

ORDINANCE NO. 28 FOR 1979

ORDINANCE NO. 782

AN ORDINANCE GRANTING TO THE SWEET HOME TELEVISION CABLE CO. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A COAXIAL CABLE SUBSCRIBER SYSTEM FOR THE TRANSMISSION OF ELECTRONIC SIGNALS FOR DISTRIBUTION THROUGHOUT THE CITY OF SWEET HOME, AND DECLARING AN EMERGENCY.

Be it ordained by the city of Sweet Home as follows:

Section 1. Purposes. The city of Sweet Home, a municipal corporation of the state of Oregon, hereinafter referred to as city, hereby grants to the Sweet Home Television Cable Co., a corporation hereinafter called the grantee, and to its successors and assigns, which shall hereinafter be included in the word "grantee," under the conditions and limitations prescribed, the right, privilege, authority and franchise to install, lay down, maintain and operate in, over and upon and under the streets, alleys and public highways of the city of Sweet Home (hereinafter referred to as streets), underground pipes and conduits with the necessary manholes and other appliances therefor and to erect poles with or without crossarms, and stretch wires and cables on all streets; and amplifiers or other appurtanances thereon, and to maintain and use the same for the purposes of erecting, operating and maintaining a coaxial cable subscription system for the transmission of electronic signals to be distributed to the subscribers, homes and to such business and public establishments as may also desire this service. When it is practicable, the grantee shall make use of poles jointly in conformity with such arrangements as may be with any power company and/or telephone company, and the owner of any other poles which may be upon the city streets used for the purpose of carrying wires; provided, however, that all work and construction hereby authorized shall be performed in a workmanlike manner and shall conform with the requirements of the National Electric Safety Code and laws of the state of Oregon and ordinances of the city of Sweet Home. Provided, further, that before any new poles, wires, cables, amplifiers or other appliances be constructed or installed under the franchise, the grantee may be required to file with the city council plans showing the location of such construction, to be approved by said city council. Such construction or repair shall be done so as not to unreasonably obstruct or prevent the free use of said streets.

Section 2. Excavations. It shall be lawful for the said grantee to make all needful excavations in any of such streets, alleys, avenues, thoroughfares and public highways in said city for the purpose of placing, erecting, laying and maintaining poles, or other supports or conduits for said wires, or to bury said cable or repairing, renewing or replacing the same, after a public works permit for said excavation has been approved by the city engineer said work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the city of Sweet Home.

Section 3. Restoration of Streets. Whenever the grantee shall disturb any of the streets for the purpose aforesaid, he or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so the city of Sweet Home shall have the right to fix a reasonable time within which such repairs and restoration of streets shall

be completed, and upon failure of such repairs being made by grantee, the said city shall cause such repairs to be made at the expense of said grantee.

Section 4. Obstructions. Nothing in this ordinance shall be construed in any way to prevent the proper authorities of the city of Sweet Home from sewerage, grading, planking, rocking, paving, repairing, altering or improving any of the streets, alleys, avenues, thoroughfares and public highways within the city of Sweet Home in or upon which the poles, wires or other conductors of said grantee shall be placed. But all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus.

Where tree trimming is necessary on public streets for the operation of the lines, wires, cables and antennas or other appurtenances of the grantee, such trimming shall be done by competent employes, agents or contractors of the grantee after approval of the city manager and it shall be done without cost or expense to the city.

Section 5. Compensation. In consideration of the rights, privileges and franchise hereby granted, said grantee shall pay to the city of Sweet Home four percent per annum of the gross local service receipts derived from the operation of said transmission service, provided that there need not be included in the gross income on which computation is made, any sums received by grantee for any installation or connection. No expenditures, however, of any kind shall be deducted from the gross income in determining gross local service receipts. Payment of said four percent shall be made on or before January 15 for the preceding calendar year.

The grantee shall keep proper books and records covering the transmission of electronic signals, which books and records shall always be open to inspection of the city manager and members of the city council, as the city's interest may appear.

Section 6. Relocation of Wires. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wiring or other apparatus of the grantee to permit the passage of any building, machinery or other object, the said grantee will perform such rearrangements on seven days' written notice from the person or persons desiring to move said building, machinery or other objects. Said notice shall bear the approval of the city manager, shall detail the route of movement of building, machinery or other objects, shall provide that the costs incurred by the grantee in making such arrangements of its aerial plant will be borne by the person or persons giving said notice. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code and the laws of the state of Oregon and the ordinances of the city of Sweet Home.

Section 7. Use of Poles. The city reserves to itself the right at any time to use the poles and other installations of grantee erected or installed under the authority granted in this ordinance for any city-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the grantee's use thereof.

Section 8. Insurance. Grantee shall indemnify and save the city free and harmless from any and all liability, loss,

cost, damage or expense from accident or damage, either to itself or to persons or property of others which may occur by reason of the exercise of the rights and privileges herein granted; and shall, for the purpose of carrying out the provisions of this section, and prior to commencing construction of any kind, have in full force and effect, and file evidence thereto with the city recorder, a good and sufficient policy (or policies) covering bodily injury with limits of \$200,000.00 personal injury each person, \$500,000.00 personal injury each accident and property damage limits of \$50,000.00 each accident and \$100,000.00 aggregate with said policy (or policies) to be executed by an insurance company (or companies) authorized and qualified to do business in the state of Oregon and conditioned to indemnify and save harmless the city from and against any and all claims, actions, suits, liability loss, cost, expense or damage of any kind or description which may accrue to or be suffered by the city or by anyone by reason of the erection, construction, reconstruction, relocation, replacing, readjustment, repair, maintenance or operation of the coaxial cable and appurtenances thereto, or by reason of anything that has been done or may be done by the grantee hereunder which may in anywise cause liability by reason thereof.

Section 9. Term of Franchise. The rights, privileges and franchise herein granted shall cease and terminate 10 years from the date of the passing of this ordinance, unless sooner terminated, as hereinafter provided. If this franchise is still in effect, the grantee may apply, not later than 60 days prior to the expiration of the term of this franchise, to the city for an extension of this franchise for an additional term of 10 years. The city shall consider granting such franchise, so long as there has been substantial compliance with the terms of this franchise by the grantee. The extension of the franchise shall be subject to renegotiation between the parties and shall conform to such changes as the city may desire to make, which changes which shall be reasonable in the light of the then existing circumstances and those to be reasonably expected in the following 10 year period.

The grantee shall at all times fully and faithfully perform all the terms, provisions and conditions of this franchise and furnish efficient service hereunder and maintain his property in good order throughout the entire term of this grant, and upon any default by the grantee hereunder and the continuance of such default for a period of 30 days from and after receipt of a notice from the city specifying such default, the city may terminate this franchise and all further rights of the grantee, its successors or assigns hereunder. Any default by the grantee in the performance of the terms and conditions of this franchise which shall result, in the judgment of the city, in a danger or hazard to the public shall be corrected within such reasonable time as the city may prescribe in its notice of default and failure to remove such default within the time prescribed by the city shall constitute grounds for the city to terminate this franchise and all rights of the grantee, its successors or assigns, hereunder.

Upon any termination of this franchise, the city may require the grantee to remove all of its equipment from all public property and from the premises of the customers of the grantee within 90 days, and if it is not so removed within such time, the grantee hereby consents that the city may remove said equipment and shall have a possessory chattel lien on the said equipment for the expense of removal thereof.

Section 10. Additional Channels. The grantee shall promptly install equipment to receive satellite television signals so that

additional television channels will be available to the customers on the cable television system. The grantee shall have in operation and available to its customers one additional television channel by May 1, 1980, another additional television channel by June 1, 1980 and a "pay" television channel by March 1, 1980.

Section 11. Office in City. The grantee shall maintain a business office within the city limits of the city, which shall be open regular business hours and maintain a telephone, so that customers of the grantee may request services and register complaints. The grantee shall make every reasonable effort to investigate legitimate complaints and to improve its service to remedy the problems.

Section 12. Extension of Service. The grantee shall furnish service under this franchise within the city limits wherever there is a demand, actual or potential, great enough to justify the costs of installing the television cables and other equipment. The city council of the city of Sweet Home may set guidelines for extension of service and it shall have the right to make the determination on the extension of the service and the costs, if any, to be paid by the parties served, and if the grantee fails to comply with the decision of the city council, then this franchise may be terminated.

Section 13. Charges for Service. Said grantee shall have the right to charge and collect reasonable compensation from all persons and corporations to whom said electronic transmission service shall be furnished (including installation charges), subject to the rules and regulations of legally constituted regulatory bodies of the state or federal governments. The charges made for a subscriber's service, including installation and connection work, shall be subject to review by the council on request. The grantee shall submit financial statements showing the cost of service and the revenues received to justify its request for any rate increase. Before any new rate schedule is put into effect the city council shall review the proposed rates at a public hearing, which hearing shall be held after publication of notice at least 10 days prior. After the hearing, the council must approve the proposed rate schedule prior to its adoption by the company. The rate schedules shall be reviewed by the council with the objective of approving rates which would provide a fair and reasonable rate of return to the company for providing a quality of service comparable to that in other areas.

Section 14. Non-Exclusive Franchise. The rights and privileges herein granted shall not be deemed exclusive, nor shall the grantee herein assign, transfer, mortgage or encumber said rights or privileges without the consent of the council of the city of Sweet Home, given by resolution, which consent shall not be unreasonably withheld.

Section 15. Acceptance. The grantee shall signify its acceptance of this franchise by filing written notification thereof with the city recorder within 30 days from the passage of this ordinance.

Section 16. Separability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity or constitutionality of the remaining portions thereof.

Section 17. Repeal. Ordinance No. 430 is hereby repealed.

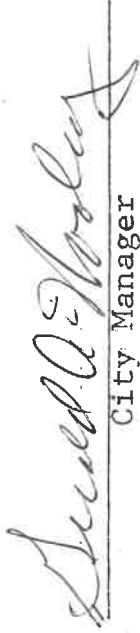
Section 18. Emergency. In the interest of the public peace, health and safety, an emergency is hereby declared to exist and this ordinance shall go into full force and effect immediately upon its passage and approval.

Passed by the council and approved by the mayor this 22nd day of January, 1980.



Mayor

ATTEST:



City Manager