

Ordinance No. 580

AN ORDINANCE OF THE CITY OF CHARLOTTE PROVIDING FOR THE GRANTING OF
FRANCHISES FOR THE OPERATION AND MAINTENANCE OF COMMUNITY ANTENNA TELEVISION
SYSTEMS

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina, that Chapter 6 of the Code of the City of Charlotte is hereby amended by adding a new Article, to be designated Article VI, as follows:

ARTICLE VI. COMMUNITY ANTENNA TELEVISION SYSTEM

Section 1. Purpose. For the better protection of the public interest, health, safety, welfare and convenience, the following rules and regulations are hereby adopted setting forth the conditions, requirements and limitations under which a person may construct, have constructed for him, operate and maintain a community antenna television system and engage in the business of providing a community antenna television service in the City of Charlotte.

Section 2. Definitions. For the purposes of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "CATV" shall mean community antenna television.
- (b) "City" shall mean the City of Charlotte, North Carolina.
- (c) "Community Antenna Television Service" shall mean the business of furnishing to the public for compensation, by means of a master antenna and cables, broadcast TV programs obtained off the air. As an incidental part of the service, AM and FM radio program material received off the air, background music, news, weather and other information, including civil defense type information as required, may be furnished to all subscribers without additional charge. Only that advertisement received from the broadcast programs transmitted may be transmitted through the CATV system. It shall not mean or include the transmission of any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television."
- (d) "Community Antenna Television System" shall mean any facility which, (1) in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television and AM and FM radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such services, (2) distributes by cable or wire, news, weather and other information, including civil defense type information as required, as an incidental part of CATV service to all subscribers without charge. It shall not mean or include any facility through which is transmitted any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television."
- (e) "Council" shall mean the governing body of the City of Charlotte, North Carolina.
- (f) "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, or have constructed, operate and maintain a CATV system in the City for the purpose of providing a CATV service to the citizens of Charlotte. Any such authorization, in whatever term granted, shall not include any license or permit authorization required for the privilege of transacting and carrying on a business within the City in accordance with Chapter 11 of the Charlotte City Code, entitled "Licenses."

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- (g) "Grantee" shall mean the person, firm or corporation to whom or which a franchise, as hereinabove defined, is granted by the Council under this ordinance, and the lawful seccessor, transferee or assignee of said person, firm or corporation.
- (h) "Gross Annual Receipts" shall mean any and all compensation and other consideration in any form whatever and any contributing grant or subsidy received directly or indirectly by a grantee from subscribers or users in payment for the community antenna television service received within the City, including charges for periodic services, for installation, and for relocation of outlets.
- (i) "Person" shall mean any person, firm partnership, association, corporation or organization of any kind.
- (j) "Property of grantee" shall mean all property owned and installed or used by a grantee in the conduct of a CATV business in the City under the authority of a franchise granted pursuant to this ordinance.
- (k) "Street" shall mean the surface of and the space above and below any publicly owned or maintained property or right of way, street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway or dirve, now or hereafter existing as such within the City.
- (l) "Subscriber" shall mean any person or entity receiving for any purpose the CATV service of a grantee.

Section 3. Franchise Required; Application.

- (a) It shall be unlawful for any person to engage in or otherwise participate in the construction, operation or maintenance of a community antenna television system in the City unless such person or the person for whom the work is being done shall have first obtained a franchise from the council. It shall also be unlawful for any person to engage in the business of providing a community antenna television service in the City unless such person shall have first obtained a franchise from the council. Provided, however, this article shall not apply to any person who only provides master antenna service to property owned or leased by said person.
- (b) A person seeking issuance of a franchise hereunder shall file a written application, in duplicate, with the City Manager. The application shall contain the following information:
 - (1) The name and address of the applicant. If the applicant is a partnership, the name and address of each partner. If the applicant is a corporation, the application shall also state the names and addresses of its directors, officers, parent and subsidiary companies and of stockholders owning as much as five percent (5%) of the outstanding stock, and shall include a certified copy of the articles of incorporation.
 - (2) A statement showing the applicant's experience in establishing a CATV system and in providing a CATV service.
 - (3) A financial statement prepared by a certified public accountant, or person otherwise satisfactory to the council, showing applicant's financial status and its financial ability to complete the construction and installation of the proposed CATV system and to provide a CATV service. In connection therewith, information with respect to financial projections, including nature and sources of capital or equity financing, shall be submitted along with the application. All financial information shall be confidential and shall not be regarded as public information.
 - (4) A statement and description of the CATV system proposed to be constructed, installed, maintained or operated by the applicant, the manner in which applicant proposes to construct, install, maintain and operate the same; and, particularly the extent and manner in which existing or future poles or other facilities of other public utilities will be used for such system.
 - (5) A copy of any arrangement, agreement or contract, if existing, between the applicant and any public utility providing for the use of facilities of such utility, such as poles, lines, cables or conduits.

- (6) A statement setting forth all agreements and understandings, whether written, oral or implied, existing between the applicant and any person, firm or corporation with respect to the ownership, control or transfer of the proposed franchise or the proposed CATV system and service. If a franchise is granted to a person acting as a front or as the representative of another person and such information is not disclosed in the original application, such franchise shall be deemed void and of no force and effect whatsoever.
 - (7) A statement or schedule of proposed rates and charges to subscribers for installation and services.
 - (8) Any additional information which the council, at any time, may deem reasonably necessary to determine whether the requested franchise should be granted.
- (c) Upon consideration of any such application, the council shall determine the applicant's qualifications to construct, operate and maintain a CATV system and to provide a CATV service in accordance with the provisions of this ordinance. If council determines that the applicant is not so qualified, it may refuse to grant the requested franchise. If council determines that the applicant is so qualified, it may, by ordinance, grant a nonexclusive franchise to such applicant. Provided, however, no provision of this ordinance may be deemed or construed as to require the granting of a franchise when the council determines that to do so would not be in the public interest. Any franchise granted shall include the following condition:
- "The CATV system and service herein franchised shall be used and operated solely and exclusively for the purposes expressly authorized by ordinance of the City of Charlotte and no other purpose whatsoever."

Section 4. Acceptance: Indemnification: Effective Date.

- (a) Within 25 days after the council has taken final action to approve the granting of a franchise, the grantee shall file a written acceptance of the franchise, acknowledged before a notary public, with the city clerk. Such acceptance shall acknowledge that the grantee agrees to be bound by and to comply with the provision of this ordinance and the franchise and shall be in such form and content as to be satisfactory to and approved by the city attorney.
- (b) Concurrently with the filing of the written acceptance, the grantee shall file with the city clerk the bond and insurance policies required by Section 11 hereof.
- (c) The effective date of the franchise shall be the date on which the grantee files the acceptance, bond and insurance policies as required herein.

Section 5. Duration of Franchise: Termination: Transfer.

- (a) The franchise shall be nonexclusive, shall be for a term of 10 years from the effective date thereof, as specified in Section 4 above, and shall be renewable for a period of 5 years upon terms satisfactory to both the city and the grantee.
- (b) The franchise shall not be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, with the prior consent of the council expressed by resolution, and then only under such conditions as may therein be prescribed. In addition to such conditions, the successor in interest as approved by council, shall comply with the requirements of Section 4 of this ordinance with respect to filing acceptance, bonds and insurance and shall show that it is financially responsible. Any such sale, transfer, lease, assignment or disposal shall be made only by an instrument in writing, a duly executed copy of which shall be filed in the office of the city clerk within 30 days thereof. Provided, however, the provisions of this subsection shall not apply to a transfer in trust, mortgage or other hypothecation to secure an indebtedness.

- (c) The council may terminate the franchise prior to the date of expiration upon a finding, made after 30 days notice of any proposed termination and public hearing, that:
- (1) The grantee has failed to comply in some material respect with any provision of this ordinance, or has, by any act or omission, violated in some material respect any term or condition of any franchise or permit issued hereunder; or
 - (2) The grantee made a material, false statement in the application for franchise, knowing it to be false; or
 - (3) The grantee, contrary to the best interest of public convenience and welfare, is not providing subscribers with regular, adequate and proper service.
- (d) In the event that the use of any part of the CATV system is discontinued for any reason for a continuous period of twelve months, or the franchise has been terminated, cancelled or has expired, the grantee shall promptly remove from the streets or public places all such property and poles of the system, other than those which the city engineer may permit to be abandoned in place, and as directed by the city engineer shall either restore the street or pay the city for restoring the street or other area from which such property has been removed to a condition for public use as good as the abutting portions thereof. Any property remaining in place 60 days after the termination or expiration of the franchise shall be considered permanently abandoned.

Section 6. Authority Granted by Franchise.

- (a) The grantee of any franchise issued pursuant to the provisions of this ordinance shall be authorized to construct, or have constructed, operate and maintain a CATV system and to engage in the business of providing a CATV service in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, over, on, under, upon, across and along any public street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including but not limited to any public utility or other grantee franchised or permitted to do business in the city.
- (b) The grantee may make a charge to subscribers for installation or connection to its CATV system and a fixed monthly charge for service in accordance with the schedule of rates and charges filed and approved by the council. No increase in rates and charges may be made without the prior approval of the council expressed by resolution.
- (c) The grantee shall not be authorized to transmit any special program or event for which a separate and distinct charge is made to the subscriber in the manner commonly known and referred to as "pay television", or to directly or indirectly install, maintain or operate on any television set a coin box or any other device or means for collection of money for individual programs. The grantee shall not engage in the sale, service, repair, rental or leasing of television receivers, radio receivers, parts or accessories and shall not require or attempt to influence its subscribers to deal with any particular person in regard thereto.
- (d) Construction and maintenance of the CATV system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code of the American Insurance Association and such applicable ordinances and regulations of the city affecting electrical installations as may be presently in effect or may be enacted by the city, and shall be subject to the approval of the building inspection department of the city.

Section 7. Conditions to Use of Streets.

- (a) The poles used for a distribution system shall be, to the extent possible, those erected and maintained by either the power company, or the telephone company, or both whenever agreement can be reached with the owners of such poles. Any poles, wires, cables, conduits, or other properties to be constructed or installed in streets, shall be so constructed or installed

- only at such locations and depths and in such manner as shall be approved by the city engineer. They shall be located so as to cause minimum interference with the proper use of streets and to cause minimum interferences with the rights or reasonable convenience of the general public and of property owners who adjoin such streets.
- (b) The installation of the facilities, including service drops to subscribers, shall be made underground in areas where facilities of either the telephone company or the power company, or both, are underground or hereafter may be placed underground. In addition to the foregoing, installation of the facilities shall be made underground when required by city ordinances or policies.
 - (c) The grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the grantee when required by the city by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, or any other type of structures or improvements by the city, and the city shall not be liable for any disturbance of the grantee's installations resulting therefrom. The grantee shall carry out the instructions and directions of the city engineer whenever it is necessary to raise or remove any of the grantee's wire or cable temporarily, for the purpose of moving or removing buildings or structures on the public streets of the city, and shall perform such tree trimming or other maintenance work as shall be required or as shall be directed by the city engineer, all at the grantee's expense.
 - (d) Whenever a grantee takes up or disturbs any pavement, sidewalk or other improvement of any street, the same shall be replaced and the surface restored in as good condition as before entry in accordance with ordinances, regulations, technical standards and fee schedules of the city as administered by the city engineer. Any opening or obstruction in the streets shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which shall be clearly designated by warning lights of approved types.

Section 8. Permits, Installation and Service.

- (a) Within 30 days after acceptance of any franchise, the grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, licenses and authorizations required by duly constituted regulatory agencies having jurisdiction over the operation of CATV systems and service.
- (b) Within 90 days after obtaining all necessary permits, licenses and authorizations, grantee shall commence construction and installation of the CATV system.
- (c) Within 8 months after the commencement of construction and installation of the system, grantee shall proceed to render service to subscribers, and the completion of the system shall be pursued with reasonable diligence thereafter.
- (d) Failure on the part of the grantee to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, shall be grounds for termination of such franchise, under and pursuant to the terms of Section 5 (c) hereof; provided, however, the council may extend the time for the commencement and completion of construction and installation for additional periods in the event the grantee, acting in good faith, experiences delays by reason of circumstances beyond its control.
- (e) The grantee shall file a map with the city at the close of each fiscal year, showing the areas and locations of the city being served by the CATV system and the location and identification of component parts of the system.

Section 9. Operational Requirements.

- (a) The grantee shall install and maintain a CATV system which shall be in accordance with the highest and best accepted standards of the industry

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to the effect that subscribers shall receive the highest possible service. In addition, the grantee shall comply with all requirements of duly constituted regulatory agencies having jurisdiction over the operator of CATV systems.

- (b) The grantee must obtain individual permits for street openings, must have the installation or construction plans approved prior to construction, must secure all necessary permits at his expense and must pay all fees charged for closing pavement cuts.
- (c) When any portion of the CATV system is to be installed on public utility poles and facilities, a certification that agreements for such joint use have been entered shall be filed with the city clerk.
- (d) The grantee shall maintain a local office for the purpose of handling subscriber complaints and providing prompt maintenance service.

Section 10. Remuneration to City.

Upon acceptance of a franchise, and in consideration of the rights and privileges granted hereunder, the grantee shall pay to the city a sum equal to \$1,250 per month for its first fiscal year or any remaining portion thereof. Within 60 days after the close of its first fiscal year, and each succeeding fiscal year thereafter during the life of the franchise, the grantee shall pay to the city for the privilege of constructing, operating and maintaining the CATV system as defined in Section 2(d) and for the privilege of providing the CATV service as defined in Section 2(c) during the ensuing fiscal year, the sum of \$15,000 or a sum equal to the percentage, as set out below, of its gross annual receipts during the preceding fiscal year, whichever is greater.

When the gross annual receipts do not exceed \$1,250,000, the percentages shall be as follows:

5% on the first \$500,000; plus
10% on the next \$250,000; plus
15% on the next \$500,000.

When the gross annual receipts exceed \$1,250,000, the percentage shall be 10% of the total irrespective of the percentages set out above. Within 45 days after the expiration of the grantee's fiscal year, the grantee shall file with the city a financial statement prepared by a certified public accountant, or other person satisfactory to the council, showing in detail the gross annual receipts, as defined herein, of grantee during such fiscal year. The payment of this fee is in addition to any ad valorem taxes which the city may levy on the grantee's real or personal property. At any time during the three fiscal years following the payment of the annual fee, the city shall have the right to inspect the grantee's records showing the gross annual receipts from which these payments are computed and the right of audit and recomputation of any and all amounts under this ordinance. Acceptance of payments hereunder shall not be construed as a release or as an accord and satisfaction of any claim the city may have for further or additional sums payable under this ordinance or for the performance of any other obligations hereunder.

In the event of holding over after expiration or other termination of any franchise granted hereunder, without the consent of the city, the grantee shall pay to the city reasonable compensation and damages, of not less than 100% of its total gross profits during said period.

Section 11. Rights Reserved to City.

- (a) Nothing herein shall be deemed or construed to impair or affect, in any way, to any extent, any right of the city to acquire the property of the grantee, either by purchase or through the exercise of eminent domain.

- (b) The city hereby reserves the right to amend any section of part of this ordinance.
- (c) At all reasonable times, the grantee shall permit any duly authorized representative of the city (1) to examine any and all financial records maintained by or under the control of the grantee relating to all revenue obtained by it from its operations under the franchise, (2) to inspect and obtain copies of any or all maps or other diagrams maintained by or under the control of the grantee showing the location and the layout of the various components of the CATV system operated by it under its permit, (3) to inspect any and all installations owned, maintained, or used by the grantee in its operations under its permit including all towers, cables and other components of the grantee's CATV system.
- (d) The grantee shall indemnify and save harmless the city, its officers and employees, from and against any and all claims, demands, actions, suits, and proceedings by others, and against all liability to others, arising out of the exercise or enjoyment of its franchise, including but not limited to any liability for damages by reason of or arising out of any failure of the grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by the grantee's CATV system, and against any loss, cost expense and damages resulting therefrom, including reasonable attorney's fees.
- (e) Concurrently with the filing of the written acceptance, as required in Section 4, the grantee shall file with the city clerk, and at all times thereafter maintain in full force and effect for the term of such permit or any renewal thereof, (1) a good and sufficient liability insurance policy or policies, providing Three Hundred Thousand Dollars (\$300,000.00) coverage for personal injuries to each person; Five Hundred Thousand Dollars (\$500,000.00) coverage for all personal injuries in each accident; and Three Hundred Thousand Dollars (\$300,000.00) coverage for all property damage in each accident. The policy or policies shall name the city as an additional insured and shall be for the purpose of insuring the city against any and all legal liability, court costs and costs of defense for any action, cause of action, claim or demand for personal injury, death or property damage arising out of the operations of the grantee under this ordinance or its permit; (2) a good and sufficient insurance policy with One Hundred Thousand Dollars (\$100,000.00) limits of liability for each accident naming the city as insured and insuring the city against damage to its property arising out of the operations of the grantee under this ordinance; (3) a good and sufficient insurance policy naming the city as an additional insured providing Two Million Dollars (\$2,000,000.00) coverage for damages, expenses and costs arising out of copyright infringements or in lieu thereof, an indemnification agreement satisfactory to the council.
- (f) Concurrently with the filing of the written acceptance, as required in Section 4, the grantee shall file with the city clerk, and at all times thereafter maintain in full force and effect for the term of such franchise or any renewal thereof, good and sufficient bond in the penal sum of Fifteen Thousand Dollars (\$15,000.00), executed by a surety company authorized and qualified to do business in the State of North Carolina. This bond shall be conditioned upon the faithful performance by the grantee of the obligations imposed by the provisions of this ordinance and the franchise. This requirement is in addition to and not in lieu of the requirements of subsection (e) above.
- (g) The grantee shall pay to the city a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a franchise pursuant to the provisions of this ordinance. Such payment shall be made within 30 days after the city furnishes the grantee with a written statement of such expenses. Payment shall be made to the director of finance.

Section 12. Violations.

- (a) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised CATV system within this city for the purpose of taking or receiving television signals, radio signals, pictures, programs, or sound.
- (b) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised CATV system within this city for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program or sound, without payment to the owner of said system.
- (c) It shall be unlawful for any person, without the consent of the owner, to wilfully tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound.

Section 13. Effective Date.

This ordinance shall become effective upon its adoption.

Approved as to form:

J. W. Kiser
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in meeting on the 16th day of January, 1967, the reference having been made in Minute Book 48, and recorded in full in Ordinance Book 14, Page 477.

Ruth Armstrong
City Clerk

January 16, 1967
Ordinance Book 14 - Page 478

ORDINANCE NO. 581-X

AN ORDINANCE TO AMEND ORDINANCE NO. 498-X, THE 1966-67 BUDGET ORDINANCE,
AUTHORIZING THE TRANSFER OF A PORTION OF THE GENERAL FUND CONTINGENCY
APPROPRIATION

BE IT ORDAINED by the City Council of the City of Charlotte, North Carolina:

Section 1. That \$3,500 of the General Fund Contingency Appropriation is hereby transferred to the appropriations made in the 1966-67 Budget Ordinance for Non-Departmental Expense - Firemen's Retirement Benefit Study, said amount then to be used for the purpose of providing funds to finance a study conducted by a consulting firm on the adequacy of present Firemen's Retirement Fund Benefits.

Section 2. That this ordinance shall become effective upon its adoption.

Approved as to form:

J. W. Kiser
City Attorney

Read, approved and adopted by the City Council of the City of Charlotte, North Carolina, in regular session convened on the 16th day of January, 1967, the reference having been made in Minute Book 46, and recorded in full in Ordinance Book 14, at Page 478.

Ruth Armstrong
City Clerk