

ORDINANCE NO. 2018 - 05

AN ORDINANCE GRANTING TO FIDELITY COMMUNICATIONS,
PERMISSION TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SYSTEM
UPON, ALONG, ACROSS, OVER, AND UNDER THE STREETS AND PUBLIC
RIGHTS OF WAY OF THE CITY OF CHEROKEE VILLAGE, ARKANSAS

WHEREAS, the City of Cherokee Village, Arkansas ("Grantor") desires to make available to its residents a cable system subject to certain terms and conditions the Grantor believes to be necessary and appropriate; and

WHEREAS, Fidelity Communications ("Gantee") desires to continue to construct, install and maintain a cable system within the jurisdictional limits of the Grantor; now, therefore

BE IT ORDAINED by the Mayor and Council of the City of Cherokee Village, Arkansas that the following ordinance is adopted and approved:

1. Definitions:
 - a. "Basic Service" means those audio and visual signals carried on the service tier of the Cable System which includes local off-air television signals and one or more local access channels. Basic Service shall not include any other tier of service or any premium or pay-per-view channels or services.
 - b. "Cable Act" means the Cable Communications Policy Act of 1984, P.L. 98-549, 47 U.S.C. §521. Supp., as it may be amended or superseded.
 - c. "Cable Service" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
 - d. "Cable System" or "System" means a system of antennas, cables, wires, lines, towers, microwaves, waveguides, laser beams or any other conductors, converters, equipment or facilities designed, constructed, or operated for the purpose of producing, receiving, amplifying, modifying and distributing audio, video, and other forms of communication or electronic signals for the purpose of providing Cable Services to and from residential and business subscribers and locations within the jurisdictional limits of the Grantor.
 - e. "Council" means the governing body of the Grantor.
 - f. "Franchise" means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Cable System within the jurisdictional limits of the Grantor.

- g. "Grantee" means Fidelity Communications and its permitted successors and assigns.
- h. "Grantor" means the City of Cherokee Village, Arkansas.
- i. "Gross Revenues" means any revenue received by the Grantee from the operation of the Cable System to provide Cable Services within the jurisdictional boundaries of the Grantor, provided, however, that such phrase shall not include any taxes, fee or assessment of general applicability collected by the Grantee from Subscribers for pass-through to a government agency, including the FCC User Fee or unrecovered bad debt.
- j. "Streets and dedicated easements" means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the jurisdictional boundaries of Grantor.
- k. "Subscriber" means a purchaser of any Cable Service delivered over the Cable System.

2. Granting of Franchise. The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the streets and dedicated easements within the Grantor for the construction, operation and maintenance of the Cable System, upon the terms and conditions set forth herein.

3. Term. The Franchise shall be for a term of fifteen (15) years, commencing on the effective date of this Ordinance. Subsequent renewals shall be pursuant to the renewal provisions of the Cable Act as it shall provide.

4. Use of the Streets and Dedicated Easements.

a. Grantee shall have the right to use the streets and dedicated easements of the Grantor for the construction, operation and maintenance of the Cable System.

b. Grantee, its own cost, shall have the right pursuant to the provisions of this Ordinance to construct, erect, suspend, install, renew, maintain and otherwise own and operate throughout the streets and dedicated easements of the Grantor, as now laid out or dedicated and all extensions thereof and additions thereto in the Grantor, the Cable System, either separately or in conjunction with any public utility operating within the Grantor. The Franchise shall further include the right, privilege, easement and authority to construct, erect, suspend, install, lay, renew, repair, maintain and operate such poles, wires, cable, underground conduits, manholes, ducts, trenches, fixtures, appliances and appurtenances for the purpose of distribution to inhabitants within the jurisdictional limits of the Grantor. Without limiting the generality of the foregoing, the Franchise shall and does hereby include the right to repair, replace and enlarge and extend the Cable System, provided that Grantee shall use the facilities of utilities whenever practicable.

c. Grantee shall have the right to remove, trim, cut and keep clear of the Cable System, the trees in and along the streets and dedicated easements of the Grantor, provided that in the exercise of such right, the Grantee shall not, cut, remove, trim or otherwise injure such trees to any greater extent than is necessary for the installation, maintenance and use of the Cable System.

d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any street or dedicated easement or sewer, electric facility, water main, fire alarm, police communication or traffic control.

5. Maintenance of the System.

a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Cable System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor. The Cable System shall at all times be kept in good repair and in a safe and acceptable condition.

b. Grantee shall install and maintain the Cable System so as not to interfere with the equipment of any utility of the Grantor or any other entity lawfully and rightfully using the streets and dedicated easements of the Grantor.

c. All conductors, cables, towers, poles and other components of the Cable System shall be located and constructed by Grantee so as to reasonably minimize interference with access by adjoining property owners to the streets and dedicated easements. No pole or other fixtures of Grantee placed in the streets and dedicated easements shall interfere with the usual travel on such public way.

6. Service.

a. Grantee shall provide to its Subscribers broad categories of video programming services.

b. Grantee shall provide Basic Service and one free outlet to each of the following public facilities located within one hundred twenty-five (125) feet of existing service lines of the Grantee and within the jurisdictional limits of the Grantor: City Hall, Fire Department, Police Department and public schools. No monthly service fee shall be charged for such outlet. Grantee shall provide Basic Service to new construction hereafter for similar public facilities; provided they are within one hundred twenty-five (125) feet of the existing service lines of Grantee.

7. Insurance/Indemnity.

a. From and after the effective date of this Ordinance, Grantee shall maintain in full force and effect at all times for the full term of the Franchise, at the expense of the Grantee, a comprehensive general liability insurance policy, written by a company authorized to do business in the state, protecting against liability for loss or bodily injury and property damage

occasioned by the installation, removal, maintenance or operation of the Cable System by Grantee in the following minimum amounts:

One Million Dollars (\$1,000,000) for property damage in any one occurrence
One Million Dollars (\$1,000,000) per occurrence and
Two Million Dollars (\$2,000,000) aggregate for general liability insurance
Worker's compensation coverage in accordance with state law

b. The Grantor and its officials and employees shall be named as additional insureds on said policy. The Grantor shall be notified by the insurance company at least thirty (30) days prior to the expiration or cancellation of such insurance policy or policies.

c. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Cable System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Cable System.

8. Pledge, Assignment of Assets.

Grantee may not assign the Franchise without first obtaining the expressed written consent of the Grantor Council, which consent shall not be unreasonably withheld, provided, however, that Grantee may mortgage or pledge the Franchise for financing purposes.

9. Cancellation and Expiration.

a. Unless earlier terminated in accordance with this Ordinance, the Franchise shall expire December 31, 2034, fifteen (15) years after the effective date of this Ordinance.

b. Prior to revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Franchising Authority has not received a satisfactory response from Grantee, it may then seek to revoke the Franchise at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

c. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a

written transcript shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.

d. Upon termination of the Franchise, Grantee agrees to remove the Cable System from the streets and dedicated easements of the Grantor.

10. Enforcement of Terms and Conditions.

Either the Grantor or Grantee may institute proceedings in a court of competent jurisdiction to enforce the terms and conditions of this Ordinance.

11. Notices, Miscellaneous.

a. Every notice served upon the Grantor shall be delivered or sent by certified mail, return receipt requested, to:

City of Cherokee Village
Attn: Clerk/Treasurer
P0 Box 129
Cherokee Village, AR 72525-0129

and every notice served upon Grantee shall be delivered or sent by certified mail, return receipt requested, to:

Fidelity Communications
Attn: Jessica Carollo
64 N. Clark Street
Sullivan, MO 63080

b. All provisions of this Ordinance shall apply to the respective parties, their successors and assigns.

c. If any particular section of this Ordinance shall be held invalid, the remaining provisions and their application shall not be affected thereby.

12. Franchise Fee.

a. Grantee shall pay to the Grantor, within sixty (60) days after each calendar quarter ends, an amount equal to five percent (5 %) of the Gross Revenues for such calendar quarter.

b. Each year during which the Franchise is in force, Grantee shall file with the Grantor no later than ninety (90) days after the end of each calendar quarter a financial statement showing total Gross Revenues derived from the Cable System during such quarter. The Grantor shall have the right to review the previous year's books of the Grantee to ensure proper payment of the fees payable hereunder. The Grantor shall bear the expense of review unless it is

determined there has been an underpayment of more than five percent (5 %), in which case the Grantee shall bear such expense of the entire review.

13. Effective Date.

This Ordinance shall take effect on January 1, 2019.

Emergency Clause. For the continued fiscal planning of the city and to ensure no interruption in cable service or revenue to the city, the City Council of the City of Cherokee Village declares an emergency to exist and this Ordinance, being necessary for the preservation of the public peace, health, comfort, safety and welfare of the City of Cherokee Village, shall be in full force and effect from the date of its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF CHEROKEE VILLAGE,
ARKANSAS**

DATED: 12/20/18

APPROVED: Russell Stokes, Jr.
Russell Stokes, Jr., Mayor

ATTEST: Deborah Weichinger
Deborah Weichinger, Clerk