

ORDINANCE NO. 73

AN ORDINANCE GRANTING UNTO SQUIRE CREEK COMMUNICATIONS, L.L.C., ITS SUCCESSORS AND ASSIGNS THE RIGHT TO ERECT AND MAINTAIN A COMMUNITY ANTENNA SYSTEM IN THE VILLAGE OF CHOUDRANT, LOUISIANA; AUTHORIZING THE USE, RIGHT, PRIVILEGE, POWER, AND AUTHORITY TO CONSTRUCT, MAINTAIN, OPERATE, AND REMOVE IN, OVER, AND ACROSS HIGHWAYS, ROADS, BRIDGES, OR OTHER PUBLIC PLACES IN THE VILLAGE OF CHOUDRANT, LOUISIANA, FOR THE PURPOSE OF TRANSMISSION BY CABLE OF TELEVISION IMPULSES AND TELEVISION ENERGY FOR SALE TO INHABITANTS OF THE VILLAGE OF CHOUDRANT; TO PROVIDE FOR THE REGULATION THEREOF; TO PROVIDE WITH RESPECT TO THE INSURANCE AND FRANCHISE FEES; AND OTHERWISE TO PROVIDE WITH RESPECT THERETO.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF CHOUDRANT, LOUISIANA, IN REGULAR SESSION CONVENED, HAVING DETERMINED THAT THE FINANCIAL, LEGAL, AND TECHNICAL ABILITY OF SQUIRE CREEK COMMUNICATIONS, L.L.C. IS SUFFICIENT TO PROVIDE SERVICES, FACILITIES, AND EQUIPMENT NECESSARY TO MEET THE FUTURE CABLE RELATED NEEDS OF THE COMMUNITY, THAT:

SECTION 1. TERMS

For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meaning below. When not inconsistent with the context, words, used in the present tense include the future tense, words in the plural number include the singular number, and words in singular number include the plural number:

- a. “VILLAGE OF CHOUDRANT” means all areas within the municipal boundaries of the Village of Choudrant, Louisiana.
- b. “Cable System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communication equipment that is designed to provide cable and other such services to subscribers.
- c. “Franchising Authority” means the Village of Choudrant, Louisiana, or the lawful successor, transferee or assignee thereof.
- d. “Grantee” means SQUIRE CREEK COMMUNICATIONS, L.L.C., or the lawful successor, transferee, or assignee thereof.
- e. “Gross Revenues” mean the monthly revenues received by Grantee from Subscribers of the Cable System; including but not limited to basic cable service, revenues from premium services, HBO, Showtime, Cinemax, and The Disney Channel, and revenue from advertising sold by Grantee. However, such phrase does not include revenues received from installation charges, which are charged at actual cost, or any taxes on cable service which are imposed directly or indirectly on any Subscriber thereof by any other governmental unit or agency, and which are collected by Grantee on behalf of such governmental unit or agency.
- f. “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both solely because of their status as such. However, such phrase does not include any tax, fee, or assessment of general applicability imposed on both utilities and cable operators or their services.
- g. “Public Ways” shall mean the surface of and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchise Authority in the Village of Choudrant which shall entitle the Franchise Authority and the Grantee to the use thereof for the purpose of installing, operating repairing and maintaining the Cable System.

SECTION 2. GRANT

The Village of Choudrant hereby grants to Grantee a non-exclusive Franchise to construct and operate a Cable System in, along, among, upon, across, above, over, under or in any manner connected with Public Ways within the Village of Choudrant and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.

SECTION 3. TERM

The Franchise granted pursuant to the Ordinance shall be for an initial term of ten (10) years from its passage and final adoption.

SECTION 4. CONDITIONS OF STREET OCCUPANCY.

All transmission and distribution structures, poles, other lines, and equipment installed or erected by Grantee pursuant to the terms hereof shall be so located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways. The manner of installation of Grantee's cable, wire, lines, and equipment as relates to crossing of Public Ways shall be made in accordance with instruction and subject to the approval of the Franchising Authority or its representative or the Lincoln Parish Police Jury or Louisiana Department of Transportation and Development, where applicable.

Franchising Authority does not warrant the extent of its right-of-way on public highways, streets, roads, bridges, and other public places, and Grantee must, in case of need, obtain adequate and proper approval and consent from adjoining property owners.

SECTION 5. RESTORATION OF PUBLIC WAYS.

If during the course of Grantee's construction operation or maintenance of the Cable System there occurs a disturbance of any Public Ways by Grantee, it shall, at its expense, replace and restore such Public Ways to a condition reasonably comparable to the condition of the Public Ways existing immediately prior to such disturbance.

SECTION 6. SAFETY REQUIREMENTS.

Grantee's Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Village of Choudrant. Construction, installation and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial compliance with applicable state and federal law, as well as all Federal Communications Commission regulations. Grantee's Cable System shall be constructed and maintained in full conformity with all requirements of the Federal Communications Commission relating to freedom from spurious radiation.

SECTION 7. RATE REGULATION

Franchising Authority shall have only those rights to regulate the rates charged by Grantee as may be granted to it by law. Grantee shall inform Franchising Authority of rate adjustments in writing thirty (30) days prior to the new rate being billed. Notifications of rate adjustments will be made in writing to each current subscriber of Grantee's cable system thirty (30) days prior to rates changing.

Nothing contained herein shall restrict Grantee's right to take any automatic rate increase permitted by federal or state law.

SECTION 8. FRANCHISE FEE.

Grantee shall pay to the Franchising Authority a Franchise Fee equal to three percent (3%) of Gross Revenues collected by Grantee from the operation of the Cable System on an annual basis. The Franchise Fee payment shall be due and payable semi-annually on November 1, and May 1 of each year, with each payment to cover the charge accruing on such monthly basis collected by Grantee for the semi-annual period ending on the last day before the first day of the month in which the payments of the charge falls due. Each payment shall be accompanied by a brief report from a representative of Grantee showing the basis for the computation. Grantee shall make its books, vouchers, contracts, ownership records, and other records available to the Franchising Authority's auditors at all reasonable times for the purpose of verifying the amounts to be paid by Grantee to Franchising Authority pursuant to the provision of this franchise agreement.

In addition to the compensation set out in the last preceding paragraph, Grantee shall pay to Franchising Authority all other taxes, licenses, and charges generally paid by other businesses, including ad valorem taxes.

SECTION 9. RENEWAL OF FRANCHISE.

The rights, privileges, and franchise granted by this ordinance to the Grantee, its legal representatives and assigns, are not exclusive, and nothing herein contained is intended to or shall ever be construed so as to prevent the Franchising Authority from granting other and similar rights, privileges and franchises to any other person, firm, association or corporation. Grantee shall have the right to renew this franchise for a like term of ten (10) years under such terms and conditions as may be then agreed on between Grantee and Franchising Authority, upon giving all notices and requests required by law to the Franchising Authority, in writing, provided Grantee is then in substantial compliance hereunder. In the event Grantee is not then in substantial compliance hereunder, the Franchising Authority shall have the right to reasonably condition renewal on Grantee taking steps to cure existing defaults and providing necessary assurances of future compliance by Company.

SECTION 10. TRANSFER OF FRANCHISE.

Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Grantee, without the prior written consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 11. INSURANCE REQUIREMENTS.

Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance to protect the Grantee from and against any and all claims, demands, actions, judgments, costs, and expenses, of every nature and kind which may arise or result, directly or indirectly, from operation of the Cable System. The amounts of such insurance against liability due to damages to property shall be THREE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$300,000) as to any one person, and ONE MILLION AND NO/100THS DOLLARS (\$1,000,000) as to any one accident, and against liability due to injury to, or death of persons, THREE HUNDRED THOUSAND AND NO/100THS DOLLARS (\$300,000) as to any one person and ONE MILLION AND NO/100THS DOLLARS (\$1,000,000) as to any one accident. Grantee shall also carry insurance as will fully protect it from all claims under the Workmen's Compensation Laws of the State of Louisiana. All insurance required hereunder shall remain in force for the entire duration of the Franchise herein granted. Grantee shall further hold Grantor harmless from any liability to any person, firm or corporation as a result of its exercise of the Franchise rights herein granted.

SECTION 12. CONDITIONS OF SERVICE EXTENSIONS.

Grantee shall extend service to any area within the Village of Choudrant that has a density of twenty (20) homes per aerial mile of cable or thirty (30) homes per underground mile of cable adjacent to and contiguous with existing cable plant as measured from the extremity of the trunk cable nearest the unserved area. In such a case, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible.

However, where the residence, building, structure, development, or subdivision of a person, persons, or firms requesting to be served cable television service by the Grantee in the Village of Choudrant is located in areas below twenty (20) homes per aerial mile of cable or thirty (30) homes per underground mile of cable, Grantee shall have the right to establish and collect an extension charge for erecting, constructing, or extending its cable, wire, or lines to the residence, building, structure, development, or subdivision desiring connection to Grantee's Cable System. Grantee's charge for and decision to extend service will be based on the following criteria:

- a. Commercial feasibility.
- b. Technical practicability.
- c. Current cost to construct cable plant and facilities.
- d. The number of permanent homes in and/or between the area to be served.
- e. The day to day operational and maintenance costs of cable plant after it is constructed.

A person, person's or firm's residence, building, structure, development, or subdivision may receive cable service if arrangements are made for cost-sharing of construction costs for service to that area. Grantee shall use the following cost-sharing formula:

- a. Grantee shall bear its pro-rata share of the then current cost per mile of plant construction based on a multiple of the actual number of potential residential subscribers per mile, divided by twenty (20) homes per mile for aerial areas or thirty (30) homes per mile for underground areas. Mileage will be measured from the nearest point on the nearest existing trunk line.
- b. The remaining construction cost will be borne equally by each applicant committing to at one year's service within the extension area.
- c. Grantee will inform each household of the computed pro rata share per household before any agreements are signed or construction begun.
- d. Grantee will also contact all residents in the area under construction to involve as many homes as possible thereby reducing the costs to each. If, at the end of a twenty-four (24) month period following completion of construction, the number of homes per mile within the line extension is equal to or greater than the prescribed density, Grantee will rebate one hundred percent (100%) of the construction costs to the developer, if any.

This extension charge shall be uniform and shall be applied indiscriminately to all persons or firms desiring service from or connection to Grantee's system. Grantee shall have the right to determine the commercial feasibility of any request for service extension and shall have the right to refuse to serve an area or areas that would cause financial harm to the Grantee or be technically impracticable to build or both.

SECTION 13. ACTS OF GOD.

The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control.

SECTION 14. NOTICE.

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service. The notices of responses to the Franchising Authority shall be addressed as follows:

VILLAGE OF CHOUDRANT
ATTN: MAYOR
P.O. BOX 288
CHOUDRANT, LOUISIANA 71227

The notices or responses to the Grantee shall be addressed as follows:

SQUIRE CREEK COMMUNICATIONS, L.L.C.
ATTN: MR. JAMES E. DAVISON, JR.
P.O. BOX 310
RUSTON, LOUISIANA 71273-0310.

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

SECTION 15. NOTICE OF VIOLATION.

In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee of the exact nature of the alleged noncompliance. Grantee shall have thirty (30) days from receipt of the notice to respond to the Franchising Authority to cure such default or, in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, to initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

Failure of the Franchising Authority to enforce or insist upon compliance with any of the terms or conditions of this agreement shall not constitute a general waiver or relinquishment of any such items or conditions, but the same shall be and remain at all times in full force and effect. Nothing herein contained shall be construed as affecting the rights and privileges previously conferred by Franchising Authority, by contract or otherwise, to others not parties to this agreement.

SECTION 16. SEVERABILITY

If any Section, sentence, paragraph, term or provision hereof is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

SECTION 17. EFFECTIVE DATE.

The rights granted by this Ordinance shall be effective from the date of adoption of this Ordinance.

SECTION 18. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.

Grantee shall not, as to rules, regulations, rates, charges, provision of service, or use of facilities and equipment, make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation or location of residence.

Grantee shall not deny cable service, or the extension of cable service, to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.

This Section does not prohibit Grantee from:

- a. denying service based on location of residence, if that residence is outside the parameters for line extension as detailed herein.
- b. Offering a promotional or incentive discount rate or charge.
- c. Denying service to a subscriber who is more than thirty (30) days delinquent in payment of any service bill
- d. Implementing a no-frills service tier for “lower income”, and/or fixed income individuals.
- e. Making agreements or entering into service agreements with multiple dwelling unit owners or commercial establishments (including hotel, motel, apartments, universities, fraternities, sororities, and mobile park owners) to provide service under a bulk billing or other type of arrangement.

SECTION 19. GRANTS OF SIMILAR FRANCHISES

Franchising Authority agrees not to enter into any other cable television franchise with another cable system operator containing more favorable terms than those contained herein unless the same terms, rights, and privileges are also made available to Grantee.

SECTION 20. ADOPTION OF ORDINANCE.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

The ordinance was read and considered by sections and as a whole, and on motion by Jimmy McGrew and second by Eddie Ford, was adopted by the following YEA and NAY vote:

YEAS: Joe R. Aswell –S-
Eddie Ford –S-
Jimmy McGrew –S_

NAYS: None

ABSENT: None

Whereupon, the Mayor declared this Ordinance duly adopted this 14th day of April, 2003.

-S- Bill Sanderson
BILL SANDERSON, Mayor