

AGENDA
ADJOURNED CITY COUNCIL MEETING
DECEMBER 16, 1981
Council Chambers
7:30 P.M.

- I. CALL MEETING TO ORDER
- II. ROLL CALL
- III. DISCUSSION AND POSSIBLE AWARDED OF CABLE TV FRANCHISE
- IV. WAIVING OF COMPETITIVE BIDS ON WELLS #2 and #5.
- V. ADJOURN

MEMO

TO: City Council

DATE: December 15, 1981

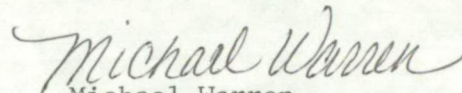
FROM: City Administrator

SUBJECT: Cable Television

At the City Council meeting on Wednesday, December 16, 1981 our Consultant and Attorney will report on the documents that have been negotiated per Council direction for the past few months.

At the Ordinance Committee meetings last week and the beginning of this week, the Ordinance Committee reviewed the proposed documents and through some minor corrections found them to be in order. Consequently, the unanimous recommendation of the committee was to accept the proposals in its present form.

I would suggest that at tonight's City Council meeting the Consultant and Attorney discuss paragraph by paragraph the proposal for a more indepth explanation into the reasons behind some of the decisions that were reached in the negotiations. After that is done, both Dundee and Newberg City Councils, I would presume, would discuss in more general terms the proposal, the franchise, the companies, etc. At that point, the decision would be to award the franchise to Liberty Cable Company or to begin the negotiation process with Harmon and Company.



Michael Warren
City Administrator

MW/bjm

MEMO

TO: MIKE WARREN

DATE: December 14, 1981

FROM: BOB SANDERS *BLS*

SUBJECT: Waiving competitive bidding for repair work on Well No. 5

As I stated in my December 10, 1981 memo to you, Well No. 5 needs some extensive repair work.

We have received a bid of \$4,715 from the Aquatic Pump and Tool Co. of Salem to do the repair work in conjunction with the work they will be doing on Well No. 2.

The work needed on Well No. 5 is very specialized and this company is quite capable of doing the necessary work.

Due to the cost saving associated with doing this work in conjunction with other work the contractor will perform for the City, and the specialty nature of the work, it is therefore recommended that competitive bids be waived and that the City enter into an agreement with Aquatic Pump and Tool Co. to perform the necessary repair work on Well No. 5.

16th MB

MEMO

TO: City Council

DATE: December 14, 1981

FROM: City Administrator

SUBJECT: Setting New Pump in Well #2 and Pulling Pump in Well #5

Recently we have received several informal bids from pump companies for setting our new Byron Jackson pump for well #2. Our experience with well drillers has not been too positive and the Public Works Director has looked into this matter to be sure that we have work done properly.

The pump in Well #5 was installed last year under Robert E. Meyer's supervision and has been causing us some problems. The pump has been drawing air due to the water table lowering six feet and has resulted in a reduction of the operating volume we can pump from the aquifer. Our consultant, Robert E. Meyers, has stated that it is not a construction problem or a design problem. During development of the well, the driller pulled the well screen up six feet by accident which resulted in some corrective work on the driller's part. The current assumption is that the pump should be pulled, any iron incrustation cleaned off the well screen, and the tail pipe lowered further down in to the aquifer.

We have received an informal quote from Aquatic Pump and Tool to do the necessary work on this well for \$4,715. This bid was the only one received on #5.

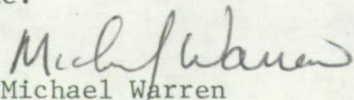
There were two quotes received on well #2. One was from the same company for \$1,682 and the other one was from Mike Waldroop Well Drilling for \$1,080.

Since the work for well #2 is under \$2,000 there is no need to advertise. However, we would need to waive competitive bidding on the work for Well #5 along with the reappropriation of funds.

The Public Works Director has requested reappropriationment in his supplemental budget to spend the \$6,500 in the current budget line item 7-430.610.

The Public Works Director prefers to have the company from Salem, which does all of Byron Jackson's pump installation, also do our installation. He feels that the difference in the bids for well #2 is not sufficient enough to go with the low bid. The experiences that we have had in the past seems to warrant this.

Recommendation Action: Waive competitive bidding on both of the informal bids and award bid for work on Well #2 and Well #5 to Aquatic Pump and Tool Inc.


Michael Warren
City Administrator

MW/bjm

cc: Public Works Director

Tape

MEMO

TO: MIKE WARREN

DATE: December 10, 1981

FROM: BOB SANDERS *BS*

SUBJECT: Setting new pump in Well No. 2 and pulling pump in Well No. 5.

We have received several informal bids from pump companies for setting our new Byron Jackson pump for Well No. 2, however, I would prefer to have the company from Salem who does all of Byron Jackson's pump installation also do our installation. Well drillers aren't the most reliable people, so I would prefer to have a company the manufacturer recommends, even though it costs more money.

The two quotations were \$1,080 from Mike Waldroop Well Drilling and \$1,682 from Aquatic Pump and Tool. The latter bid is the company I prefer to have do the work.

(No 5)

The pump^A installed last year by Jack Kennedy Contracting under Robert E. Meyer's supervision has been causing us some problems.

The pump has been drawing air due to the water table lowering 6' and has resulted in a reduction of the operating volume we can pump from the aquifer.

Robert E. Meyer has stated that it is not a construction problem nor a design problem!

During development of the well the driller pulled the well screen up 6' by accident which resulted in some corrective work on the driller's part.

The current assumption is that the pump should be pulled, any iron incrustation cleaned off the well screen, and the tail pipe lowered further down into the aquifer.

I have just received a quotation from Aquatic Pump and Tool to do the necessary work on Well No. 5. Their quotation is \$4,715.

I have requested a reappropriation in my supplemental budget to spend the \$6,500 in the current budget (line item 7-430.610) for modification to No. 2 high service pump on the necessary work to Well No. 5.

After all this background, my point is I need to do the pump work as soon as possible and the quote for doing the work on Well No. 5 is based on doing it at the same time the company does the work on Well No. 2.

Since the work for Well No. 2 is under \$2,000 we don't need to advertise, however we would need to waive competitive bidding on the work for Well No. 5 along with the reappropriation of funds.

The weather is deteriorating, making it harder to get into the well field with heavy equipment. The work also needs to be done prior to the spring water demand, so the timing is important.

Please advise how to procede.

Bid-Estimate For Well ~~STATEMENT~~

MIKE WALDROOP WELL DRILLING

4982 Regal Drive NE
SALEM, OREGON 97301

Phone 399-8923

DATE	July 8, 1981
NUMBER	

City of Newberg
(Estimate for rehabilitation
of well #2)

TERMS:

PLEASE DETACH AND RETURN WITH YOUR REMITTANCE

\$ _____

DATE	CHARGES AND CREDITS	BALANCE
	BALANCE FORWARD	
-	Mobilization + Demob. of drill equipment	\$300.00
-	Swab + bail well initially to dislodge loose material; introduce Liquid Bacterial Acid (LBA) + install small submersible for circulation w/ necessary equipment for intermittent run of pump during set time for thorough mixing + formation cleaning. Estimate 5 hrs @ \$35/hr.	175.00
-	rental for sub.pump + equipment	325.00
-	Swab well + bail dissolved incrustation + corrosion Estimate 8 hrs @ \$35/hr.	280.00
	Estimated total for job.	\$1080.00

MIKE WALDROOP WELL DRILLING

Thank You

PAY LAST AMOUNT
IN THIS COLUMN



QUOTATION

NO. _____
DATE 12-3-81
BY Frich Lietz/ke

[illegible]

THIS QUOTATION IS SUBJECT TO THE FOLLOWING CONDITIONS: (a) errors are subject to correction (b) all prices subject to change without notice. (c) prices fob point of origin unless specified otherwise. (d) quotations are made for immediated acceptance unless stated otherwise. (e) all orders are subject to approval by our credit dept. (f) Claims for corrections, reductions or shortage must be made within 10 days after receipt of goods. (g) if goods are received in damaged condition, your recourse is against the transportation company only.

A MEETING OF THE
ORDINANCE/LEGISLATIVE COMMITTEE
Cable Television
Special Meeting

Monday, December 14, 1981

7:30 P.M.

Council Chambers

The meeting was called to order at 7:30 P.M. by Chairman Tom Tucker.

Present: Maybelle DeMay
Alan Halstead
Richard Rementerieria
Tom Tucker
Neil Cohen

Staff Present: Terry Mahr
George L. Page
Richard Faus

Public Present: Elvern Hall, Mayor
Harold Grobey, Councilman
Donald Tykeson
William Rutherford
Robert Corrao
Sylvia Sycamore
Michael Kruger
Don Tarlow
Joe Young
3 other members of the public

Chairman Tucker called for any questions on the second draft of the ordinance and resolutions of December 11, 1981 which followed committee activity on December 9th. Mahr proceeded to outline the alterations in the original draft since the last meeting of the committee. He highlighted changes in the bonding requirements and amounts, section 17(B) of the ordinance. Mahr further indicated that a new subsection E was added to the resolution on rates because of public concern expressed by Mr. Pennock at the last meeting over the waiver of installation fees during the initial provision of services. The new subsection E was added providing the waiver of these fees during the first 30 days services are available into an area. This was part of Liberty's existing policy but it was made a part of the requirements of the franchise.

Further, in the resolution dealing with standards tier three was added to the specifications of 54 channel converters. Cohen confirmed that Dundee would not be using emergency clause on its ordinance and thus the time frames for construction compliance would not change from city to city.

Chairman Tucker called on Page for further clarification of the changes. Halstead asked Page if there was a possibility in this franchise that the franchise holder could sublease a channel to someone else. Halstead indicated that this had been a problem at Rockford, Illinois where a channel was leased to a computer company for a rate of \$5.00 per month and only the \$5.00 was computed in terms of calculating the franchise fee. Page indicated this would not be a problem with this franchise because of the statements in the franchise that the system would be used only for cable television purposes.

Chairman Tucker then opened the proceedings for public comment. Harold Grobey, Councilman, from the audience, indicated that during public hearings in which Liberty was selected, he raised the question of potential sale of the system and

asked whether Liberty would be willing to sell the system at depreciated book value should there be a change in ownership. He notes that section 3, paragraph F of the ordinance has changed from depreciated book value to fair market value, and asked why this change was made in negotiations. Page indicated that this was the question that was posed. He further indicated that the purpose of posing the question and the purpose of the provision was to insure that the same management team remained with the Liberty operation. The question was also posed to attempt to flush out the intent of either Liberty or Harmon to sell their system in the near future. Page indicated he felt that fair market value without provision for good will was a fair standard and that depreciated book value might be too harsh a standard. Grobey indicated he felt that this was a relaxation of the agreement made at the time of the hearing in moving from the book value standard to fair market value. Page indicated that yes it had been relaxed and because the depreciated book value standard was quite severe.

Tarlow, from audience indicating he represented Harmon and Company, indicated he would review certain points of the franchise and then introduce Mike Kruger of Harmon and Company for further comment. Tarlow indicated there was a loop hole in section 3(g) of the ordinance, indicating that if the intent was to protect against changes of ownership including merger that this provision should be broadened. Tarlow further indicated that on page 3 of the ordinance 60 days in which to purchase appeared to be too short a time should there be an exercise of the merger provisions. Tarlow commented with regard to section 18, the merger provisions of the ordinance, that the language "for reasons related to the merger agreement" is too vague and could lead to litigation and that this provision should be modified to either spell out specific reasons for termination or not require that any reasons be given. Tarlow further commented that 30 days might not be long enough for a proper investigation of the circumstances of the merger agreement. Tarlow commented that paragraph 2 of section 18 regarding termination appeared not to provide enough time for payment. He also indicated that the word agreement should probably be changed to section to avoid having this provision relate back to other termination provisions in the ordinance. Tarlow turned to the rates resolution, page 3, section G, and indicated that if the rate guarantee only went from the time franchise was granted, in effect, you would only have 2 years and 4 months of rate guarantee by the time system was activated and people could take advantage of the guarantee. Tarlow pointed out on page 4, section 4 that there was a typographical error that Grantee should be changed to Grantor. With regard to the operating standards resolution, Tarlow indicated page 4, subsection E with regard to the consumer shopping guide, he recommended that instead of 50% from local area and 50% from Portland area that it be all local area in order to promote local merchants. Tarlow indicated on page 6, subsection H of the resolution with regard to the laying of additional B cable when needed the phrase the City will not apply "unreasonable criteria" was an invitation to a lawsuit as it allows them to stall on the basis of what criteria are reasonable or not. He indicated that Harmon rates were figured assuming any installation of a B cable whereas this provision allows Liberty in the future to install the B cable and increase its rates because of the cost of this installation.

Chairman Tucker asked Page to comment on the length of the rate guarantee. Page indicated that length of the rate guarantee was valued but not for a full three year period. Page indicated that Harmon did not guarantee its rates. With regard to the shopping guide, 50% local coverage was only a minimum required. This allowed coverage from other areas on the possibility the consumers might want a comparison with Portland or other areas. The reasonableness criteria with regard to the B cable might cause problems but it was clear that there was no need to provide a second B cable at this time.

DeMay asked why not eliminate that last sentence regarding "unreasonable criteria" as it did appear to be a very general standard. Tucker commented to Page that there was no intent in section 18 regarding merger to make this provision unworkable and the language should probably be checked. Mahr commented that there did appear to be some problem regarding the time frame in section 18 and that a payment in 90 days would be difficult to make. Mahr made a distinction between subsection G and the operation of section 18 as they did apply to different situations. Subsection G gives a one year time limitation. The section 18 time frame is shorter, primarily based on the assumption that the system would only be partially constructed and the costs of buyout would be minimal. Halstead commented that if the system was only under construction for 2 months and only 10% had been completed the 90 day time frame for buyout would probably be alright but if the system were more built out than 10% the 90 day time limit on buyout would be very difficult to meet. Mahr commented that if this were changed it would have to be something Liberty agreed to.

DeMay indicated that they felt some insecurity with regard to management but that what we were interested in was performance of all requirements of the agreement, that management cannot be agreed so all we can do is construct an agreement where nonperformance can be addressed and that what we are after is a good functioning system. Halstead commented that the franchise must work well for all. DeMay commented that we cannot guarantee the future of management. Tucker commented that it was unlikely such a provision would be enforceable.

Michael Kruger for Harmon and Company was then called upon to comment. Kruger suggested that with regard to the merger provisions that the words "change in working control" be added to make this provision more generally apply to situations such as mergers. He also commented that the sale of the franchise after termination depreciated book value would be preferable to fair market value. He commented that the 60 day time frame under the nonrenewable termination provisions were extremely brief and indicated that if the center was original cost plus inflation you would in a couple of years have the full market value including good will as your standard. Kruger commented that with regard to section 4 of the ordinance involving penalties there should be some provision for written notice of violation prior to the imposition of penalties. With regard to section 8, Kruger did not feel this spelled out the requirement of 100% backup power for all systems. In section 9 he suggested that there should be added to this under the extension policy a measurement from the distribution cable, not just the trunk line as service might be readily available through the distribution cable even though the trunk line is quite far away. He indicated that normally you can get good signal on the distribution line even though it was as much as 2,700 feet away from the trunk line. Kruger also indicated that the words "homes past" should be used instead of "potential subscriber" in determining line extension policy. Kruger also indicated that there should be a refund policy for persons who paid a premium from line extension and then had a new person move in quite soon who could take advantage of the line extension without having paid for it. Kruger commented that section 12(b)3 should add to answering service the words or system staff so as not to preclude actual staffing for repairs as opposed to using just an answering service. With regard to section 13, Kruger pointed out that program staffing for local programming was not defined and should be more well defined. Kruger further pointed out with regard to the resolution on standards, subsection F that the word "may" with regard to the 54 channel converters should be changed to "shall".

Chairman Tucker asked Page and Mahr to respond to these concerns. Page commented that with regard to depreciated book value, the question asked at the council meeting was used specifically for the purpose of trying to flush out the existence of a potential sale. Page indicated that fair market value is a fair standard, i.e. fair

market value or construction cost without provision for good will. Page indicated that the 8 month requirement for build out was clear and thus, the imposition of penalties for failure to meet this requirement would be easier. Page indicated that with regard to power generation sources, the intent of this provision was to have full emergency backup. Page indicated that with regard to line extension policies this was a good point and the statement that distribution was available for as much as 2,700 feet away from the trunk line was correct. With regard to the "homes past" definition, he feels that potential customers is close enough and his real intention had been to use potential customers not just numbers of homes present which may not be subscribers at all. Page indicated that his example of the formula in section 9, paragraph 2, should be reworked to use the 35 home figure. Page further indicated that the refund policy on paid for line extensions should also be worked into the ordinance. Page further indicated that the converter provision should probably be changed from may to shall have 54 channel converters. Page indicated that requiring a staff of 2 persons for local origination would probably be not correct. This should be determined based on the need. Chairman Tucker asked Page if the merger provision should be reworked. Chairman Tucker and Member Halstead called upon Liberty for its comments regarding the proposed changes and criticism.

Bill Rutherford, attorney for Liberty Communications, Inc. provided their comments on these matters as follows: With regard to section 3(G) and section 18 of the ordinance, the intention of the Council was to avoid trading in franchises. Harmon indicated it would not agree to such a provision. Liberty indicated it would. Rutherford indicated that these sections were accepted by Liberty as presented by the negotiating committee and were not changed by the negotiations. Rutherford further indicated that particularly with regard to section 18, some of the clarifications in language and suggestions really don't move the agreement toward greater clarity. With regard to "working control" this does not really make this provision any clearer as the definitions of working control can differ. As an example under securities and exchange commission regulations, 10% ownership might constitute substantial or working control. With regard to section 18, the time frames were negotiated and they originally began at 10 days and 30 days and these have been increased to 30 days and 90 days so there has been great improvement on Liberty's part with regard to this. With regard to the 54 channel converter requirement for tier three this was agreed to after a great deal of negotiations. With regard to the 60 day time frames, this is really not too long or too short. Negotiations of this franchise took 23 days. In terms of definition of completion, this was hammered out in negotiations over considerable time as regards to section B(2). With regard to 54 channel converters, this was accepted for tier three subscribers. Tier three subscribers would be the only subscribers that would need the converters.

In general there were few substantial changes made to the City's draft of this ordinance and resolutions. This is a tough agreement but Liberty is able to meet its standards and Liberty would like to sign this and move on to the building process.

DeMay asked for Liberty's position on the 50% shopping guide. Sycamore answered for Liberty that it was their intention that the shopping guide be 100% local and that they took the 50% local requirement as being a minimum which they expected to exceed. Sycamore further indicated that the cable committee would probably provide some direction for the shopping guide. Cohen commented that it would probably be a good idea to have McMinnville ads involved as well and felt that the 50% minimum requirement made the shopping guide more flexible and perhaps useful. Corrao indicated for Liberty that they preferred the potential subscriber definition to home past definition and that they had no problem with the refund policy for paid for line extensions as long as sometime it was based on when the refund would be available. Page indicated this particular problem regarding time limits was unlikely to occur within the city limits very much. Grobey from the audience questioned the

lost or theft of converters policy and questioned whether subscribers should be liable for stolen converters. Cohen indicated that homeowners insurance policies should cover this and Page indicated the purpose of the policy was to prevent friends from giving friends converters. Page further reiterated that section 3(G) was intended to prevent franchise from being traded on the street speculatively. Grobey indicated he had some concerns that we had regressed in our bargaining from the depreciated book value which in essence was agreed to at the Council hearing and that Council should give careful consideration to retaining the depreciated book value standard.

Tarlow indicated that Harmon had a two year refund policy on line extension as opposed to one year. Tarlow further indicated he still had concerns about section 3(f) and whether it applies to paragraph 4, section 9. Mahr indicated that Tarlow was right, there appeared to be an oversight in this provision with regard to time frames, however, it was felt at the time that in a nonrenewal or termination situation we would be protected time wise by being able to anticipate such a buyout as circumstances resulting in nonrenewal or termination would likely be developing over a long period. Halstead suggested perhaps the problem could be solved by just including in paragraph G a reference to paragraph F.

Chairman Tucker and members called for a recess and directed staff members to discuss these changes with Liberty to determine what alterations could be made. hearing was recessed for 10 minutes at 9:15 p.n. Chairman Tucker called the meeting back to order at 9:33 P.M. Chairman Tucker asked Mahr to indicated what points that had been brought up by speakers had been resolved by staff and Liberty. Mahr reviewed the changes point by point. Mahr indicated on page 2 of the ordinance that the evaluation of fair market value was left the way it was feeling it should be a Council decision on whether to use depreciated book value. On page 3 Mahr indicated there would be changes in the buyout provisions to coordinate them. Tarlow was concerned with regard to the timing of giving intent to purchase if fair market value had to be determined by arbitration prior to giving notice of intent, feeling 60 days was not adequate. Their suggestion that this time frame be changed from 60 days to 60 days after fair market value had been determined by arbitration. Grobey commented that all of these problems would disappear if depreciated book value was used as it is a matter of record. Chairman Tucker directed that these provisions be reworked. On page 7 of the ordinance regarding section 9, line extension policy, Mahr indicated that essentially the Harmon policy would be adopted, using a two year time limitation for refunds. Page 8 of the ordinance, Mahr indicated would be redone to include answering service and/or staff. Mahr indicated that on page 13, section 8 of the ordinance, paragraph 2, that agreement would be changed to section to eliminate this issue. With regard to section 8 of the ordinance it was felt that the wording was alright as it is and it did require full backup power. Section 13 regarding local origination of staff, it was felt that this should be left as it is and not requiring specific numbers of staff. With regard to the rate resolution there were no changes except typographical ones. With regard to the standards of operation resolution on page 6, subsection F, change the may to shall with regard to converters. Mahr indicated that he wanted to be sure that everyone understood that the 54 channel converter was required only for tier three subscribers and not for lower tier subscribers. Chairman Tucker directed Mahr and Page to discuss revisions of the buyout provisions and clarify them.

Chairman Tucker then closed the public hearing and called for committee deliberations and asked whether the Committee wanted to accept the ordinances and resolutions with the additions discussed. Motion: DeMay-Rementeria move to reword and make additions and corrections to the ordinance and resolutions per the recommendations of the Committee. Carried unanimously.

Motion: Rementeria-Halstead that the Committee recommend the ordinances and resolutions to the Council as corrected. Carried unanimously. Cohen indicated he would recommend the ordinance and resolutions to his council.

The meeting was then adjourned by Chairman Tucker at 9:57 P.M.

Dec. 16, 1981
Draft
Check for Type 0-5

ORDINANCE NO. 2074

AN ORDINANCE OF THE CITY OF NEWBERG GRANTING A NON-EXCLUSIVE FRANCHISE TO LIBERTY COMMUNICATIONS, INC., FOR THE INSTALLATION, CONSTRUCTION, OPERATION AND REGULATION OF A CABLE TELEVISION SYSTEM FOR NEWBERG.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Newberg Cable Television Franchise Ordinance with Liberty Communications, Inc."

SECTION 2. Grant of Franchise. This Ordinance is enacted pursuant to the authority provided in, and all the provisions, terms and conditions of Ordinance No. 2046, titled Newberg Cable Communications Ordinance, passed and adopted on February 26, 1981, copies of which are on file in the office of the City Recorder. The franchise herein granted shall include the provision of said Ordinance the Request for CATV Proposal dated March 12 and 13, 1981, the franchise application dated May 29, 1981 by Liberty Communications, Inc., dba Liberty Cable Television, to the City as set forth in their letter to the City's residents September 28, 1981; the City of Newberg Resolution setting rates and charges; and the City of Newberg Resolution establishing rules and regulations and standards of operation, all of which are incorporated herein by reference. The franchise requested from the City by Liberty Communications, Inc., to install, construct and operate a cable television system is hereby granted as herein provided.

SECTION 3. Franchise General Terms and Conditions. Liberty Communications, Inc., dba Liberty Cable Television, hereinafter referred to as Grantee, is hereby granted a non-exclusive franchise for a period of fifteen (15) years from the date of acceptance of this franchise on the terms and conditions hereinafter set forth.

(a) The Franchise herein granted shall be subject to all or the terms and conditions of this Ordinance and other documents comprising the franchise as set forth in Section 2 herein above. In the event of any conflict between the provisions of this Ordinance and documents comprising the franchise as set forth in Section 2, the provisions of this Ordinance will prevail.

(b) Grantee shall build, construct and operate a cable television system to serve the entire City of Newberg in full compliance and without deviation of each and every stipulation and proposal set forth herein.

(c) Grantee shall lease property, buildings and office space required for system operation, rather than purchase such as proposed in its franchise application, except as otherwise approved by the City Council. By acceptance of franchise award, Grantee implicitly agrees, that prior to lease of any property, buildings and/or office space, to first enter negotiations with the City in good faith for lease of City property, buildings and/or office space mutually deemed suitable for use by Grantee in franchise operation, with the understanding Grantee shall fund any renovation or remodeling necessary to accommodate Grantee's operations. If lease of City property, buildings and/or office space proves impractical, then Grantee shall make every reasonable effort to locate its facilities within the downtown area of the City.

(d) Grantee may use signal from Grantor's franchise for other franchises but such taking shall not adversely affect Grantor's rates.

(e) The CATV System herein franchised shall be used and granted solely and exclusively for the purpose expressly authorized by Ordinance of the City of Newberg and for no other purpose whatsoever.

(f) In the event of non-renewal or termination of this franchise, the City may at its sole option purchase Grantee's system at a cost not to exceed its then fair market value, with a reduction for any uncompensated damages.

If fair market value cannot be agreed upon by the parties, it shall be determined by a three-member Arbitration Panel, one member to be selected by the City Council, one by the Franchisee, and the third member by the two members first named. The parties shall divide expenses of arbitration evenly among themselves.

In the event the City does not give notice to Grantee of its intent to purchase said franchise within sixty (60) days from the arbitration decision or from the time of non-renewal or termination, whichever is the later, the Grantee may sell the system on similar terms to a successor franchisee or third party. In the event the City does give notice of intent, the purchase is to be paid for in cash not later than one (1) year from the date of such notice.

(g) In the event of divestiture or other corporate action resulting in change of the Newberg System ownership within seven years of franchise award, the City reserves the right to purchase the system at the fair market value or original construction cost with adjustment for inflation of the system, whichever is the lesser, without allowance for franchise privilege, goodwill or other implicit value associated with franchise award.

Grantee shall provide the City's Director of Public Works detailed listings of actual construction costs for verification. Only those construction costs submitted and verified in accordance with the provisions of this paragraph will be utilized in the determination of original construction cost. Grantee shall initially provide detailed actual construction costs within

sixty (60) days of construction completion as defined in Section 6 (a) herein. The costs of follow-on new City authorized system construction shall likewise be submitted to the Director of Public Works within sixty days of construction completion for verification, if such construction totals in excess of TEN THOUSAND DOLLARS (\$10,000.00). Follow-on new construction efforts individually totalling less than TEN THOUSAND DOLLARS (\$10,000.00) may be submitted to the Director of Public Works for verification within sixty (60) days of the end of Grantee's fiscal year for verification. All verification shall be concluded within ^{sixty} (60) days of submission.

In the event the right to purchase the franchise shall arise by reason of this paragraph, then the city shall give notice of their intent to purchase by resolution taken at the next regular city council meeting. Such purchase is to be paid for in cash not later than one (1) year from the date of such meeting.

In the event the City elects to exercise its right to purchase as set forth in this subsection, and the City of Dundee elects to not exercise its like-type right to purchase, the City agrees to purchase the Dundee portion of Grantee's system as well, under the same terms and conditions as set forth in this subsection. Further, the City shall provide Dundee subscribers service under the same general terms and conditions as it provides Newberg subscribers.

SECTION 4. Franchise Pre-operative Requirements. The franchise herein granted shall become operative when the following requirements have been fully complied with by Grantee, but not sooner than the effective date of this Ordinance. The City, at its sole option, may rescind the Franchise Award without liability to Grantee, if all the following pre-operative requirements are not met within sixty (60) days from the effective date of this Ordinance. The Grantee must:

(a) File with the City Recorder not later than the tenth (10th) day from the effective date of this Ordinance, as defined in Section 20, in a form satisfactory to the City Attorney, an executed written agreement of the franchise herein granted accepting the franchise granted herein by the City by the terms of which Grantee agrees to comply with and do all things required by it to be done by the provisions of this Ordinance, the documents comprising this franchise as set forth in Section 2, and by which Grantee further agrees to the payment of liquidated damages, as set forth in Sections 6 and 17 herein, to City in the event of Grantee's failure to fulfill its obligations as set forth in this Ordinance, and the other documents comprising this franchise.

(b) File with the City Recorder the bond required in Section 17 (b) of the Ordinance and insurance policies as required by Section 24 of Ordinance 2046.

(c) File with the City Recorder the ^{\$50,000} security deposit required in Section 17 (a) herein.

(d) File with the City Recorder within ten (10) days of

bill
franchise award an agreement to pay the City within thirty (30) days of receipt of billing the costs of consultants, advertising, and publication expenses incurred in connection with the granting of the franchise. Copies of the actual billings will be submitted to Grantee upon request for same.

(e) File with the City Administrator a preliminary construction and development plan with sixty (60) days from the effective date of this Ordinance. Such plan will be subject to review by the City Public Works Officer. If comments are not received by Grantee within thirty (30) days, the plan shall be deemed approved as submitted. The construction plan shall include but shall not be limited to, the following items:

(1) A preliminary engineering study or plan, as appropriate, shall be submitted for the planned location(s) of the headend, satellite receiver dishes, antenna tower (if required), and local video production studio.

(2) Preliminary local video production studio design layout and studio capital budget.

(3) Copies of orders or evidence of dedicated in-stock cable, electronics, and associated parts and equipment to 50% of that necessary to fully construct and equip the Newberg Cable System, including all interconnects, the studio, and portable and mobile video production equipment.

(4) Copies of all applications for construction agreements, utility pole contracts, and contracts for studio construction.

(f) File with the City Administrator an agreement to pursue negotiations with the Newberg and Dundee Joint Community Cable Television Advisory Board, if and when the Board is chartered by Council. The negotiations shall formalize Grantee's obligations in support of the Board's activities in administration of all activities under the franchise. At the direction of the Newberg and Dundee City Councils, Grantee shall fund the Board as a non-profit activity, with a sum of \$5,000 per year in 1981 dollars, i.e., increased annually with the increases in Portland Area Consumer Price Index. This annual sum to be used for development of local programming. It would be expected that Grantee would be an active participant in the development and operation of any such Board.

(g) File with the City Administrator an agreement to promote and develop within the City a local origination capability, including the employment of additional qualified production staff and the provision of additional required production equipment, when required by the City. The City shall not make unreasonable demands, shall substantiate requests regarding additional staff and equipment, and shall ensure Grantee representation at all meetings where such requirement is developed.

SECTION 5. Permits, Licenses and Authorizations.

(a) Immediately upon acceptance of the franchise, Grantee shall proceed with due diligence to obtain all necessary permits, licenses and authorization per Section 23(a), of Ordinance No. 2046.

(b) A Grantee shall have authority to trim the trees upon and overhanging the public streets so as to prevent the branches of such trees from coming in contact with the wires and cables or the Grantee, except that, at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

SECTION 6. Construction Schedule.

(a) In addition to the provisions of Subsections (a) through (d) of Section 23, of Ordinance No. 2046, the Grantee shall fully complete the proposed system and facilities construction, including all proposed interconnects, within eight months of the effective date of this Ordinance. The complete proposed system and all facilities shall be fully activated and service commenced within one (1) month of completion of construction.

(b) Subject to Subsection (5) below, Grantor may, at its sole option, apply any of the following penalties in connection with delays in system construction. Prior to Grantee imposing any of the following penalties, Grantor shall notify Grantee in writing within 30 days of Grantor's discovery of the violation alleged and of the penalty to be imposed:

(1) Impose a penalty of up to \$250.00 a day for each strand mile of cable not completed within fifteen (15) days of the scheduled completion date.

(2) Impose penalty of up to \$1,000.00 a day for each day in excess of thirty (30) days that any major facility proposed by applicant is not completed or activated as scheduled. For the purpose of this section, major facilities shall include completion of physical plant, signal processing headend, satellite earth stations, microwave interconnects, community access/origination studio and program library, mobile E.N.G. van, and local office and system maintenance facilities.

(3) Forfeiture of performance bonds for delays exceeding four (4) months.

(4) Termination of the franchise for delays exceeding six (6) months.

(5) No penalty shall be imposed without a hearing before the Council or its so designated representative(s). No penalty shall be imposed for delays where the result or causes beyond the control and without fault or negligence of the Grantee as determined by Grantor. Grantee shall be entitled to an extension of time if construction is suspended or delayed by Grantor or where unusual weather, acts of God, extraordinary acts of third parties or other

circumstances delay progress and which are beyond the control of Grantee, provided that Grantee is not at fault, and is not negligent under the terms of this franchise ordinance. However, delay in obtaining pole attachments shall not delay commencement of underground construction. The degree of fault and/or negligence, and extension of time allowed shall be reasonably determined by Grantor.

The extension of time in any case shall not be less than the actual no fault/negligence delay experienced by Grantee. To the extent practicable, the City will assist the Grantee in resolving any difficulties in obtaining pole attachment permits, to the extent possible Grantor shall allow Grantee to use utility easements.

SECTION 7. Undergrounding of CATV Lines.

(a) In those areas and portions of the City where either the transmission and/or distribution facilities of the public utility providing telephone service, and those of the utility providing electric service, are underground or hereafter may be placed underground, or are to be placed underground by a builder, developer or subdivider as part of a development or subdivision, such that the facilities of both utilities are to be placed underground and no aerial pole lines remain, then the Grantee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground.

(b) In new developments or subdivisions the builder, developer or subdivider shall be responsible for the performance of all necessary trenching the backfilling of main line and service trenches, including furnishing of any imported backfill material required. Pre-wiring of new homes by builder while under construction shall be mandatory. Amplifiers and other active electronic equipment in the Grantee's transmission and distribution line may be in concrete boxes, vaults or pedestals on the surface of the ground. However, all passives for subscriber service taps will be in pedestals unless otherwise directed by the City. The Grantee will be responsible for the conduct of the engineering and labor to put the CATV conduit in the trench. The Grantee will be responsible for pulling in the cable, and providing the pedestal amplifiers, electronics, stub ends and drops to individual homes, following completion of 60% of the housing units of each construction phase, and within sixty (60) days after initial occupancy.

(c) In those areas and portions of the City heretofore designated by the City Council as Underground Utility Districts and where utility service facilities are currently located underground, the Grantee shall be responsible for the undergrounding of CATV facilities, including the performance of all necessary trenching and backfilling of main line and service trenches, and the furnishing of any imported backfill material required. Amplifiers and other active electronic equipment in the Grantee's transmission and distribution lines may be in concrete boxes, vaults or pedestals on the surface of the ground. However, all passives for subscriber service taps will be in pedestals unless otherwise directed by the City.

(d) Previously installed aerial cable shall be undergrounded by Grantee in concert, and on a cost-sharing basis, with utilities pursuant to the general ordinances of the City or applicable State law, or in the event such action shall be taken by all utilities on a voluntary basis.

(e) Underground cable will normally be installed under the pavement of the street or a minimum of 1 foot from the curb away from the street. Variations from this procedure must be approved by the Director or Public Works.

SECTION 8. Emergency Power. Emergency power sources shall be provided by the Grantee at the headend, processing hub, and other system locations as may be necessary to guarantee that in the event of a power failure on any part of the system, service will be maintained on the rest of the system.

SECTION 9. Line Extension. Grantee shall extend service into new subdivisions, developments and any areas newly annexed or incorporated into the City having thirty-five (35) or more aerial drop service, or forty-five (45) or more underground drop service, dwelling units per strand mile of plant for the normal installation fee. In those areas where the number of dwelling units per strand mile is less than thirty-five (45 underground), Grantee will provide cable service on a pro-rata sharing of the installation costs with the potential subscriber(s). Grantee will bear its pro-rata share of the then current mile or plant construction cost based on a multiple of the actual number of potential subscribers per mile divided by (35) or (45) as appropriate regarding aerial or underground service.

The remaining construction cost will be borne on a pro-rated basis by each cable television applicant committing to service within the extension area. Mileage will be measured from the nearest distribution line or preceeding trunk whichever is technically feasible.

The same line extension fee will be collected from all subsequent homes served off a given extension; the fee will be divided and refunded to all those who paid previously for a given extension. The refund provision shall expire two years after the date of first service.

SECTION 10. Standards of Operation. The standards governing operation of the cable television system adopted by the City Council by Resolution No. 81-919 is by this reference incorporated herein.

SECTION II. Customer Service Rules and Regulations. Customer service rules and regulations for the cable television system adopted by Resolution No. 81-919 are by this reference incorporated herein. The City reserves the right to further regulate the conduct of the Grantee in regard to the privacy and property rights of private citizens. Such regulations may include but are not limited to the security of all records maintained by the Grantee containing privacy sensitive information, personnel practices relating to such records and any

other matters related to privacy and individual rights.

SECTION 12. System Outage and Subscriber Complaint Service.

(a) The Grantee will maintain a Subscriber Complaint Service operated from Grantee's Newberg office, and qualified technicians will be permanent members of the Newberg staff.

(b) Routine handling of customer service requests will be the responsibility of the local staff as follows:

(1) A call involving loss of reception on all channels will be dispatched to the field immediately via two-way radio. If the loss of reception on all channels affects five (5) or more customers, at any time of day or night, repairs will be commenced immediately and pursued diligently. Total loss of reception involving less than five (5) customers will be corrected on the same day received except if reported after 2:PM; in which case, correction may be post-poned to the following day. The majority of all outages (total loss of reception on all channels) will be corrected in four (4) to eight (8) hours or less.

(2) The majority of calls involving degraded reception or single channel outage will be handled on the same business day if received prior to 2:PM. In all cases such service calls will be handled no later than the following day.

(3) Requests for repairs made after hours or on weekends shall be answered by an answering service or staff. Outage calls will be referred immediately to the standby technician for resolution in accordance with Subparagraph (1) above. Calls involving degraded service will be reported by the answering service the next day. The staff will call the customer to schedule a service call in accordance with Paragraph (2) above.

(4) Customers will be notified of the complaint procedure by inclusion of the following text on the Customer Work Order which is left with the customer:

"Request for repairs should be made to Liberty Cable Television by calling the local office at any time. Response will be made immediately or on the following day, depending on the severity of the complaint and other circumstances.

Subscribers who have so requested repairs but are dissatisfied with services rendered are requested to lodge a written complaint to the system office.

(c) Grantee will maintain a data base, or "log", listing date of consumer complaints, identifying the subscriber and describing the nature of the complaint, and when and what action was taken by the Grantee in response thereto; from the date when the system is first energized said record shall be kept

accessible at the Grantee's local office for a period of three (3) years, and shall be available for inspection during regular business hours, without further notice or demand by the City Administrator or any other duly authorized representative of the City.

(d) The Grantee will not be responsible for problems created by subscribers or for problems with subscriber-owned equipment. The subscriber must allow the service technicians access to the problem if located on the subscriber's property, or forfeit any refund due for service outage.

SECTION 13. Local Origination and Access.

(a) The Grantee shall provide and maintain on a permanent basis a Local Origination and Access Studio at an accessible centrally located position within the City of Newberg. Location of the studio to be approved by appropriate municipal authorities as required in Section 4 herein.

(b) The Grantee shall provide, install, maintain and replace as necessary on a permanent basis for Video Production Systems at the Local Origination and Access Studio as proposed in the Grantee's application for franchise. In addition to the audio-video origination/access equipment proposed therein, Grantee shall provide and maintain on a permanent basis at the Local Origination and Access Studio a film chain and portable colorized character generator with typewriter keyboards, all compatible with and of quality standards equivalent to the other studio equipment provided.

(c) The Grantee shall make the video equipment available on a free rental basis to Newberg and Dundee residents provided the following:

(1) Grantee may charge a reasonable deposit for the safe return of portable equipment.

(2) The user shall be responsible to the Grantee for any loss of or damage to said equipment.

(3) Said equipment shall be available to Newberg and Dundee residents on a "check-out" basis, and Grantee shall be given reasonable notice by a resident who wishes to use said equipment.

(4) Residents may not use the equipment for longer than a reasonable period of time, nor more frequently than is reasonable.

(5) Grantee may deny use of said equipment to any resident who, in the judgment of Grantee, is not competent in the care or use of said equipment.

(6) Grantee shall hold harmless the City from any damages resulting from the use of Local Origination and Access Studio and portable equipment, excluding the use by City employees in City authorized efforts.

(d) Grantee shall provide time by its staff, upon reasonable notice, for training in the use of said portable video equipment. This training shall, at a minimum, be available at the Newberg Local Origination and Access Studio and Newberg and/or Dundee public elementary schools and public junior and senior high schools. Grantee may group potential users of said equipment into training classes for efficient use of Grantee's and user's time.

(e) Additional local access channels will be activated when all of the channels stipulated in Grantee's application are in use during eighty percent (80%) of the weekdays (Monday through Friday) for eighty percent (80%) of the time during any consecutive three (3) hour period for six (6) consecutive weeks.

(f) The City reserves the right to form with the City of Dundee a Joint Community Cable Communications Television Advisory Board for the purpose, inter alia, of promoting and administering all Community Access channels except as preempted by the City Council, State or Federal authorities. Subject to the approval of the City, the Grantee shall enter into an agreement or contract with the Joint Community Cable Communications Advisory Board for support of that Board's responsibilities as addressed in Section 4 herein.

SECTION 14. Emergency Alert - Audio/Video Override. The Grantee shall design and construct the CATV system to provide for a restricted audio and video simultaneous override of all audio and channels during emergencies, as proposed in Grantee's franchise application, with override to be placed under City control. The functional design and procedure for implementation of the the Emergency Alert system is to be submitted to the City Public Works Officer for approval prior to construction.

SECTION 15. Rates and Charges. Pursuant to the provisions of said Section 19, of Ordinance No. 2046, and except as preempted by Federal or State regulations, the Grantee shall charge its subscribers and users the rates and charges approved by the City Council by Resolution No. 81-918, which is by this reference incorporated herein, and no change in rates and charges may be made without the prior approval of the City Council expressed by resolution, incorporated herein by reference, as part of the franchise agreement.

SECTION 16. Franchise Fee.

(a) In consideration of the granting and exercise of a franchise to use the streets, as defined in Section 2, of Ordinance No. 2046, for the operation of a cable television system, the Grantee shall pay to the City during the life of the franchise, a franchise fee of three percent (3%) of the Grantee's gross revenues as defined in Subparagraph (a), Section 25, of Ordinance 2046.

(b) The franchise fee payments shall be made to the City Recorder each fiscal quarter based on estimated revenues with a final fiscal year payment to be submitted with financial

statement within 45 days of the end of Grantee's fiscal year, reflecting any adjustments of the quarterly estimated payments. All described payments due within 45 days of the end of the subject period.

(c) Upon two working days' notice, the Grantor shall have the right to inspect all books, records, maps, plans, financial statements, and other like material of the Grantee at any time during normal business hours.

SECTION 17. Security Fund and Faithful Performance Bond.

(a) Security Fund:

(1) In lieu of the indemnification provisions set forth in Section 24, of Ordinance No. 2046, within sixty (60) days after the effective date of this Ordinance, the Grantee shall deposit into a bank account or Certificate of Deposit established by the Grantor, or provide a bank letter of credit at a banking institution acceptable to Grantor, maintaining or guaranteeing the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) as security for the faithful performance by it of all provisions of this franchise and the Dundee franchise granted contemporaneously, and compliance with all orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults under this contract, and the payment by the Grantee of any penalties, claims, liens, and taxes due the Grantor which arise by reason of the construction, operation or maintenance of the system. This security will be maintained throughout the term of the franchises as a security of aforesaid faithful performance on the part of Grantee.

(2) The Grantee shall be entitled to all interest if any earned on such account and shall be subject to any interest penalty for early withdrawal, if any are incurred, on account of Grantor's withdrawal of funds.

(3) If the Grantee fails, after ten days' notice to pay to the City any taxes due and unpaid; or, fails to repay to the City within ten (10) days, any damages, costs or expenses which the City shall be compelled to pay by reason of any act or default of the Grantee in connection with this franchise; or, fails after thirty (30) days' notice of each failure by the Grantor to comply with any provision of the franchise which the Grantor reasonably determines can be remedied by expenditure of the security, the Grantor may immediately withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and date thereof, in the form of an affidavit stating the reasons for withdrawal of funds. Within thirty (30) days after notice to it that any amount has been withdrawn by Grantor from the security fund, pursuant to Subsection (a) of this Section, the Grantee shall restore such security to the original amount.

(4) The security pursuant to this section shall become

the property of the City if the franchise is either cancelled by reason of the default of the Grantee, or revoked for cause.

(5) The rights reserved to the Grantor with respect to this security are in addition to all other rights of the Grantor whether reserved by this contract or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall affect any other right that Grantor may have.

(6) Any dispute between Grantor and Grantee concerning the withdrawal of funds from the security by Grantor may be submitted to arbitration by the Grantee. Each party shall select one arbitrator and the two arbitrators so selected shall select a third, the decision of a majority of the arbitrators shall be final.

(b) Faithful Performance Bond:

(1) In lieu of Section 24, of Ordinance 2046, upon the effective date of the franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the Grantor, in the penal sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise. The bond will be both a labor and materials payment bond whereunder the Surety promises to pay for the labor and material if the Principal fails to do so, and a performance bond under which the Surety agrees that the Principal will perform all of the franchise terms, not merely for performance of the work of the franchise. Such bond shall be maintained by the Grantee throughout the term of this franchise, and any renewal thereof plus an additional six (6) months thereafter. Provided that upon completion of all construction provided for in Section 7 of this Ordinance, the amount of the original bond shall be reduced by the Grantor to FIFTY THOUSAND DOLLARS (\$50,000.00).

SECTION 18. Provisions Relating to Merger of Grantee. A letter of intent to merge having been signed by Grantee, Grantor and Grantee hereby agree that upon the approval of a merger agreement between Grantee and Field Enterprises, Inc., a copy of such agreement shall be immediately provided to Grantor who shall promptly review such agreement. Grantor may thereupon terminate the franchise granted by this ordinance for reasons related to the merger agreement. Such termination shall, however, be made, if at all, not later than ~~thirty~~ sixty (60) days after receipt of a copy of the merger agreement.

Upon termination, if any, ordered under this section, Grantor shall reimburse Grantee for all costs of construction of the franchise system incurred up to the date of termination. Such payment shall be in cash and made not later than ninety (90) days after the decision.

SECTION 19. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee of any franchise granted hereunder.

SECTION 20. Notices. Every direction, notice or order to be served upon a Grantee shall be sent to the local office described in Section 1, ~~of City Council of Newberg~~, Resolution 81-___ establishing rules and regulations and standards of operations. Every notice to be served upon the City shall be delivered, or sent by certified mail to the City Recorder at: City Hall, Newberg, Oregon 97132. The delivery of such notice shall be deemed to have been at the time of receipt.

SECTION 21. Effective Date. This Ordinance shall become effective thirty (30) days from and after its adoption; provided, however, that the franchise granted by this Ordinance shall not become effective unless and until Grantee files written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof including the provision of the indemnifications as set forth in Sections 4 and 17 herein.

PASSED AND ADOPTED by the City Council of the City of Newberg, Oregon, this ___ day of _____, 1981, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

, Mayor

, City Recorder

Dec 16, 1981
Draft
Check for Type-O's

RESOLUTION NO. 81-918

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBERG, OREGON, ESTABLISHING THE SCHEDULE FOR RATES AND CHARGES FOR CABLE TELEVISION SERVICE UNDER A NON-EXCLUSIVE FRANCHISE TO BE GRANTED TO LIBERTY COMMUNICATIONS, INC.

CITY OF NEWBERG

WHEREAS, the City Council of the City of Newberg anticipates granting a non-exclusive franchise to allow construction, operation and maintenance of a Community Antenna Television (CATV) system within the City of Newberg; and

WHEREAS, the Section 19, of Ordinance 2046, allows that one of the conditions in the granting of a CATV franchise may be the establishment by the Grantor, on a not to exceed basis, the rates and charges associated with CATV service; and, specifies the procedures for the petition by the Grantee for increase in service rates and charges; and

WHEREAS, Liberty Communications, Inc., dba Liberty Cable Television in a letter to the residents of the City dated September 28, 1981, in effect modified its franchise application such that, inter alia, Grantee lowered its proposed rates and charges structure, such rates and charges to be valid for three (3) years from date of franchise award.

NOW, THEREFORE, BE IT RESOLVED, that the City Council established the Grantee's service rates and charges schedule, which is effective until the expiration of Grantee's rate guarantee as defined herein and either at such time as Grantee elects to raise its rates for cable service as permitted in Section 19, of Ordinance 2046, or preempted by State or Federal regulations. The service rates and charges established are as follows:

1. The Liberty Communications, Inc. schedule of service rates and charges for subscribers, residential and institutional, except as modified elsewhere herein, are as follows:

A. Basic Service:

Residential:	Monthly	Installation
Tier 1 (12 Channels)		
First Outlet	\$ 5.95	\$ 20.00
Additional Outlet	1.60	8.00
Tier 2 (19 Channels):		
First Outlet	6.50	20.00
Additional Outlet	2.80	12.00

Tier 3 (35-54 Channels):

First Outlet	7.95	20.00
Additional Outlet	2.80	24.00
FM, with other service	1.60	8.00
FM, sole service	6.00	20.00
Relocation	--	12.00
Reconnection		12.00

Commercial:

Bulk Rates	4.80/Unit	Negotiated at approximately time and materials
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B. Premium Service:

The Movie Channel	9.45	8.00
Home Box Office	9.45	8.00
Showtime	8.45	8.00
Home Theatre Network Plus	5.95	8.00
Home Theatre Network	4.95	8.00

Joint Movie Package:

Any two of above	2.00/Disc.	Standard
Any three of above	3.00/Disc.	Standard

C. Other Service:

Underground installation 45.00; however, reduced to 24.00 during first 30 days service is offered.

Converter installation 8.00
 Converter deposit 25.00 for 54 channel converter only (refundable with allowance for deduction for damage)
 Converter rental No charge
 Converter Remote Control Device 2.00/month each, with no deposit.

Parental Control Device: \$8.00 one-time charge for the Movie Channel, and HBO and Showtime.
 \$12.00 one-time charge for one service and \$20.00 for both, per each converter.

D. Program Production:

<u>Non-Commercial</u>	<u>Commercial</u>
Studio Time	No Charge \$60/hour

Remote Time	No Charge	\$100/hour plus travel @ \$7.50/hr
Supervision, instruction, editing, system playback	No Charge	\$25/manhour and \$7.50/airhour

- E. All service installations, including converter installation, shall be waived for residential subscribers for Basic and Premium services ordered during the first thirty days following notification of the resident that such service is available to the residence, with the exception that underground installations will cost \$24.00 instead of the usual \$45.00. Premium service installations will be at no cost when installed at the same time as Basic Service.
- F. Installation of drops of over 150 feet in length may be charged at a maximum of 25 cents per foot up to 300 feet, and time and materials for that length over 300 feet. Installation cost estimates shall be provided in writing to potential subscribers prior to installation where drops exceed 150 feet.
- G. The above rates and charges (subsections A through F immediately above) are guaranteed by Grantee as fixed for a period of three years from date of franchise award.
- H. All other service rates, charges and/or determination of same will be in accordance with the specifications and spirit of Grantee's franchise application.
- I. Grantee will coordinate with media to see that a comprehensive program guide is available to subscribers. In the event the media does not make such guide available, Grantor will make such guide available through convenient commercial outlets, such as supermarkets.

2. All City public elementary and high schools and City government buildings will be provided free basic connection and free basic service, at tier three level, for education purposes except, however, such users should be responsible for deposits and converters in the same manner as subscribers, including: converters and routine converter maintenance. Each such elementary and high school shall receive three (3) drops and each City government building will receive one (1) drop. Chosen drop locations should be at reasonably accessible locations. Any additional drops will be on a time and material cost basis. The City or entity involved will provide whatever easements may be necessary for Grantee to provide such service.

3. There will be no charge or fees for installation of bi-directional cable drops into Public Schools and City government buildings and offices, for data transfer, facsimile transfer, and

other cable access requirements when and as requested by the City Administrator's office. Grantee shall have a reasonable time to respond to City Administrators request.

4. Grantee shall be authorized to reduce its 36-month rate guarantee period on a month-for-month basis for each month that Grantee's system construction completion precedes that outlined in the construction schedule submitted and approved in accordance with Section 6 of Franchise Ordinance No. 2074. Conversely, Grantor reserves the right to extend the thirty-six month rates and charges guarantee period one month for each month the construction completion is delayed beyond the scheduled completion date.

It is acknowledged by the Grantor that Federal regulations preempt the regulation of rates and charges for Pay TV services, and that the rates for such services are listed herein to reflect Grantee's rate guarantee as specified above.

PASSED AND ADOPTED by the City Council of the City of Newberg, Oregon, this ____ day of _____, 1981, by the following votes:

AYES:

NOES:

ABSENT:

_____, Mayor

_____, City Recorder

Dec. 16, 1981
Draft
check for Type O-5

RESOLUTION NO. 81-919

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBERG, OREGON, ESTABLISHING RULES AND REGULATIONS AND STANDARDS OF OPERATION FOR A NON-EXCLUSIVE CABLE TELEVISION FRANCHISE TO BE GRANTED TO LIBERTY COMMUNICATIONS, INC.

CITY OF NEWBERG

WHEREAS, the Newberg City Council is considering the granting of a non-exclusive franchise to Liberty Communications, Inc. to provide cable television services to residents and institutions of Newberg; and

WHEREAS, Section 10, of Ordinance 2046, provides that Rules and Regulations and Standards of Operation for cable television shall be established by resolution as a part of the granting of a franchise;

NOW, THEREFORE, BE IT RESOLVED that the Rules and Regulations and Standards of Operation set forth herein shall apply to the franchise granted to Liberty Communications, Inc. upon acceptance of the franchise, to wit:

SECTION 1. Rules and Regulations for Customer Service Standards.

(a) Grantee shall utilize best efforts to establish, operate and maintain a centrally located office in the City of Newberg within 60 days following effective date of the franchise award.

(b) It shall be the right of all subscribers to receive all available services insofar as their financial and other obligations to the Grantee are honored. Neither the Council nor the Grantee shall, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to prejudice or disadvantage. Nothing in this provision shall be construed to prohibit the reduction or waiving of charges in conjunction with promotional campaigns for the purpose of attracting subscribers, nor shall this provision be interpreted to prohibit the establishment of graduated schedules which vary with volume of usage, to which any subscriber, or programmer on a leased channel, included within a particular classification, shall be entitled.

(c) The cable television system shall be extended to every new subdivision of the City, and the capacity to provide cable television service shall be provided by Grantee during the construction phase of every new subdivision. For purposes of this paragraph, the capacity to provide cable television service

shall include the provision of conduit and other such substructure necessary to make cable service available to subdivision residents following completion of 60% of housing units of each phase and within sixty (60) days after initial occupancy.

(d) There shall be no charge for service calls to subscribers' homes except as provided by Resolution No. 81-918 adopting rates and charges.

(e) The loss or theft of a converter will incur a penalty of \$150.00 plus replacement cost to the responsible subscriber unless a police report has been filed. If a police report has been filed and copy furnished to Grantee, then the subscriber shall be charged not more than wholesale replacement cost.

(f) In the event of service interruption or unresolved service complaint not caused by subscriber, Grantee shall credit the subscriber's account on a pro-rata basis to offset the monthly billing charge for all outages, of over 24 hours, except when such outage is beyond the control of Grantee.

(g) No polls or other two-way responses to subscriber shall be conducted by Grantee without the subscriber's consent. The program of which the poll is a part shall contain explicit disclosure of the nature, purpose and prospective use of the results of the poll. No commercial or other use of information of subscriber viewing habits or patterns may be made and no release of such information shall be permitted without the prior consent of the City Council or pursuant to rules and regulations duly adopted by the City.

(h) In the event that the Grantee elects to rebuild, modify, or sell the system, or the Grantor revokes or fails to renew the franchise, the Grantee shall do everything in its power to ensure that all subscribers receive continuous, uninterrupted service regardless of the circumstances during the lifetime of the franchise. In the event of system purchase by the Grantor, or change of Grantee, the current Grantee shall cooperate with the Grantor to operate the system for a temporary period, not to exceed one year, in maintaining continuity of service to all subscribers. Grantee shall be entitled to the profits or losses from operation of the franchise during such temporary period.

SECTION 2. Standards of Operations: Programming.

(a) The programming of the Basic TV, FM and Premium (Pay TV) service shall be a minimum as proposed in Grantee's franchise application with the following additions:

- (1) English Channel
- (2) Appalachian Community Service (ACSN)
- (3) CBS Cultural Channel
- (4) Warner Music Channel
- (5) Talking Books for the Blind

- (6) American Educational Network (AETN)
- (7) Alpha Repertory TV Service
- (8) Public Service Satellite Consortium
- (9) The Weather Channel
- (10) Satellite News Channel
- (11) CNN II

This required programming, including that as proposed in Grantee's franchise application, is subject to FCC Rules and Regulations and availability of service; however, will be carried on a fulltime basis when available and permitted by FCC Rules and Regulations, unless specifically approved by the City to the contrary.

(b) At least once per year the Grantee shall provide all subscribers with their monthly service statement, a complete descriptive menu of possible programming and services, including area independent stations and satellite carried stations and services available to Grantee. The menu to be in the format of a mailback survey of the subscribers' programming preferences. The results of the survey are to be provided the City by the Grantee with any proposed change(s) in programming to accommodate subscribers' desired revisions as indicated by the results of the survey. The first such survey to be conducted within one year following franchise award. The requirements of this paragraph shall not continue beyond three years from the award of this franchise unless ordered by Grantor.

(c) The City will have the option to utilize, at no cost to the City, one additional residential system full 6 MHz forward bandwidth and one full 6 MHz reverse bandwidth when desired for video, data, facsimile, and/or audio transmission in support of City administration, public facilities and community services. The City will be responsible for the provision of all termination and cable access equipments, i.e., modem, etc., for such applications. Grantee will be responsible for headend interconnection (and switching if required) of the channels for bi-directional communications. The city shall be responsible for the cost of installation and maintenance of such additional residential system.

(d) Additional, non-entertainment services, will be provided as set forth in Grantee's franchise application with the following additions:

(1) Security services, i.e., burglar, fire, assault and medical alert system for residences, institutions and businesses. The system should be of comparable or greater capacity and capability to that of the TOCOM III-A Central Data System or Cable Bus _____ or equivalent and will be offered to residential, institutional, and commercial subscribers no later than six (6) months after the time of completion of system construction.

(2) Play Cable, when proven economically feasible in

other systems of comparable description.

(3) Energy management, when proven economically feasible in other systems of comparable description.

(4) Electronic interactive banking services, when proven economically feasible in other systems of comparable description.

These additional services are optional services and rates other than those for Basic and Premium services are applicable.

(e) Grantee's Consumer Guide/Comparative Shopping channel programming shall be comprised of a minimum of 50% of Newberg/Dundee area businesses' merchandise and services information.

(f) When demonstration is made by the survey, addressed in Subparagraph (b) above, or other means that sixty percent (60%) or more of Grantee's subscribers desire a modification and/or addition to the cable television services, one for which the subscribers have previously agreed to pay a sufficient amount of money to Grantee to return Grantee's investment for the providing of such service within a period not exceeding five (5) years, and Grantee elects not to provide the modified or additional service, the City may require Grantee to show cause why it should not be required to modify and/or add to the service to provide said service to the subscribers. Should Grantee not be able to demonstrate that it could not financially and on a technically viable basis modify and/or add to the service, the City may require Grantee to provide such modification and/or addition to the service.

(g) The video production studio and mobile production (ENG) van shall be completed with all equipment installed and fully operational by the time of initial activation of the Grantee's cable plant. Grantee shall maintain all studio equipment, including portable equipment, in a fully operational status on a continuous basis, and to technical standards requisite for quality performance.

SECTION 3. Standards of Operation: Technical.

(a) The cable system technical characteristics shall be a minimum as proposed in Grantee's franchise application with the following modifications:

(1) 54 channel converters shall be installed from initial activation of the cable system for tier three subscribers.

(2) The reverse system of the entire plant will be activated not later than scheduled system construction completion per Section 6, of Ordinance No. 2074.

(b) The Federal Communications Commission (FCC) Rules and Regulations, Part 76, Subpart K (Technical Standards), shall apply. However, because of emphasis on interactive and other innovative services, modifications of FCC standards, as presented in the specifications herein, are considered necessary to meet system design objectives. The following referenced specifications will also apply, unless exception is agreed upon between the City and the Grantee.

(1) Applicable City, County and State and National/Federal Codes and Ordinances;

(2) Applicable Utility Joint Attachment Practices;

(3) National Electrical Safety Code, NFPA No. 70;

(4) Local Utility Code Requirements;

(5) Local Right-of-Way Procedures;

(6) Grantee's franchise application proposal including system construction, maintenance, inspection and testing procedures.

(c) Technical standards and parameters are to be referenced to the mean temperature of the Newberg/Dundee area. The system shall be designed to meet all specifications over a temperature range of $\pm 50^{\circ}$ F from the mean temperature of the Newberg/Dundee area.

(d) The forward system shall be capable of carrying 54 Class I Television Channels, the full FM broadcast band and adequate bandwidth for Pilot Carriers or such auxiliary signals as required for system control. In the event that future FCC restrictions prohibit use of portions of the band (e.g., the Aircraft Navigational frequencies from 108 to 120 MHz), a reduction in channel capacity may be required, or modifications made to the slope/gain control method to retain channel capacity. The combined forward trunk and distribution system will deliver signals to each and every customer's TV receiver that will meet or exceed the technical specifications set forth in Section XVI of Grantee's franchise application at the mean system temperature $\pm 50^{\circ}$ F. This shall include the effects of drop cables, interior splits, and any terminal equipments such as descramblers and set top converters.

(e) The residential and institutional systems shall have the capability of providing and delivering return signals from each subscriber and institutional (including all schools) tap to the extreme downstream end of any area in compliance with the above specifications. This capability shall include transmission of Color video Black and White video, and both low and high speed data, whether analog or digital. Where applicable, the end of the system specifications shall include the effects of any signal reprocessing equipment necessary to achieve forward

transmission.

(f) Grantee provided subscriber entertainment system channel converters shall have a minimum 54-channel capacity, digital type, with internal decoding capability for tier three.

(g) Although the programming procedure of shared channel usage for non-contrasting programming is encouraged to preclude having numerous channels with large blank periods (i.e., infrequent programming), it is a implicit obligation of the Grantee in accepting the franchise award to actively foster development of full usage of entertainment, access, and local origination channel capacities, including readily activating additional channels as necessary to fulfill this obligation.

(h) Technical specifications addressed in this Section are intended to ensure accommodation of possible multiple institutional and residential interactive data information and cable communications applications, e.g., home energy management, information retrieval, and educational services, as well as possibly significantly expanded entertainment service offerings. Grantee shall make additional channel space available, including a second cable if necessary, when required by the City to accommodate those institutional and/or residential broadband communications services beyond the capacity of Grantee's then existing system. Grantee will assist the City in determination of the requirement for installation of a second cable, to ensure timely provision of additional channel capacity. The City, however, reserves the right of requiring Grantee to construct and activate a second cable, in part or throughout the system, at the City's sole option and without unilateral, monetary or other pre-conditions on the part of Grantee. Grantee may not require financial pre-conditions for the construction of such cable, but Grantee does not thereby waive the right to request a rate increase for such construction and operation after the period stated in Section G of Resolution No. 81-918, pertaining to Rates and Charges. The City will not apply unreasonable criteria in determination of the requirement for an additional cable.

PASSED AND ADOPTED by the City Council of the City of Newberg, Oregon, this _____ day of _____, 1981, by the following votes:

AYES:

NOES:

ABSENT:

ATTEST:

, Mayor

, City Recorder