

Ordinance No. 83-O-380 replaced by Ordinance No. 00-O-539

ORDINANCE NO. 83-O-380

AN ORDINANCE GRANTING TO SKYLINE CABLE, INC., AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY OF BROOKINGS. [November 10, 1983]

Sections:

Section 1.	Grant of Franchise.
Section 2.	Construction.
Section 3.	Installation Regulations.
Section 4.	Term of Franchise.
Section 5.	Temporary Rearrangement of Aerial Plant.
Section 6.	Excavations.
Section 7.	Indemnification.
Section 8.	Certificate of Insurance Required.
Section 9.	Franchise Fee.
Section 10.	Rate Structure.
Section 11.	Default of Franchise Agreement.
Section 12.	Referendum Process.
Section 13.	Cancellation of Franchise.
Section 14.	Subordination Clause.
Section 15.	Grantee Responsibility.
Section 16.	City Right to Examine Property.
Section 17.	Violation of Franchise.
Section 18.	City Retains all Rights and Remedies Under ORS 221.420 to 221.470.
Section 19.	Attorneys Fees.
Section 19.	[Severability clause]
Section 20.	Repeal of Ordinances No. 66-O-183, 73-O-241 and 74-O-250.
Section 21.	[Emergency clause]

The city of Brookings ordains as follows:

Section 1. Grant of Franchise. The city of Brookings, hereinafter designated as "City", does hereby grant to Falcon Telecable, a California limited partnership, hereinafter designated as "Grantee", the right, privilege, authority and franchise to operate in, over, upon, and under the streets, alleys, public highways, and avenues of the city of Brookings, Curry County, Oregon, and to erect antennas and other appurtenances thereon and to maintain and use the same as a coaxial cable subscription system to subscribers' homes and business establishments within the said city of Brookings. [Section 1 amended by Ordinance No. 87-O-420, adopted August 13, 1987]

Section 2. Construction.

A. The construction authorized herein shall be done only in accordance with a plan or design submitted to and approved by the common council of the city of Brookings.

B. All poles, cables, wires, antennas, or other appurtenances shall be constructed and erected in a workmanlike manner. Nothing in this ordinance shall be construed to prevent the city from sewerage, planking, bridging, grading, altering, or otherwise improving any of the streets of the city. This ordinance shall further not be so construed as to deprive the city of any rights or privileges which it has now or which may be conferred upon it to regulate the use and control of streets. The city shall further have, at all times, the right to make use of the poles of said grantee for wires, cables, or conductors for any and all city-owned wire systems; providing that such use does not conflict with grantee's prior occupancy.

In the event any of the grantee's poles, cables, wires, antennas, or other appurtenances interfere with any future use that the city desires to make of its streets or alleys, the grantee shall, at its own expense, promptly relocate any such poles, cables, wires, antennas, or other appurtenances upon being notified to do so.

C. That any rights granted hereunder shall always be subject to the right of the public to free use of public property, and that nothing herein shall be construed as granting any right that may interrupt or infringe upon the free use by the people.

Section 3. Installation Regulations. That all installation made under the authority granted in this franchise shall be made in such a manner as to conform to any and all applicable regulations now in force or which may be enacted in the future for the public health, safety, and welfare of the city of Brookings and its inhabitants. All work and construction hereby authorized shall be performed in a workmanlike manner and shall conform to the requirements of the National Electric Safety Code, the laws of the state of Oregon, the ordinances of the city of Brookings, and all applicable rules and regulations of the Federal Communications Commission as presently existing or as may be enacted hereafter.

Section 4. Term of Franchise. The rights, privileges, and franchise herein granted shall cease and terminate 15 years after the effective date of this ordinance; and grantee shall, within 60 days after the effective date of this ordinance, file with the city recorder its written acceptance of the obligations contained herein and its agreement to abide with any regulations herein imposed.

Section 5. Temporary Rearrangement of Aerial Plant. Whenever it becomes necessary to temporarily rearrange, remove, lower, or raise the aerial cables, wires, or other apparatus of the grantee, to permit the passage of any building, machinery, or other object, the said grantee will perform such rearrangement on seven (7) days' written notice from the person or persons desiring to move said building, machinery or other object. Said notice shall bear the approval of such official as the city may designate, shall

detail the route or movement of the building, machinery, or other object, shall provide that the costs incurred by the grantee in making such rearrangement of its aerial plant will be borne by the person or persons giving said notice, and shall further provide that the person or persons giving notice will indemnify and save said grantee harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the aerial plant of the grantee.

Section 6. Excavations. It shall be lawful for said grantee to make all needful excavations in any street, alley, thoroughfare, and public highway in the city for the purposes of placing, erecting, laying, maintaining poles or other supports or conduits for grantee's wires or repairing, renewing, and replacing the same. Such work shall be done in compliance with the necessary rules, regulations, ordinances, or orders which may, during the continuance of this franchise, be adopted from time to time by the city or its lawfully constituted agents. Grantee shall, in particular, comply with the terms and provisions of Ordinance No. 65-O-181 of the City of Brookings and any amendments thereof or successors thereto.

Section 7. Indemnification. Grantee shall indemnify and hold harmless the city, its officers, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of action, suits, proceedings, damages (including but not limited to damages to city property and damages arising out of copyright infringements, and damages arising out of any failure to grantee to secure consents from the owners, authorized distributors or licensees of programs to be delivered by grantee's cable television system), costs or liabilities (including costs or liabilities of the city with respect to its employees), of every kind and nature whatsoever, including, but not limited to, damages for injury or death or damage to persons or property, and regardless of the merit of any of the same, against all liability to others, and against any loss, cost and expense resulting or arising out of any of the same, including any attorney fees, accountant fees, expert witness or consultant fees, court costs, per diem expense, traveling and transportation expense, or other costs or expenses arising out of or pertaining to the exercise or the enjoyment of any franchise privilege by grantee, or the granting thereof by the city.

Grantee shall at the sole risk and expense of grantee, upon demand of the city, made by and through the city attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third persons or duly constituted authorities, against or affecting the city, its officers, boards, commissions, agents or employees, and arising out of or pertaining to the exercise or the enjoyment of such franchise, or the granting thereof by the city.

Grantee shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against grantee, the city, its officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise; provided that neither the grantee nor city shall make or enter into any

compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

Section 8. Certificate of Insurance Required. As a prerequisite for the herein ordinance to become effective, said grantee shall provide a certificate of insurance, showing premiums prepaid for a period of one year, and annually thereafter in the same manner, presented to the city and an indication of grantee's liability coverage and naming the city of Brookings as co-insured for the following:

- A. Bodily and personal injury and tort liability insurance with limits of \$300,000 each person and \$1,000,000 each occurrence; and
- B. Property damage liability insurance with limits of \$50,000.

Section 9. Franchise Fee. Payments to the city under this franchise shall be on a fiscal year basis from July 1st of each year to June 30th of the next year, starting for the fiscal year 1983-84. The franchise fee shall be in the minimum sum of \$100.00 per fiscal year. Such minimum annual payment shall be credited to the required percentage payment provided for herein. The grantee shall pay to the city annually an amount equal to three percent of the basic gross income, exclusive of excise taxes collected, received by it for services rendered, provided, sold and delivered in the city for any part of the rights exercised under this franchise other than the initial installation charges. Such annual payment shall be based on the basic gross income from grantee's business for the 12 months preceding the first day of July in each year. All payments due hereunder shall be made within 30 days after the close of the fiscal year for said services rendered in the preceding fiscal year. Grantee shall not add to the billing of its customers the franchise fee paid by him to the city under this ordinance.

The city reserves the right hereunder to modify, adjust, or increase the payments and fees due the city hereunder, from time to time, upon resolution of the common council of the city of Brookings.

Section 10. Rate Structure. The grantee shall at all times keep on file with the city a copy of its rate structure and regulations, and the city reserves the right to review said rates, and direct changes therein, which, in the opinion of the common council, are reasonable in view of the following considerations:

- A. That grantee shall have the right to charge and collect reasonable compensation from persons and groups to whom it shall furnish TV reception, and the term "reasonable compensation" may be defined at the discretion of the city after a study and consideration of national figures pertaining thereto and as affected by local conditions in the local system.
- B. The city bases its rights reserved hereunder upon the inherent and statutory right of the city to perform in the best interest of the people of the city of Brookings, and to prevent any possible flagrant misuse of the rights granted hereunder.

C. Grantee shall not refuse to furnish TV reception to any person applying for the same within the corporate limits of the city of Brookings as they are now constituted, nor in any way discriminate against any such applicant because of the make of television set or any television equipment owned by such applicant and to which such reception is requested, nor designate or attempt to designate the dealer or dealers from which such applicant must purchase any such equipment; provided, however, that this provision shall not be construed as preventing grantee from recommending model, make, or type of equipment to be used by the applicant.

D. The council shall at no time direct or require that any of the grantee's rates be lowered unless it shall affirmatively appear that said rate is unreasonably high with due regard to grantee's investment, right to a reasonable profit, and similar and comparable rates of other systems in other communities of like size, population, density, and technical problems in providing satisfactory service.

Section 11. Default of Franchise Agreement. The grantee shall at all times fully and faithfully perform all the terms, provisions, and conditions of this franchise or grant and furnish efficient service hereunder, and maintain its property in good order and repair throughout the entire term of the grant; and upon any default by grantee hereunder, and the continuance of such default for a period of 30 days, except where another time is expressly provided herein, from and after the receipt of notice from the city specifying such default said city may, by ordinance and for good cause shown, forfeit this grant or franchise and all further rights of grantee, and successors, or assigns hereunder.

Section 12. Referendum Process. Upon the passage and approval of this ordinance, no acceptance thereof by the grantee shall impose any obligation on the City of Brookings if there shall be a referendum of this ordinance, and if this ordinance shall not be approved by the people on such referendum.

Section 13. Cancellation of Franchise. If grantee does not continue its service and business as presently conducted and at the same level with uninterrupted diligence, then, in that event, this franchise may be cancelled upon 90 days notice to grantee, and thereupon the same shall become null and void. In the event grantee shall cease to exist, said notice shall not be required and this franchise shall be cancelled immediately.

Section 14. Subordination Clause. The grant of any privilege of this franchise hereunder shall be subordinate to any prior lawful occupancy of any street or public property or to the grant of any privilege under any other franchise or ordinance of prior date, insofar as there shall be any conflict.

Section 15. Grantee Responsibility. Grantee shall have no recourse or remedy whatsoever against the city for any loss, costs, expense or damage arising out of or with respect to any term, condition, privilege or responsibility granted or required hereunder, or the enforcement thereof.

Section 16. City Right to Examine Property. Grantee shall at all reasonable times, and to the extent necessary to carry out the provisions of this ordinance, permit any duly authorized agent or representative of the city to examine all franchise property of grantee, together with any appurtenant property of grantee situated within or without the city, and to examine and transcribe any and all maps and other records kept or maintained by grantee or under the control or direction or at the request of grantee which treat of the franchise operations, affairs, transactions, or property of grantee.

Any of such maps or other records which are not situated within the city and which are not made available in the city within a reasonable time after written request therefor by the city manager or the city attorney, shall be produced for examination wherever the same shall be situated and grantee shall pay all travel and other expenses necessarily or reasonably incurred by the city, its agents, and representatives in making such examination.

Grantee shall prepare and furnish to the city manager, at such times and in such form as prescribed by the city manager, references, and materials with respect to the operations, affairs, transactions, or property of grantee as may be reasonably necessary or appropriate to the performance of any of the duties of the city manager.

Section 17. Violation of Franchise. Nothing herein contained shall be construed as authorizing the grantee, its employees or agents to violate any ordinance of the city herewith now in existence or hereafter enacted; and further, the grantee shall not violate any provisions of the Oregon Anti-Trust Law codified in ORS 646.705 to 646.836 nor shall the granting of this franchise be in any way construed as in violation thereof; and further, the grantee shall not infringe, violate or engage in any activity prohibited by the Oregon Unlawful Trade Practices Act as defined in ORS 646.605 to 646.652, this franchise being subject to the sanctions contained within such statutory provisions including, but not limited to, ORS 646.646.

This franchise is subject to said above-stated terms and statutory provisions; and further, should any part hereof contravene such terms or provisions then any provisions herein contained contrary thereto shall be deemed null and void.

Section 18. City Retains all Rights and Remedies Under ORS 221.420 to 221.470. Notwithstanding anything herein stated to the contrary, city shall retain all of its rights and remedies under ORS 221.420 to 221.470. The city shall retain its general municipal police powers and exercise of such over the erection, installation, replacement and maintenance of poles, wires and similar apparatus of the grantee in streets, alleys and public ways; and further, such police power shall extend to the designation of on what parts of streets there may be erected poles, lines conduits or other apparatus or, in proper cases, to require relocation thereof, and compel all generally accepted improvements which tend to decrease the obstruction of the streets or increase the safety or convenience of the public in their use; and further, said power shall extend, although not be limited to, the regulation of the use, location, height and size of utility poles as part of the city's general planning and zoning process and power.

Section 19. Attorneys Fees. In any dispute between the city of Brookings and the grantee arising out of the franchise granted by Ordinance 380, the prevailing party shall be entitled to reasonable attorneys fees at trial and on appeal, if any. [Section 19 added by Ordinance No. 420, adopted August 13, 1987]

Section 19. [Severability clause]

Section 20. Repeal of Ordinances No. 66-O-183, 73-O-241 and 74-O-250. Upon the effective date of the passage of this ordinance, Ordinances No. 66-O-183, 73-O-241 and 74-O-250 shall be and herein are expressly repealed.

Section 21. [Emergency clause]

Adopted November 10, 1983