

ORDINANCE 21

Ordinance granting a non-exclusive franchise to operate a television cable system in Beech Bottom, Brooke County, West Virginia

Whereas it is the desire of the common council of the Village of Beech Bottom to obtain for the citizens of Beech Bottom an opportunity to participate in expanded television reception: and

Whereas it is the desire, in furtherance thereof, to grant a non-exclusive television cable system franchise to Dale's Electronic Television & Cable Service, the right, privilege and permission to install a television cable system within the municipal limits of the Village of Beech Bottom, Brooke County, State of West Virginia, the terms thereof, the limitations thereon, and the extent thereof to be as hereinafter set forth:

- (1) Permission is hereby granted to Dale's Electronic & Cable Service, a West Virginia Corporation with its principle offices in Moundsville, Marshall County, West Virginia, and its successors and assigns, to set poles, to traverse and cross above and under streets and alleys within the Village of Beech Bottom, with wires, cables and associated appliances in connection with the construction of a television cable system, and to operate and maintain such wires, cables, and appliances. Poles to be set at such places as the Council may designate.
 - a. This license shall be a non-exclusive license, and the Village of Beech Bottom reserves the right to issue such additional licenses for television systems as it deems proper.
 - b. This license shall not be construed to give license right to install any part of the system in, over, or under any private property
 - c. Such installation of poles, wires, cables, and other appliances shall in no way interfere with the Beech Bottom Volunteer Fire Department fire alarm system, and shall not in any way interfere with the equipment or the maintenance of equipment of other utilities who may be at this time operating under a franchise from the Village of Beech Bottom. To this end the Grantee of this Franchise shall exhibit to the Village Proper agreements which it has made with Monongahela Power company and/or the Chesapeake and Potomac Telephone Company with respect to occupation of poles belonging to either or both of the said utilities, or in lieu thereof, furnish to the village an affidavit indicating that there is no such occupation to be made of Dale's Electronic & Cable Service. This Franchise shall not be effective until such agreements and/or affidavits are properly furnished.
 - d. In all installations Dale's Electronic & Cable Service shall at all times comply with the minimum requirements for clearance above ground, clearance for other utilities, and all other requirements of the National Safety Code.
- (2) That wires, cables and associated appliances hereby permitted shall at all times be maintained in good and safe order and condition.
- (3) Installations made hereunder shall remain until the expiration of ten (10) years from the date of this permit, and shall continue thereafter from year to year until and unless either the Licensor, being the Village of Beech Bottom, or the Licensee, the

- Corporation, shall give ninety (90) days notice in writing prior to the end of any licensed year of its intention to terminate the same.
- (4) The Licensed Corporation shall at its own expense remove, alter, rearrange, improve or repair such television cable system in such a manner as the Village may direct when it endangers the employees of the Village, or when it interfere with the streets, alleys, or other municipal property, and said Licensee Corporation shall at its own expense, remove, alter, rearrange, improve or repair such television cable system in such a manner as either Monongahela Power Company or Chesapeake & Potomac Telephone Company. May direct when the same endangers the employees or such utilities, or interferes with the purposes and uses of their poles, power lines, telephone lines, or other property.
 - (5) The Licensee shall carry public liability and property damage insurance in the sum of \$100,000 - \$300,000 and \$20,000 - \$40,000 respectively, to protect itself against claims or damage suits, expenses and liabilities which may result by reason of loss or damage. Such insurance shall extend for the full term of this agreement, and any extension thereof and satisfactory evidence of the securing of such insurance shall be furnished unto the Village, the Licensee, Corporation, also shall save harmless the Village of Beech Bottom from any and all loss resulting from injury or damage to persons or property, including injury to the employees or damage to the property of the Village arising out of or resulting in any manner from the presence , use or maintenance of said television cable system or for the acts or omissions of the Licensee Corporation's agents or employees while engaged in the work of placing, maintaining, renewing, or removing the same, as well as any payments made by the Village to any of its injured employees or relatives or representatives in conformity with the provisions of the Workmen's Compensation Act or any Act creating liability of an employer to pay compensation for personal injury to an employee. The insurance described aforesaid shall contain evidence Licensed Corporation's hold harmless agreement stated herein stated. Under such hold harmless, Lessee Corporation shall not use Village's "Immunity" as a defense against claims for damage to persons or property.
 - (6) In the event and in those locations that the use of poles or other utilities is not practicable, the Licensee may erect poles or place cables underground. Such installations shall be performed in a neat, safe, and substantial manner, and shall be kept in good order and repair, and shall before installation be subject to the approval by the Street Commissioner. Licensee shall not be permitted to dig up any portion of the Village's streets or alleys to install poles or cables without securing permission from the Village and guaranteeing proper repair and replacement of streets and/or alleys after installation.
 - (7) Upon termination of permission granted hereunder or any extension thereof, the Licensee Corporation shall forthwith remove all of its attachments form the poles and upon its failure to do so, the Village may make such removal at the Licensee's cost and expense.
 - (8) The permission granted hereunder is subject to all Ordinances, Rules, and Regulations now enforced or which may hereafter be passed relative to the use of streets and alleys by the Licensee.

- (9) ~~It is agreed by Licensee Corporation that its facilities shall not be used for the installation of the sale of what is now commonly known as "Pay TV"~~
- (10) In the event, in the Village's judgment, upon advice retained by the Village, such system causes interference to the television reception of other persons in the Village not customers of Licensee, then Licensee shall at its own expense, take such steps as may be necessary to eliminate such interference.
- (11) It has been represented to the Village by Licensee and Licensee agrees that it shall furnish television cable service to each school, public or otherwise within the limits of the Village of Beech Bottom, at no cost to the Board of Education or to other school Administrative bodies.
- (12) ~~Insofar as the Village has jurisdiction, it retains its rights to negotiate, regulate, and control, and otherwise supervise rates.~~
- (13) In the event that construction of a television cable system has not begun within six months from this date, or in the event that such system had not been installed and is available for public use within one year from this date, this Franchise shall cease and determine and no longer be of any force and effect.
- (14) That said, Dale's Electronic & Cable Service shall at all times maintain said system in a state of good order and repair. Under petition signed by 35% of the subscribers to the service rendered by Dale's Electronic & Cable Service and after a public hearing held after ten (10) days notice published in a newspaper of general circulation in said Village, Council shall have the right to repeal this Ordinance.

Appendix

The following sections were stricken/removed as an amendment by Council of the Village of Beech Bottom on July 2, 2012. These sections are provided only for historical reference, and are no longer in effect

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