

ORDINANCE NO. 2097

AN ORDINANCE GRANTING A NON-EXCLUSIVE 10 YEAR PERMIT TO UNIVERSAL CABLE HOLDINGS. INC., (D/B/A CLASSIC CABLE) TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CLAY CENTER, KANSAS AND SETTING FORTH CONDITIONS PROVIDING FOR THE REGULATION AND USE OF THE CABLE TELEVISION SYSTEM AND REPEALING ORDINANCE NO. 2001.

Section 1. Short Title. This ordinance shall be known and be cited as the Classic Cable, Cable Television Permit.

Section 2. Definitions.

- (a) CITY - The City of Clay Center, Kansas.
- (b) Council - The governing body of the City of Clay Center, Kansas.
- (c) Cable Television System - The equipment and materials used to distribute electronic signals, including, but not limited to, television, radio and other signals as permitted by the Federal Communications Commission and other entities of competent jurisdiction.
- (d) Permit - The non-exclusive right to construct, operate and maintain a Cable Television System within the corporate limits of the city as they now exist and may exist from time to time, and to install underground and aerial cable, pedestals and electronic equipment over, under and across the surface of, and the space below any public street, road, highway, freeway, lane, alley, court, sidewalk, easement, parkway, drive, or public ways and public places, now or hereinafter existing as such within the city.
- (e) Permittee - The person, persons, partnership or corporation granted a permit by the city, and the lawful successor assignee.
- (f) Subscriber Revenues - The sums paid by subscribers living in the city to permittee for monthly cable television service and shall in addition include all charges made for other cable television services by the permittee.
- (g) FCC - The Federal Communications Commission.

Section 3. Permittee's Character. After public proceedings affording due process, the city has determined the legal, character, financial, technical and other qualifications of Classic Cable to be satisfactory and approved of the adequacy and feasibility of the construction arrangements made by the permittee for the areas of the city which may not at the present time have service available.

Section 4. Terms of Permit. The terms of this permit hereby granted to permittee shall be for a period of 10 years from the date hereof. This permit provides to the permittee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, roads, highways, freeway, lanes, alleys, courts, sidewalks, easements, parkways, drives, public ways and public places now laid out or dedicated and all extensions thereto in the city, wires, cables, and other television conductors, appliances and fixtures necessary for the maintenance and operation in the city of a cable television system.

The permittee shall have the authority to trim trees upon and overhanging the streets, alleys, sidewalks, and public ways and places of the city as to prevent the branches of such trees from coming in contact with the wires and cables of the permittee, except that at the option of the city, such trimming may be done by it or under its supervision and direction.

Section 5. Rights to the City - Remedy. Due Process. Notification. The right is hereby reserved to the city to adopt, in addition to the provisions contained herein, and in existing applicable ordinances, such additional regulations as it may find necessary in the exercise of its regulatory power, provided that such regulations by ordinance or otherwise shall be reasonable and not conflict with or impair or diminish the rights granted herein.

The city shall have the right to revoke and terminate this permit at any time for cause upon giving of 90 days written notice thereof to the permittee. Revocation and termination action shall proceed if, after 60 days from permittee's receipt of written notification of a violation by the city, permittee fails to correct such violation. In the event the violation is not reasonably curable within 60 days, this permit shall not be terminated if the permittee provides a good plan to correct the violation and continues to demonstrate good faith in seeking to correct such violation. Notification of revocation and termination shall be by ordinance fully adopted following an appropriate public proceeding affording due process. Cause for termination and revocation shall be a finding of fact that the permittee willfully:

- (a) Violate any provision of this permit except where such violation is without fault or through excusable neglect;
 - (b) Becomes insolvent, unable to pay its debts or is adjudged a bankrupt;
 - (c) Attempts to evade any of the provisions of this permit or practices any fraud or deceit upon the city.
- The permittee may appeal any such revocation and termination to a court of competent jurisdiction.

Section 6. Compliance with Applicable Laws. The permittee shall at all times during the life of this permit be subject to all lawful exercise of the police power by the city and to such reasonable regulations as the city, state or federal laws shall hereafter provide in the exercise of police power.

Section 7. Federal Communications Commission Rules. Within one year from the date the FCC amends or modifies Chapter 1 of Title 47 of the Code of Federal Regulations, Subpart C of Part 76 thereof, this permit shall be amended to be made consistent with such amendment or modifications. Actions in compliance with FCC Rules and Regulations by permittee that conflict with this permit will not be a violation of this permit.

Section 8. Territorial Area. This permit relates to the present territorial limits of the city and to any area henceforth added thereto during the term of this permit. Service shall be provided at standard installation rates where there is a minimum of 30 homes per contiguous mile of aerial plant, and elsewhere if economically sound.

Section 9. liability and Indemnification. The permittee shall maintain throughout the term of this permit adequate liability insurance insuring the city and the permittee as follows:

- (a) Bodily injury or death - \$500,000;
- (b) Property damage - \$500,000;

(c) All other types of liability - \$500,000.

Section 10. Payment to the City. The permittee shall pay to the city an amount equal to five percent of the subscriber revenues received by the permittee within the city during the permittee's fiscal year, and shall be in lieu of all other license or permit fees.

Payments shall be made to the city on a quarterly basis and are due 45 days following the end of the quarter. If not paid within 60 days, interest shall accrue at the rate of 1 Y2 of the quarterly payment per month and shall become due and payable on the 60th day immediately following the end of the quarter. Failure to pay a quarterly payment, including interest, within 90 days following the end of the quarter is considered a violation of this permit.

Section 11. Rates. The permittee shall have the right and power to fix, charge, collect and receive reasonable rates for service furnished within the corporate limits of the city.

Section 12. Service. Operation and Maintenance. The permittee shall render efficient service, make repairs promptly and interrupt service only for good cause and only for the shortest time possible. The permittee shall continue to maintain an office in the vicinity which shall be open during all usual business hours, have a listed telephone, and be operated so that complaints and requests for repairs and adjustments may be received. The permittee shall, where circumstances warrant, correct problems within a reasonable period of time and be able to demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered to the subscriber's terminal. The permittee shall maintain complete records of any complaints which it receives regarding its cable television operations and steps taken to resolve same. Such records are to be available to the city for review as may be required. Should the permittee be unable to resolve any complaints within a reasonable period of time, the permittee is to advise the appropriate city official of such fact, so that the city may take whatever additional steps as may be necessary. If such complaint remains unresolved longer than 30 days from the date first received by the permittee, the cable subscriber shall have the right to register in writing such complaint with the appropriate city official hereinbefore designated. The permittee shall provide each subscriber, at the time of initial cable television subscription, with effective notice of the procedures for reporting and resolving complaints. The city shall designate by title the following official, the city clerk, as having primary responsibility for continuing administration of the permit and implementation of complaint procedures.

Section 13. Carriage of Signals. All FCC regulations shall be complied with regarding carriage of the programming and signals of broadcast television stations. Such signals will be carried throughout the broadcast day of the broadcast television station without alteration, deletion or substitution, except as required or permitted by FCC Rules and Regulations.

Section 14. Technical Standards. The technical standards shall fully comply with the standards of the FCC Rules and Regulations, part 76, Subpart K or any waivers which may from time to time be granted thereto.

Section 15. Building Movement. The permittee shall, on request of any person holding a building movement permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting same. Permittee shall have authority to require such payment in advance. The permittee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

Section 16. Transfer of Permits. The permittee shall not transfer this permit to another person or entity other than a parent, affiliate or subsidiary of the permittee without prior approval of the city. The city shall not unreasonably withhold such permission.

Section 17. Use of Facilities. In the exercise of this permit, the permittee may, with the consent of the owner, use the poles, conduit and other equipment of public utilities doing business in the city. The permittee may not use any of the poles, conduit or other equipment of the city without entering into an agreement with the city on such terms, conditions and considerations as may be mutually agreed upon between the city and permittee.

Section 18. Relocation of Facilities. In the event that any time during the period of this permit the city shall lawfully elect to alter or change the grade of any street, alley, or other public way, the permittee, upon reasonable notice by the city shall remove, relay and relocate its poles, wires, cable~, underground conduits, manholes and other fixtures at its own expense.

Section 19. Nonexclusivity. Neither the granting of this permit, nor any of the provisions contained herein shall be construed to prevent the city from granting a permit to any person or corporation other than the permittee; provided, however, that any such permit shall be on terms no more favorable or less burdensome than those terms provided herein.

Section 20. Separability. If any section, subsection, clause, phrase or portion of this permit is, for any reason, held invalid or unconstitutional by any governmental agency or court of competent jurisdiction, such portion shall be deemed separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 21. Repealer. That Ordinance No. 2001 be, and the same is hereby repealed.

Section 22. Hearing and Effective Date. Pursuant to K.S.A. 12-2007 and to notice published in the official city newspaper on June 27, 2000, a public hearing was conducted upon the advisability of granting the above-mentioned permit. The hearing was conducted by the council on July 5, 2000, and immediately prior to its regular meeting. This ordinance shall take effect and be in force from and after its passage, approval and publication once in the official city newspaper. The permit granted herein shall commence July 7, 2000. This ordinance repeals the permit granted by Ordinance No. 2001 by agreement of the parties.

(7-5-2000)