in the case of the failure of the said grantee to comply with the terms of this section, the superintendent of streets or other proper officer of the said City, shall be, and is hereby, authorized to remove said wires at the expense of the grantee. Neither the City nor any of its employees shall be liable for the consequence of any act done in connection with the moving of said building or rearrangement of wires or for the cost of rearranging the wires.

Section 8. CITY NON-LIABILITY. In case it shall be necessary to cut or remove any of the said wires, cables or other appurtenances or equipment of the said grantee in order to get fire ladders or othe apparatus to a building during a city conflagration or emergency, the said City shall not be liable for any damage done to such wires, cables, conductors or equipment, provided, however, that the City shall hold the grantee harmless from any injury or damage that results from the cutting or removing of grantee's wires, cables, conductors or equipment.

Section 9. INDEMNIFICATION and INSURANCE. Grantee shall idemnify and save the City free and harmless from any and all liability, loss, cost, damage or expense from accident or damage, either to itself or to persons or property of others which may occur by reason of the exercise of the rights and privileges herein granted; and shall, for the purpose of carrying out the provisions of this section, and prior to commencing construction of any kind, have in full force and effect, and file evidence thereto with the City Recorder, a good and sufficient policy (or policies) covering bodily injury with limits of \$300,000 personal injury each person, \$500,000 personal injury each accident and property damage with limits of \$300,000 each accident and \$500,000 aggregate with said policy (or policies) to be executed by an insurance company (or companies) authorized and qualified to do business in the State of Oregon and conditioned to indemnify and save harmless the City from and against any and all claims, actions, suits, liability loss, cost, expense or damage of any kind or description which may accrue to be suffered by the City or by anyone by reason of the erection, construction, reconstruction, relocation, replacing, readjustment, repair, maintenance or operation of the coaxial cable and appurtenances thereto.

Section 10. COMPENSATION. In consideration of the rights, privileges and franchise hereby granted, the Grantee shall pay to the City of Lebanon, from and after the date of this franchise and until the expiration thereof, an amount equal to the hereinafter set forth percentage. Such payment shall be due not later than 45 days following the end of each calendar quarter, to-wit:

Three percent (3%) of the gross income of the grantee during the term of this franchise.

This quarterly payment shall be based on the gross income received during the previous calendar quarter. Gross income shall mean all monthly service fees actually collected from cable subscribers within the quarter by the Grantee for providing basic cable to cable subscribers in the franchise area. There shall not be included in gross income those sums received by Grantee for installation, construction or connection work, nor shall such term include any taxes on services furnished by the Grantee which are imposed directly on any subscriber or user by the state, city or other governmental unit and collected by the Grantee on behalf of said governmental unit. All payments made hereunder by the Grantee to the City shall be offset credited against any other license, or excise or privilege taxes imposed by the City against the Grantee. Additionally copyright fees imposed by the Federal Government on the Grantee shall be offset credited against the fee paid to the City.

The Grantee shall keep proper books of account and records covering the business, customers, and financial transactions of the company, which shall at all reasonable times be available to and open to inspection by the City or its agents for all purposes pertinent to the matters covered in this franchise.

Section 11. ACCEPTANCE. Grantee shall, within thirty days after the effective date of this Ordinance, file with the City Recorder written acceptance of this franchise and the terms imposed.

Section 12. RATES. Said Grantee shall have the right to charge and collect reasonable compensation from all persons and corporations to whom said electronic transmission service shall be furnished (including installation charges), subject to any rules and regulations of legally constituted regulatory bodies of the County State, or Federal Government.

Section 13. STANDARDS AND SERVICE.

- (A) Grantee agrees to render a reasonably good quality picture and service to its customers, judged on the then current standards of the FCC. After the commencement of service and operation of the system, Grantee shall furnish the said service to every applicant in the city limits within 30 days after the making of application and tendering of the installation charge by said applicant; however, a reasonable additional allowance would be granted in cases of annexation creating remote connections.
- (B) To help ensure cable service in new development areas of the City, the Grantor will notify the Grantee within 30 days following subdivision requests. It shall be the requirement of a subdivision developer to make arrangements with the Grantee per the requirements of the Lebanon Subdivision Ordinance, Section 7.01(11).
- (C) The City shall notify the Grantee upon receiving a request for a building permit for any new development.
- (D) The Grantee's obligation to provide, maintain or operate cable service as detailed herein, shall be excused for any period during which such cable service is prevented or interrupted for any cause which is beyond the Grantee's reasonable ability to control.
- (E) It shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether

physically, electrically, acoustically, inductively or otherwise, with any part of the cable television system for the purpose of enabling such person, firm or corporation or third parties to receive or use any cable services without payment to the Grantee. It shall be a misdemeanor for any person without the consent of the Grantee, to willfully tamper with, remove or injure any property, equipment or part of the Cable Television system.

- (F) Nothing contained in this Section 13 shall be read to require the Grantee to extend its existing plant to areas where the density is less than sixty homes per strand mile of plant.

Section 14. DEFAULT AND FOREFEITURE. The Grantee shall at all times fully and faithfully perform all the terms, provisions, and conditions of this franchise and grant and furnish efficient service hereunder and maintain its property in good order and repair throughout the entire term thereof, and upon any material default by the Grantee or upon the failure of the Grantee to comply with any of the material rules, regulations, orders of the City, and the continuance of the default or failure for a period of thirty days following written notice from the City detailing the specific nature of the alleged default or failures, the City may cancel, terminate and forfeit this grant and franchise and all other rights of the Grantee hereunder.

Section 15. FREE SERVICE. The Grantee shall furnish without charge to the City, at a price designated (within the corporate limits of the City) by the City, one (1) outlet that is equivalent to the service the Grantee shall be furnishing to private residences.

Section 16. NON-ASSIGNABLE. The rights, privileges and franchise herein granted shall not be sublet or assigned without the consent of the City of Lebanon expressed by Resolution or Ordinance duly passed, such consent shall not be unreasonably withheld; provided, however, that such consent is not required when

transferred, sold or assigned to another entity controlling, controlled by or under common control with the Grantee, and provided further that no such consent shall be required for a transfer in trust, by mortgage, or by other hypothecation, in whole or in part, or to assign rights in the cable television system to secure indebtedness.

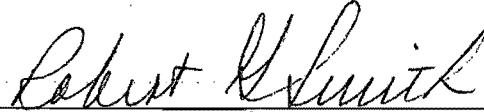
Section 17. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof. If the FCC, or any federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of this ordinance, then to the extent such jurisdiction shall pre-empt or preclude the exercise of like jurisdiction by the City, the jurisdiction by the City shall cease and no longer exist.

Section 18. In the case of any emergency or disaster, the Grantee shall, upon request of the City, make available its facilities for the City to provide emergency information and instructions during the emergency or disaster period. The City shall hold the Grantee, its agents, employees, officers, and assigns hereunder harmless from any claims arising out of the emergency use of its facilities by the City.

Section 19. EASEMENTS. Any easement for such use which has already been granted to a telephone or other utility company shall to the extent possible, be interpreted so as to grant the Grantee the same rights and privileges as have been granted to the telephone or other utility company. In such easements, the words "telephone" or "telephone company", "public utility" and the like shall be interpreted to include the Grantee, to the extent possible.


Section 20. PUBLIC ACCESS. Subject to the requirements of applicable federal statutes and regulations, Grantee will provide a public access channel or reasonable public access time on an existing channel, in the basic cable tier.

Passed by the Council by a vote of 6 for and 0 against and approved by the Mayor this 22nd of January, 1986.



Mayor

ATTEST:



City Administrator