

Article 11-7

PRIVATE TELEVISION FRANCHISE

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11-701 Title.

This Ordinance shall be known and may be cited as Cable Television Franchise, 1989.

11-702 Definitions.

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meanings set forth below:

(a) "City" is the City of Rock Springs, a municipal corporation under the laws of the State of Wyoming.

(b) "Grantee" is Sweetwater TV Corp.,

a corporation organized and existing under the laws of the State of Wyoming and it is the grantee of rights under this franchise.

(c) "City Council" is the City Council of the City of Rock Springs or its designated representative.

(d) "Federal Communications Commission" or "FCC" is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(e) "Person" is any individual, firm, partnership, association, corporation, company or organization of any kind.

(f) "Gross subscription receipts" shall include the basic monthly service charges for cable television reception service within the boundaries of the City, but shall not include monies received as installation charges, charges for reconnection, inspection, repairs or modifications of any installation, or local, State or Federal taxes, relating thereto, or monies received from: (1) sale of advertising time on cable channels; (2) rental or deposits on equipment or facilities; (3) the furnishing of special programming not covered by the basic monthly service charge; (4) the furnishing of other communications services either by private contract or as a carrier, including by way of example, but not limited to, leasing of channels, burglar alarm, AM or FM radio broadcast, data transmission information storage or retrieval, and facsimile reproduction services; and (5) any source other than directly from the carriage of television signals.

(g) "Regular subscriber services" shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include "ancillary" or "auxiliary" service, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel basis.

11-703 Grant of Authority.

There is hereby granted by the City to Grantee the right and privilege to construct,

erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the transmission of television signals and other lawful services or signals either separately or upon or in conjunction with any public utility maintaining the same in the City with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to provide cable television signals and other lawful services and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposed herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, easements, public ways and places to any person at any time during the period of this franchise.

11-704 Police Power.

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided that such regulations shall be reasonable and not in conflict with the rights herein granted, the laws of the State of Wyoming, the laws of the United States of America, or the rules of the Federal Communications Commission.

11-705 Indemnification.

Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever against the City resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Wyoming. The amounts of such insurance to be carried for liability due to property damage shall be One Hundred Thousand (\$100,000.00) Dollars as to any one person and One Hundred Thousand (\$100,000.00) Dollars as to any one accident; and against liability due to injury to or death of persons, Three Hundred Thousand (\$300,000.00) Dollars as to any one person and Three Hundred Thousand (\$300,000.00) Dollars as to any one accident. The City shall notify Grantee, in writing, within ten (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given not less than five (5) days prior to the date upon which an answer to such legal action is due or within ten (10) days after the claim or demand is made upon the City, whichever gives the Grantee the larger amount of time within which to prepare an answer.

11-706 Complaint Procedure.

Grantee shall maintain a business office or a toll-free telephone listing in the City for the purpose of receiving inquiries and complaints from its customers and the general public. Grantee shall investigate all complaints within five (5) days of their receipt and shall in good faith attempt to resolve them swiftly and equitably. The following City official shall be responsible for receiving and acting upon any

unresolved complaints: City Clerk. Written notice of this complaint procedure, including the identity of the City official responsible for receiving unresolved complaints, shall be given to each subscriber at the time of initial subscription to the cable system.

11-707 Construction and Maintenance.

(a) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places and to cause minimum interference with the rights of reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now or hereafter in force.

(b) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, at its own cost and expense and in a manner approved by the City replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition as before said work was commenced.

(c) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any street, alley, easement, or other public way requiring the relocation of Grantee's facilities, then in such event Grantee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense; provided, however, that where federal or state funds are available for such relocation pursuant to law, at no cost or offset to the City, Grantee shall not be required to pay the cost.

(d) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority to require such payment in advance.

(e) Grantee shall have the authority to trim trees upon and overhanging all streets,

alleys, easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming into contact with Grantee's facilities.

(1) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places of the City shall be kept by Grantee at all times in a safe and substantial condition.

11-708 FCC Rules Applicable.

This franchise is governed by and subject to all applicable rules and regulations of the Federal Communications Commission, specifically including Part 76, and by the laws of the State of Wyoming. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated into this franchise, the City and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

11-709 Franchise Term.

This franchise shall take effect and be in full force from and after the final passage hereof, subject to acceptance by Grantee as herein provided, and the same shall continue in full force and effect for a term of twenty (20) years, beginning with the date of such acceptance; provided, however, that should FCC certification be necessary prior to implementation of the cable television service contemplated under this franchise, then the term shall begin upon the effective date of the grant by the FCC of the necessary certification.

11-710 Renewal Procedure.

Grantee shall have the option to renew this franchise for an additional period not to exceed fifteen (15) years, except the amount of the franchise fee provided for hereinafter may be modified. Should Grantee desire to exercise this option, it shall so notify the City, in writing, not less than three (3)

months prior to expiration of this franchise. Upon exercise of this option by Grantee, the City shall conduct a full, open, and public renewal proceeding upon prior notice and opportunity of all interested parties to be heard. The renewal proceeding shall be held for the sole purpose of considering the performance of Grantee under this franchise and any other factors deemed relevant in determining whether the performance of the Grantee has been satisfactory. Renewal shall not be unreasonably denied. If this franchise is renewed by the City, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified by the City, or unless this franchise is superseded by a new franchise.

11-711 Forfeiture.

If Grantee should violate any of the terms, conditions or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the City regulating the use by Grantee of the streets, alleys, easements or public ways of the City and should Grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after Grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided that such forfeiture shall be declared only by written decision of the City Council after an appropriate public proceeding before the City Council affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the City Council may, in its discretion and upon a finding of violation or failure to comply, excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure

to comply and any resultant forfeiture to any Court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this six month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

11-712 Surrender Right.

Grantee may surrender this franchise at any time upon filing with the City Clerk of the City a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate.

11-713 Transfers.

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment of the franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the City Council. In event this franchise is assigned by Grantee as security for debt, or is transferred or assigned to a parent or subsidiary corporation or to an entity in which at least fifty percent (50%) of the beneficial ownership is held by the same

person, persons or entities, the City shall be notified, in writing, within thirty (30) days after such assignment or transfer.

11-714 Franchise Fee.

In consideration of the terms of this franchise, Grantee agrees to pay the City a sum of money equal to two percent (2%) of Grantee's gross subscription receipts per year derived from regular subscriber service charges in the City. Such annual sum shall be payable one-fourth (1/4) thereof at the end of each quarterly period. The quarterly anniversary shall be the last day of March, June, September and December of each year; and each quarterly payment shall be paid within sixty (60) days thereafter. The fee set forth herein shall be in lieu of all other license fees or taxes levied upon Grantee by the City, except ad valorem property taxes and special assessments for local improvements.

11-715 Receiver Sales Prohibited.

As a condition of this franchisee, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers, nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

11-716 Acceptance.

This Ordinance when accepted by Grantee shall be and become a valid and binding contract between the City and Grantee; provided that the franchise granted by this Ordinance shall be null and void and of no force and effect whatsoever unless Grantee shall, within ninety (90) days after the final passage of this Ordinance, file with the City Clerk of the City, a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by

this Ordinance.

11-717 Unlawful Acts.

(a) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its lessee.

(b) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, removed, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

(c) It shall be a misdemeanor punishable by a fine of not more than Two Hundred (\$200.00) Dollars, or by imprisonment for a term not to exceed three (3) months, to which may be added costs, for any person to violate any of the provisions of this Section.

11-718 Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, which can be given effect without the invalid provisions, and to that end the provisions of this Ordinance are deemed severable.

11-719 Effective Date.

This Ordinance shall become effective upon final passage. (Ord. No. 1218, 9-4-56; Rev. Ord. 1963; Ord. No. 76-20, 7-20-

11-719

76)(Ord. No. 89-33, 12-19-89).