

(Published in the Washington County News, Thursday, December 9, 2004)

ORDINANCE NO. 693

AN ORDINANCE OF THE CITY OF WASHINGTON, KANSAS, GRANTING TO CUNNINGHAM COMMUNICATIONS, INC., ITS SUCCESSORS, LESSEES, AND ASSIGNS, FOR A COMBINED TERM OF FIVE (5) YEARS, THE RIGHT AUTHORITY, POWER AND FRANCHISE TO ESTABLISH, CONSTRUCT, ACQUIRE, MAINTAIN AND OPERATE A CABLE TELEVISION AND CLOSED CIRCUIT ELECTRONIC SYSTEM WITHIN THE CITY OF WASHINGTON, KANSAS, TO RENDER, FURNISH AND SELL CABLE TELEVISION AND CLOSED CIRCUIT ELECTRONIC SERVICE THEREWITH WITHIN THE CITY OF WASHINGTON, KANSAS, AND ENVIRONS THEREOF, AND TO USE AND OCCUPY THE STREETS AND OTHER PUBLIC PLACES OF THE CITY OF WASHINGTON, KANSAS, FOR SUCH CABLE TELEVISION AND CLOSED CIRCUIT ELECTRONIC SYSTEM.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WASHINGTON, KANSAS:

Section 1: After public hearings affording an opportunity to be heard to all interested parties, and after a review of the qualifications of Cunningham Communications, Inc., and after determining that Cunningham Communications, Inc., is legally qualified, of good moral character and reputation, adequately financed, and technically competent to provide cable television and closed circuit electronic and other services to the City of Washington, Kansas, and that its operation of the system has been satisfactory, there is hereby granted to Cunningham Communications, Inc., a corporation duly authorized to do business in the State of Kansas, (hereinafter called the "Grantee") and to the Grantee's successors, lessees and assigns, pursuant to the authority provided in the City Charter of the City of Washington, Kansas, for a term of five (5) years, the non-exclusive right, authority, power and franchise to continue to construct, maintain, and operate a cable television and closed circuit electronic system within the City of

Washington, Kansas, (hereinafter called the "City") to render, furnish and sell cable television and closed circuit electronic and other services from such system to the inhabitants of the City and its environs, and to use and occupy the streets and other public places within the corporate limits of the City as the same now exist or may hereafter exist for its cable television and closed circuit electronic system.

Section 2: That in the construction, installation, maintenance, and operation of said television system, the Grantee, its successors or assigns, are hereby given the right, permission and authority to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, alleys, avenues, parkways, lanes, bridges, easements, rights of way, and other public places of the City; provided, that the same shall be so used as not to interfere with the public for the purpose of travel or public purposes; and provided further, that whenever it becomes necessary for the Grantee to tear up or dig into any street, alley or sidewalk, it shall first obtain permission to do so from said City, and the Grantee shall, at its own expense, repair and replace any such street, alley or sidewalk to City specifications by the said Grantee; provided further that whenever it becomes necessary to change or alter the grade of any street, alley or sidewalk, the City shall have the right to require the said Grantee to remove its lines, poles and cables so that they will in no way hinder such change in grade, and all such work of removing or changing the lines, poles and cables shall be done at the expense of the Grantee provided further that in the laying of cables underground by the said Grantee, they shall be laid in such a manner as not to obstruct or interfere with water pipes, drains, sewers or other structures already installed; and that all such work shall be done under the supervision of said City; and upon the completion of the cable installation, the said

Grantee shall furnish the City, a blue-print showing the nature and location of all lines, poles and cables, and at any future time when the location of any lines, poles or cables is changed, or additional ones installed, then it shall be the duty of the Grantee to notify the City of such changes so that the blue-print can be changed, corrected or kept current. Grantee acknowledges that the City, from time to time, may add additional land to the City limits by annexation to which Grantee is obligated to serve under this franchise; provided however, that Grantee shall not be obligated to construct and provide service in any area where density of homes is less than 60 per strand mile.

Section 3: That the Grantee on the request of any person shall remove, raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of the wires shall be paid by the party or parties requesting the same, and the Grantee may require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

Section 4: It is expressly understood and agreed by and between the Grantee and the City that the Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Grantee in the construction, operation or maintenance of its electronic system in the City, and Grantee shall cause to be defended at its own expense all actions that may be commenced against the City by reason of the construction and/or operation of such system. The Grantee shall carry public liability and property damage insurance in the sum of \$100,000.00 for each individual, \$300,000.00 for each accident, and \$25,000.00 for property damage, with the City named as an additional insured, said

insurance to be carried with an insurance company with a recognized national rating acceptable to the City.

Section 5: The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its services under this franchise and to the extent reasonably possible to assure an uninterrupted service to each and all of its customers. The Grantee shall have the right and power to fix, charge, collect and receive reasonable rates for cable television and closed circuit electronic furnished within the corporate limits of the City.

Section 6: The City reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonably designate where such facilities are to be placed within the public ways and places.

Section 7: The Grantee shall have the authority to trim trees upon any overhanging streets, alleys, sidewalks, and public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, all trimming to be done under the supervision and direction of the City and at the expense of the Grantee. Grantee shall protect and save harmless the City from any and all claims from damage arising out of the trimming of trees as herein provided.

Section 8: The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City, and to such reasonable regulation thereunder as the City shall hereafter by resolution or ordinance provide.

Section 9: In consideration for the rights, privileges and franchise hereby granted, and as compensation to the City for the use of its public ways and places by the Grantee,

and in lieu of all occupation and license taxes, the Grantee shall, on or before the 31st day of January and the 31st day of July of each year in which this franchise is effective, pay to the City a sum equal to two percent (2%) of the gross receipts from the sale of community antennae and closed circuit electronic service within the then existing corporate limits of the City for the preceding six (6) month period ending on the 31st day of December and the 30th day of June, respectively, less said minimum fee theretofore paid. Each of the above semiannual payments to the City shall be accompanied by a statement of gross receipts received by the Grantee from operations within the City for the said preceding six (6) month period. The term “gross receipts” shall mean gross subscriber revenues per year from cable television operations.

Section 10: As an inducement to Grantee to continue to improve its systems and services offered at all times during the initial franchise period, and any automatic renewals thereof, the City hereby agrees to give Grantee the first opportunity to negotiate a renewal of this franchise agreement with the City after the expiration of the five (5) year franchise period herein stated. Assuming Grantee’s operation under this franchise agreement has been satisfactory, and after compliance with any applicable Rules and Regulations of the Federal Communications Commission, the Governing Body shall give favorable consideration to renewal of this franchise agreement by Grantee, if Grantee so requests and provides evidence that it can and will provide facilities and services at least equal to other prospective franchisees offering similar services and facilities.

Section 11: The City is the owner of certain utilities, and in order to keep the number of poles to a minimum, hereby consents to the installation of Grantee’s facilities on poles belonging to it. Such installation shall be made in accordance with the National

Safety Code, the electric code of the City of Washington, Kansas, and such other safety requirements as may be applicable. Should the existing poles be inadequate to support Grantee's facilities, or if for any reason the manager of the City Utilities deems it unsafe or that the facilities of Grantee will unduly interfere with the use of any pole or poles for any existing utility, City shall have the right to refuse Grantee the right to install its facilities or any part of such facilities on any such pole or poles. As compensation for the use of said poles, Grantee will pay the City the sum of two dollars (\$2.00) per pole, per year, for each pole to which contact is made. The use of said poles by Grantee for the purposes authorized herein shall be subject to inspection by the City, and Grantee agrees that it will correct any deficiency or improper condition upon notice from the City of such condition. Grantee's use of said poles shall not vest in Grantee any ownership, and its relation shall remain that of a lessee.

Section 12: This franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for the five (5) year term.

Section 13: It shall be the policy of the City to amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and electronic signals which will afford an opportunity to more effectively, efficiently or economically serve its customers, and to enable the Grantee to perform the services permitted by and to conform to the Rules and Regulations of the Federal Communications Commission as they may be amended from time to time.

Section 14: Upon termination of service to any subscriber the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon the subscriber's request.

Section 15: All ordinances and parts of ordinances in conflict herewith are hereby repealed as of the effective date of this ordinance.

Section 16: All Provisions of this ordinance shall be binding upon the Grantee and all successors, lessees and assigns of the Grantee whether expressly stated herein or not, and all the rights, authorities, powers, grants and privileges secured by this ordinance to the Grantee shall be held and inure to the benefit of the Grantee and all successors, lessees, and assigns of the Grantee.

Passed and approved this 6th day of December 2004.

Travis L. Kier, Mayor

ATTEST:

Denise M. Powell