

ORDINANCE NO. 242

ORDINANCE GRANTING AN EXCLUSIVE FRANCHISE TO JOHNSTOWN CABLE TV., A SUBSIDIARY OF CONLEY ELECTRONICS CORPORATION, AND TELEPROMPTER CORPORATION, A PARENT COMPANY, ITS SUCCESSORS AND ASSIGNS, TO MAINTAIN A COMMUNITY CABLE TELEVISION SYSTEM IN THE BOROUGH OF SOUTHMONT, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE, PROVIDING FOR THE BOROUGH REGULATION AND USE OF THE COMMUNITY TELEVISION SYSTEM, AND PRESCRIBING PENALTIES FOR THE VIOLATION THEREOF.

BE IT ORDAINED AND ENACTED, AND IT IS HEREBY ORDAINED AND ENACTED, by the Council of the Borough of Southmont, Cambria County, Pennsylvania, as follows:

SECTION 1. This Ordinance shall be known and may be cited as the "CABLE TELEVISION ORDINANCE."

SECTION 2. DEFINITIONS. For the purpose of this Ordinance, the following words shall have the meaning set forth. When not inconsistent with the context, words in the present tense include the future, in the plural include the singular, and in the singular include the plural. The word "shall" is mandatory.

(1) "Borough" is the Borough of Southmont, Cambria County, Pennsylvania.

(2) "Companies" are the corporate grantees of the franchise under this ordinance; Johnstown Cable TV. Conley Electronics Corporation and Teleprompter Corporation.

(3) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.

(4) "System" means a system of apparatus of the reception and distribution of audio signals and visual images or the separate reception and distribution of either of them by means of electrical impulses to receiving sets and for the receiving and making available to subscribers television, radio and other closed circuit electronics and related signals, also known as a community antenna television system.

SECTION 3. GRANT OF FRANCHISE. There is hereby granted by the Borough to the Companies, subject to the terms and conditions of this ordinance, the exclusive right and privilege, hereinafter called "franchise" to construct, operate and maintain, in, upon, along, across, above, over and under the public streets, alleys, ways and places, and all extensions and additions thereto, within the Borough, poles, wires, cables, underground conduits, man-holes and other apparatus and fixtures necessary for the maintenance and operation on the Borough of a community antenna television system. The Borough during the term hereof shall not grant to any other person a franchise which is similar in whole or in part, to the rights granted hereunder.

SECTION 4. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. The Companies shall, at all times during the term of this franchise, be subject to the Borough Zoning Ordinance, the Borough Pole Inspection Ordinance, and to such reasonable regulation as the Borough shall hereafter by resolution or ordinance provide.

SECTION 5. COMPANY LIABILITY - INDEMNIFICATION. The Companies shall save the Borough harmless from all loss or damage on account of any suit, judgment, execution, claim, or demand whatsoever, resulting from any acts of the Companies in the

CCBS33

ORDINANCE NO. 242 (continued)

construction, operation or maintenance of their system in the Borough. The Borough shall notify the Companies within (10) days after the presentation of any claim or demand, either by suit or otherwise, made against the Borough on account of any such act of the Companies. The Companies upon receipt of such notice shall defend against any such claim or demand.

SECTION 6. INSURANCE. The Companies shall carry insurance with reputable insurers to protect the Borough and the Companies from and against any and all claims for injuries or damages to persons or property, both real and personal, caused by the construction, operation or maintenance of the system under this franchise, and providing workmen's compensation coverage for their employees working within the Borough. The amounts of such insurance for property damage shall be not less than \$50,000.00 Dollars, and for liability for personal injury or death, the amount of insurance shall be not less than \$100,000.00 Dollars for one person and \$300,000.00 for one event. The Companies upon request of the Borough shall furnish a Certificate of Insurance evidencing such insurance coverage.

SECTION 7. SERVICE STANDARDS. The Companies shall maintain and operate the system and render good and efficient service in accordance with technical progress and in compliance with such rules and regulations as are, or may be provided by the Borough, or required by the Pennsylvania Department of Highways, the Public Utility Commission of the State of Pennsylvania, or other governmental bodies having jurisdiction over the Companies, and shall provide as many channels of service as are being provided to the majority of subscribers of the service within the area served by the Johnstown Cable TV Company or its successors. The Companies shall operate its system so as not to interfere with non-cable radio and television reception within the Borough. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, the Companies shall give reasonable notice thereof to their subscribers, unless such interruption is unforeseen or an emergency.

SECTION 8. COMPANY RULES. The Companies shall have the right to provide rules and regulations, terms and conditions governing the operation of the system as shall be reasonably necessary to enable them to exercise the rights and perform the obligations under this franchise, and under their contracts so as to assure good and efficient service to their subscribers.

SECTION 9. CONDITIONS ON STREET OCCUPANCY.

(1) Restoration. In cases of any disturbance of pavement, lawn, sidewalk, driveway or other surface by the Companies in the exercise of their rights hereunder

ORDINANCE NO. 242 (continued)

the Companies shall at their cost, and in a manner approved by the Borough Street Commissioner, replace and restore all pavement or other such surface disturbed to as good condition as before said work was commenced.

(2) Relocation. In the event during the term hereof the Borough shall alter or change the grade of any street, alley or other public way, the Companies, upon reasonable notice in writing by the Borough, shall at the Companies' expense remove, relay and relocate their apparatus, and upon failure to do so within a reasonable time, after such notice, the Borough may at its option declare a default hereunder.

(3) Placement of Fixtures. The Companies shall not place apparatus where the same will interfere with any existing utility lines, including gas, electric, telephone, water, sewer lines and all such apparatus shall be placed so as to cause minimum interference with the use of Borough streets, alleys, ways and places, and the location of poles and other apparatus shall be approved by the Borough Street Commissioner. The Borough shall have the right to inspect the system so as to insure compliance herewith.

(4) Underground Service. When utility poles now in place are available for use of the system they shall be used, unless the Companies show to the Borough Council's satisfaction that additional poles are required, and where all other public utility lines in the Borough or a part thereof are extended or replaced with underground services, the apparatus for the operation of the system under the franchise hereby granted where technically possible, shall likewise be placed underground.

(5) Temporary Removal of Wire for Building Moving. The Companies shall, on the request of any person holding a building moving permit issued by the Borough, raise or lower its wires temporarily to permit the moving of buildings. The expense of lowering of wires shall be paid by the person holding such permit, and the Companies may require such payment in advance, and shall be entitled to 5 days notice from a permit holder of such request.

(6) Tree Trimming. The Companies shall have the authority to trim trees upon and overhanging public streets, alleys, ways and public places of the Borough so as to prevent the branches of such trees from coming in contact with the wires and cables of the Companies. All trimming shall be done under the supervision and direction of the Borough Shade Tree Commission and at the expense of the Companies.

SECTION 10. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED. The Companies shall not make or grant any preference, discrimination or advantage to any person or subscriber as to rates, charges, facilities, rules, regulations, or operations of its service within the area served by the Johnstown Cable TV Company or its successors, and the rates for installation and service within the Borough shall not be in excess of those charged other subscribers of the said Johnstown Cable TV Company. Nothing herein contained shall prohibit the Companies from allowing a discounted rate to subscribers using installations or outlets exceeding ten (10) in number at the same building.

SECTION 11. APPROVAL OF TRANSFER. The Companies shall not sell, assign, lease or transfer any rights under this franchise, to any person unless the vendee, assignee or lessee files in the office of the Borough an instrument, duly executed, reciting the fact of such sale, assignment, lease or transfer, accepting the terms and agreeing to perform all the conditions hereof.

SECTION 12. BOROUGH RIGHTS IN FRANCHISE.

(1) Use of System by Borough. The Borough shall have the right during the

CCBS33

ORDINANCE NO. 242 (continued)

term hereof, free of charge, where the system exists, to place and maintain upon the poles of the Companies within the Borough wires, cables and fixtures necessary for a police and fire alarm system, which shall be constructed and maintained at the Borough's expense and in accordance with the Companies' specifications so that there will be no conflict or interference between the system and operation of the Companies and the Borough alarm system.

(2) The Companies shall during the term hereof furnish and service without charge one attachment for the Borough Building, for the Police Department, for the fire company quarters, and for each public school located in the Borough.

(3) Liability. The Borough shall be responsible for all damage to persons or property arising out of the placement and maintenance and renewal of any alarm system authorized by this Section, and shall save the Companies harmless from all claims and demands whatsoever arising out of the placement or maintenance thereof.

(4) Statement of Operations. The Companies shall within 60 days after the end of each year during the term hereof furnish the Borough with a statement showing the number of subscribers within the Borough, the number of poles owned by them, and the block locations within the Borough served by the Companies, as of the last day of the said year.

SECTION 13. PAYMENTS TO THE BOROUGH. The Companies will pay to the Borough for the years designated, the applicable specified sum of money (hereinafter designated as guaranteed minimum amount) or the applicable percentages of the gross receipts derived from the Companies' subscribers resident within the Borough limits, whichever is higher, in accordance with the following schedule:

(1) For the year 1966--Three per cent (3%) of the gross receipts derived from the Companies' subscribers resident within the Borough's limits, or \$680.00, whichever is higher.

(2) For the year 1967--Three and one half per cent ($3\frac{1}{2}\%$) of the gross receipts derived from the Companies' subscribers resident within the Borough limits, or \$770.00, whichever is higher.

(3) For the year 1968--Four per cent (4%) of the gross receipts derived from the Companies' subscribers resident within the Borough limits, or \$905.00, whichever is higher.

(4) For the year 1969--Four and one half per cent ($4\frac{1}{2}\%$) of the gross receipts derived from the Companies' subscribers resident within the Borough limits or \$1,000.00, whichever is higher.

(5) For the year 1970--Four and one half per cent ($4\frac{1}{2}\%$) of the gross receipts derived from the Companies' subscribers resident within the Borough limits or \$1,135.00, whichever is higher.

The payment schedule of four and one half per cent ($4\frac{1}{2}\%$) of the gross receipts derived from the Companies' subscribers resident within the Borough limits, or \$1,135.00, whichever is higher, will continue for the years 1970 through 1975.

The payment for 1966 shall be made immediately upon the enactment of this Ordinance, and the succeeding payments shall be made in quarterly installments on the first day of February, May, August, and November of each succeeding year. Within 60 days after the end of each calendar year, the Companies will submit a certified statement of the gross receipts derived from the Companies' subscribers resident within the Borough limits for said year, and if the percentage designated for that year exceeds the guaranteed minimum amount already paid for such year just completed, the excess will be paid to the Borough at the time of the rendition of the said statement. In addition to the above payments, the Companies will be required to

ORDINANCE NO. 242 (continued)

pay all other taxes and fees imposed by state law or Borough ordinances, such as real estate, taxes, personal property taxes, business permits, pole taxes, and shall collect from Company employees who reside within the Borough any and all employment wage or income taxes levied by the Borough. The Borough Treasurer or an accountant or attorney appointed by the Borough Council shall have the right at reasonable times to inspect the books and records of the company relating to its services under this Franchise, for the purpose of verifying the reports and statements of receipts provided for herein. The statements submitted by the Companies hereunder shall be considered correct unless excepted thereto by the Borough within 6 months after they are submitted.

SECTION 14. TERM OF THE FRANCHISE. The exclusive franchise and rights herein granted shall take effect upon the effective date hereof, and shall continue in force and effect for a period of ten (10) years beginning January 1, 1966. The franchise hereby granted, unless terminated by reason of default, shall be automatically renewed for two (2) additional terms of five (5) years each, without reenactment of the Ordinance granting it, unless either the Borough or the Companies, at least six (6) months prior to the expiration of each term, shall request in writing renegotiation thereof, and upon failure of negotiations for renewal thereof, shall terminate six months after the end of said term. Upon termination of this franchise or any extension or renewal thereof, the Companies shall remove within a reasonable time not in excess of two (2) years, all poles, wires, cables, underground conduits, or other apparatus installed in the Borough hereunder.

SECTION 15. AGREEMENT. In connection with the enactment of this Ordinance, the Companies and the Borough will enter into an Agreement of even date relating thereto and providing for said franchise in contractual terms.

SECTION 16. PENALTIES. Any violation or default by the Companies, their successors or assigns of the provisions of this ordinance shall be cause for the forfeiture to the Borough of the franchise and all rights hereunder shall at the option of the Borough cease and terminate upon written notice by the Borough to the Companies and continuation of such violation, or default for a period of thirty (30) days after such written notice is received by the Companies, or such additional time as is reasonably necessary to correct said violation, or default. The Companies shall not be in violation hereunder and no forfeiture shall result if they are prevented from performing the terms and conditions of this ordinance by an Act of God, Labor Disputes, governmental action or other causes of like or different nature beyond the Companies' control.

SECTION 17. SEVERABILITY. The provisions of this Ordinance are severable, and the invalidity of any section, subsection, clause or provision of this

CCBS33

ORDINANCE NO. 242 (continued)

Ordinance, shall not affect or impair the validity of any other part of this Ordinance, which can be given effect without the invalid part or parts.

SECTION 18. REPEALER. Any Ordinance or Resolution or a part or parts of any Ordinance or Resolution in conflict with this Ordinance, shall be and the same are hereby repealed insofar as the same affect this Ordinance.

THE RESOLUTION No. 6018 adopted the 14th day of November, 1960, is hereby specifically repealed.

ENACTED this 12th day of December, 1966.

Paul L. Weir

President of Council

ATTEST:

Charles A. Hanna

Secretary

APPROVED:

Robert Mares

Mayor