

ORDINANCE

No. 1026

AN ORDINANCE AMENDING THE ORDINANCE APPROVED OCTOBER 17, 1974, GRANTING A FRANCHISE TO TWIN LAKES TELEVISION CORPORATION TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF EUREKA SPRINGS, ARKANSAS: SETTING FORTH TERMS AND CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE: AND PROVIDING FOR CITY REGULATION OF THE CABLE TELEVISION SYSTEM.

WHEREAS, The City Council of the City of Eureka Springs has found and determined that the public necessity and convenience of the general public of the City requires a cable television system in the City; and

WHEREAS, The City Council of Eureka Springs has concluded full and open public hearings on November 12, 1977, after public notice of such hearings was duly published on October 29, 1977, during which any and all applicants, interested parties and members of the public desiring to present evidence and/or present statements concerning the granting of such Cable Television Franchise, were afforded an opportunity to do so. The legal, character, financial, technical and other qualifications having earlier been considered and approved, and the qualifications and construction programs and proposal of TWIN LAKES TELEVISION CORPORATION having earlier been considered and approved, the changes hereinafter set out were further considered and approved.

BE IT ORDAINED BY THE CITY COUNCIL OF EUREKA SPRINGS, ARKANSAS, AS FOLLOWS:

Section 1. Grant of Authority

There is hereby granted by the City to the Grantee that right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV System for the interception, sale and distribution of television and radio signals.

## Section 2. Duration of Franchise

The duration of the rights, privileges and authorities hereby granted shall be fifteen (15) years from the date of passage of the Ordinance by the City Council of the City of Eureka Springs granting said franchise, provided, that the Grantee shall have the option of extending this franchise for an additional period of fifteen (15) years upon application by the Grantee not later than six (6) months before the expiration date of the Franchise and not earlier than one (1) year before the expiration date of the Franchise and conditioned upon a review of the Grantee's qualifications and performance and approval thereof by the City Council.

## Section 3. Compliance with Applicable Laws and Ordinances

The Grantee shall, at all times during the duration of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

Section 4. Rates

The maximum initial rates charged by the Grantee to subscribers shall be as follows:

<u>Residential:</u>	First outlet	\$ 6.75
	Second outlet	1.25
	Each additional outlet greater than two (2)	1.00
	Service charge	10.00
<i>Turn On or installation</i> <u>Commercial:</u>	\$10.00 for each group of eight outlets	
	Installation charges	Negotiable but no greater than cost plus 10%
<u>Multi unit:</u>	First outlet	\$ 6.75
	Each additional outlet	1.25
	Installation charges	Negotiable but no greater than cost plus 10%

At such time as the Grantee desires to increase rates, Grantee shall file with the City Clerk the amount of such desired increase and shall promptly thereafter publish in a local newspaper of general circulation notice of such desired increase, advising that specific information concerning such increase exists in the office of the City Clerk. Said increase shall become effective on the 30th day following publication of such notice unless within such 30-day period there is filed in the office of the City Clerk a petition opposing such increase bearing the signatures of not less than 15% of the legal voters of the municipality in the most recent General Election, and that aforesaid notice shall contain information to that effect.

Promptly upon filing of such petition, the Grantee shall give notice of and conduct a hearing on the question of whether such rate increase should be granted, and shall within 60 days from the time of filing of such petition, make a determination as to whether such rate increase shall be granted. If no determination, either granting or denying said increase, shall be made within 90 days from the time of filing of said petition, the requested rate increase shall become effective on the 90th day from the time of filing of the petition.

In no event shall any requested rate increase be arbitrarily denied; denial of any requested rate increase shall be based only upon a finding that said increase is exorbitant or unreasonable.

#### Section 5. Payment to City

For the use of the streets and other facilities of the City in the operation of the CATV System and for the municipal supervision thereof, the Grantee shall pay to the City annually an amount equal to three (3) percent of the Grantee's gross subscriber revenues starting October 1, 1974, from operations within the City of Eureka Springs during the year. For this purpose, "gross subscriber revenues" does not include sales, excise or other privilege taxes billed to and collected from subscribers by Grantee in addition to charges for services rendered, and shall not include amounts collected from installation charges.

#### Section 6. Indemnification

(a) The Grantee shall hold the City of Eureka Springs harmless from all claims for damages arising out of the construction, maintenance, or operation of the said cable system or other apparatus under the control of the Grantee.

(b) Any streets, alleys or other City owned or controlled property which are damaged in the course of the conduct of business by the Grantee shall be repaired by, or at the expense of, the Grantee.

(c) The Grantee shall furnish to the City a certificate evidencing the issuance of public liability insurance to the Grantee.

#### Section 7. Standards of Service

(a) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) Procedures have been adopted by the City and the Grantee regarding the receipt, investigation and resolution of any and all complaints regarding cable television operations. The procedures include, but are not limited to, requirements that:

(1) Complaints shall be investigated and resolved by the Grantee within twenty-four (24) hours of receipt thereof, whenever possible.

(2) To receive complaints regarding cable television operations, the Grantee shall maintain a toll-free telephone operated so as to receive complaints, requests for repairs or service twenty-four (24) hours per day, seven (7) days per week.

(3) The Grantee shall be required to maintain a local business office or agent not more than twenty-five (25) miles from any subscriber served by the CATV system who will receive and commence resolution of complaints regarding cable television service.

(c) The City hereby designates the City Clerk to be the office responsible for continuing administration of this franchise and for exercising the authority for implementing the complaint procedures adopted by the City and the Grantee.

(d) The Grantee shall give written notice to all subscribers, upon subscribing to the cable television system and periodically thereafter, which will indicate procedures for reporting and resolving complaints about cable television service and will indicate the name of the office designated in subsection (c) of this section whose responsibility it is to implement complaint procedures.

(e) The Grantee shall in the event of interruption of service which continues for seven or more consecutive days, make a refund to the subscribers whose service is interrupted of a service fee proportionately based upon the time of the existence of the aforesaid interruption of service; PROVIDED, that said interruption of service occurs to all of the subscribers on the particular distribution line where said interruption of service occurs; and FURTHER PROVIDED, That said interruption of service is reported to the Grantee within 24 hours of its initial occurrence.

#### Section 8. Right of Revocation

The City shall have the right to rescind or revoke the rights herein granted upon any substantial violation by the Grantee of any of the obligations and requirements contained herein after written notice by the City to the Grantee and continuation of such violation, failure or default.

(a) Such written notice to the Grantee shall specify precisely the manner in which the Grantee is in violation, failure or default with respect to the Franchise.

(b) The notice given by the City shall give the Grantee a specified, reasonable amount of time within which to correct the violation, failure or default, but in no event shall the time period be less than thirty (30) days from the date of receipt of the notice to the Grantee.

Section 9. Line Extension

Service shall be provided for any and all subscribers requesting service where the annual cost of providing the service is less than or equal to the net projected annual revenue from the service. Potential subscribers requesting service where the annual cost of providing the service is greater than the net projected annual revenue shall be allowed to make an aid in contribution to the construction so that the annual cost is equal to the net projected annual revenue.

In the event that the City of Eureka Springs annexes additional territory, the Grantee shall apply the same criteria as above to the annexed territory.

All construction required to be undertaken by the Grantee into newly annexed territory shall be accomplished within three years after the City annexes such additional territories.

Any refusal of service under the terms of this Section must be promptly reported by the Grantee to the City Clerk.

#### Section 10. Separability

If any section, sub-section, sentence, clause, phrase, or portion of this Franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction, or any State or Federal Agency having jurisdiction over such matters, such portion shall be deemed a separate, distinct, and independent provision and such holdings shall not affect the validity of the remaining portions hereof.

#### Section 11. Regulatory Action

(a) The performance by the Grantee hereunder is subject to limitations, restrictions, or requirements now existing or which may henceforth be imposed by law, rules, or order of the Federal Communications Commission or any other government board, commission or authority of any kind. The Grantee shall not be deemed in breach of any of the requirements of this Franchise to the extent it performs in accordance with or refrains from doing anything prohibited by such law, rule or order.

(b) Should the Federal Communications Commission modify or amend the provisions of Section 76.31 of its Rules and Regulations entitled "Franchise Standards" such modifications or amendments shall be incorporated into this Franchise within one (1) year of adoption of the modification or amendment, or at the time of the renewal at the expiration of this Franchise pursuant to Section 2 hereof, whichever occurs first.

#### Section 12

It has been found and decided by the City Council of Eureka Springs, Arkansas, that there is an urgent need for the revision of the franchise as hereinbefore set out and that a delay in implementing said revision would be detrimental to the interests of the people of the City of Eureka Springs. Therefore, an emergency is declared to exist and this resolution being necessary for the preservation of the public health and safety shall take effect and be enforced from the date of its approval. Any further amendment to said franchise shall be accomplished only after public hearing is held thereon in which all interested parties are afforded an opportunity to participate and/or present evidence regarding the matters on which amendment is

being sought.

ORDAINED on this 10<sup>th</sup> day of December, 1977.

Charles F. Robertson  
MAYOR

APPROVED on this 10<sup>th</sup> day of December, 1977.

ATTEST:

June I. Monerauie  
CITY CLERK

CERTIFICATE

I, June I. Monerauie City Clerk of the City of Eureka Springs, Arkansas, do hereby certify that the foregoing 7 pages of typewriting are a true and correct copy of the Ordinance it purports to be as same appears of record in the Ordinance Record of the City of Eureka Springs, Arkansas.

IN TESTIMONY WHEREOF, I have hereunto set my Hand and Seal of said Office at Eureka Springs, Arkansas, on this 10<sup>th</sup> day of December, 1977.

June I. Monerauie  
CITY CLERK