

ORDINANCE #433

AN ORDINANCE GRANTING A FRANCHISE TO J & N CABLE SYSTEMS, INC., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF YACOLT, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR TOWN REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

WHEREAS: The Town Council of Yacolt, Washington initially considered this franchise ordinance at its regular meeting on November 1, 2004; and

WHEREAS: The Town Council of Yacolt, Washington has held a public hearing on the adoption of this ordinance on November 15, 2004; and

WHEREAS: The Town Council deems it in the best interests of the Town of Yacolt, Washington to enter into a franchise agreement between the Town and J & N Cable Systems, Inc.; and

WHEREAS: The Town Council of Yacolt, Washington, is in regular session this 15<sup>th</sup> day of November; and

WHEREAS: All members of the Town Council have had notice of time, place and purpose of said meeting; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF YACOLT, WASHINGTON AS FOLLOWS:

SECTION 1. DEFINITIONS

For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. 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 the singular number include the plural number.

"Basic CATV Service" shall mean the distribution of broadcast and/or satellite signals designated by the Company as the basic service, a minimum of twelve channels.

"Cable Television System" shall mean a system composed of, without limitation, antenna, cables, wires, lines, fiber-optics, towers, wave guides, or any other conductors, equipment, or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by fiber-optic and/or coaxial cable, audio and/or visual radio, television, electronic, or electrical signals to and from persons, subscribers, and locations in the franchise area.

"CATV" shall mean a cable television system as herein defined.

"Company" shall mean the grantee of rights under this ordinance.

"Council" shall mean the governing body of the Town of Yacolt.

"Expanded Basic Service" shall mean the distribution of broadcast satellite signals in excess of the twelve basic channels designated by the Company as the Basic CATV Service.

"Franchise Area" shall mean the area within the corporate limits of the Town.

"Pay Per View" shall mean any service the Company may offer on an event-by-event basis.

"Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

"Premium Service" shall mean any broadcast and/or satellite signal the Company may define as a premium service.

"Property Of Company" shall mean all property owned, installed or used by the Company in the conduct of a CATV business in the Town.

"Street" shall mean the surface of, and the space above and below, any public street, right-of-way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, or drive, communications or utility easement, now or hereafter existing as such within the franchise area.

"Subscriber" shall mean persons, firms, and corporations as the customers receiving the Company's CATV services.

"Town" shall mean the Town of Yacolt.

## SECTION 2. GRANT OF AUTHORITY

Whereas the Town has approved the legal, character, financial, technical, and other qualifications of the Company and the adequacy and feasibility of the Company's construction arrangements, there is hereby granted by the Town to the Company the right and privilege to engage in the business of operating and providing a CATV system in the Town, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across, and along any public street, public way, and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations including, but not limited to, any public utility or other grantee franchised or permitted to do business in the Town; and revoking any and all prior such Town franchises held by the Company.

## SECTION 3. NONEXCLUSIVE GRANT

The right to use and occupy the streets and other public ways for the purpose herein set forth shall not be exclusive, and the Town reserves the right to grant a similar use in said street to any other person.

## SECTION 4. TERM OF FRANCHISE

The franchise and rights herein granted shall effective December 1, 2004, and shall continue in force for a term of twenty (20) years, conditioned upon filing of acceptance by the Company.

## SECTION 5. CONDITION OF STREET OCCUPANCY

- (a) All transmission and distribution structures, lines, and equipment erected by the Company within the franchise area shall be so located as to cause minimum interference with the proper use of streets, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets or other public ways and places. The CATV system shall be constructed and operated in compliance with all Town, State, and Federal construction and electrical codes and shall be kept current with new codes. The Company shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will not interfere with any installations of the Town or of a public utility serving the Town.
- (b) In case of disturbance of any street, public way, or paved area, the Company shall, at its own cost and expense and in a manner approved by the Town, replace and restore such street, public way, or paved area in as good a condition as before the work involving such disturbance was done.

- (c) If at any time during the period of this franchise, the Town shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Company, upon reasonable notice by the Town, shall remove, relay, and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.
- (d) Any pole or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.
- (e) The Company shall, on the request of any person holding a building-moving permit issued by the Town, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have authority to require such payment in advance. The Company shall be given no less than forty-eight (48) hour advance notice to arrange for such temporary wire changes.
- (f) The Company shall have the authority to trim trees upon and overhanging streets and public ways and places of the franchise area so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, except that at the option of the Town, such trimming may be done by it or under its supervision and direction at the expense of the Company.
- (g) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the Town by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structure or improvements by public agencies.
- (h) The Town shall have the right to make additional use, for any public or municipal purpose, of any poles or conduits controlled or maintained exclusively by or for the Company in any street, provided such use by the Town does not interfere with the use by the Company. The Town shall indemnify and hold harmless the Company against and from any and all claims, demands, causes of actions, actions, suits, proceedings, whatsoever arising out of such use of the Company's poles or conduits.

#### SECTION 6. SAFETY REQUIREMENTS

- (a) The Company shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (b) All structures and all lines, equipment and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition, and in good repair.

## SECTION 7. REQUIREMENTS FOR SERVICE

- (a) The Company, whenever it shall receive a request for service within one thousand five hundred (1,500) cable feet of its trunk cable, shall extend its system to such subscriber at no cost to the subscriber, except the normal installation charge.
- (b) In the event additional adjacent territory is incorporated within the Town's limits, by annexation or otherwise, the Company's rights and duties under this ordinance shall be deemed to include such additional territory.

## SECTION 8. OPERATIONAL STANDARDS

The Company shall operate and maintain its cable television system in compliance with the standards set forth by the Federal Communications Commission.

## SECTION 9. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

The Company shall not as to rates, charges, service facilities, rules, regulations, or in any other respect make or grant any preference or advantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled, and provided further that connection and service charges may be waived or modified during promotional campaigns of the Company.

## SECTION 10. FRANCHISE PAYMENTS

The Company shall make payments to the Town of three and one-half percent (3.5%) of its basic, expanded basic, and premium services revenues from its subscribers within the corporate limits of the town. Said payments shall be made monthly beginning the tenth (10<sup>th</sup>) day of January, 2005 for the immediate preceding month and thereafter on the tenth (10<sup>th</sup>) day of each month during the term of this franchise. In computing such revenue, connection charges, transfer fees, commercial advertising revenues, and other revenues derived from additional services are excluded from the three and one-half percent (3.5%) franchise fee. Only revenues generated from subscriber's television reception services are taxable.

## SECTION 11. RECEPTION QUALITY AND FREE "OFF-AIR" BROADCASTING SIGNALS

- (a) At all times during the term of the franchise, the Company shall promptly and without discrimination furnish to the Town and its successors, persons, corporations, and inhabitants therein who request the same and agree to abide by the Company's reasonable rules and regulations, television reception commensurate with that which is reasonably available under any obtainable coaxial cable system

- (b) The Company will provide off-air broadcast educational television signals to all public and private, non-profit educational institutions within the Company's service area at no cost for use in the teaching facilities of such institutions.

## SECTION 12. STANDARDS/MODIFICATIONS

The CATV system shall be designed, installed and maintained in accordance with the highest and best standards of the CATV industry and similar industries engaged in the transmission and distribution of television signals. Minimum standards shall govern the Company's service as set forth by the Federal Communications Commission or other authorized regulatory agency. If such regulatory agency shall issue standards more stringent than those contained, the more stringent standards shall prevail. During the life of any franchise granted hereunder, the Company shall from time to time make reasonable modifications as are required to assure that service rendered is of the highest quality and in accordance with CATV industry standards as they may develop and improve.

## SECTION 13. CONFORMANCE TO FEE

The Company shall conform to and abide by all lawful Rules and Regulations pertaining to Community Antenna Television Systems that the Federal Communications Commission or other authorized regulatory agency has adopted or may hereafter adopt and any provisions contained herein, inconsistent with such lawfully adopted Rules and Regulations, shall be null and void and without effect.

## SECTION 14. INDEMNIFICATIONS

The Company shall indemnify and hold the Town harmless from any liability, loss, cost, damage, or expense due to casualty, accident, or damage, either to the Town or its property, or to other persons or property, which may at any time arise or occur by reason of the exercise by the Company of any of the rights and privileges herein granted, or by reason of the performance of or in connection with any work or activity by the Company.

## SECTION 15. LIABILITY COVERAGE

The Company, at the time of acceptance of the terms and conditions of this franchise as hereinafter provided, shall furnish to the Town and shall thereafter maintain in full force and effect during the life of this franchise, with a carrier or carriers satisfactory to the Town, the following:

- (a) Bodily injury liability insurance having limits of two hundred thousand dollars (\$200,000) for bodily injury (including death) for any person and three hundred thousand dollars (\$300,000) for bodily injury (including death) for more than one person arising out of any single incident.

- (b) Property damage liability insurance with limits of one million dollars (\$1,000,000) for any single incident.

The Town shall be named as co-insured on all such liability policies and the Company agrees to deliver all such policies of insurance or certificates of the same, as issued by the insurance company or companies, evidencing that such insurance is in effect, and renewal policies or certificates, evidencing the renewal thereof, to the Town Clerk of the Town, all such renewal policies or certificates to be delivered to said Town Clerk not less than twenty (20) days prior to the expiration of such policy or policies. Upon the failure of the Company to comply with the terms and provisions of this section, the Council of the Town may, upon thirty (30) days prior notice to the Company in writing, revoke all rights and privileges of the Company under this franchise and cancel the franchise as to the Company, provided said failure remains uncorrected for thirty (30) days after written notice thereof by the Council to the Company.

#### SECTION 16. NON-EXCLUSIVE RIGHTS AND RIGHT TO RESCIND AND REVOKE

The rights and privileges are not exclusive and the Town reserves the right to grant to any other person, company, or corporation rights similar to those herein granted. The Town reserves the right to rescind and revoke the rights herein granted, for a substantial violation by the Company or non-compliance with any of the obligations and requirements of the Company, provided that said violation or non-compliance remains uncorrected after thirty (30) days written notice by the Council to the Company.

#### SECTION 17. PROCEDURE UPON TERMINATION

Upon expiration of the franchise, if the Company shall not have acquired an extension or renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets and public ways of the Town, for the purposes of removing therefrom any or all of its property. In so removing said property the Company shall refill, at its own expense, any excavation that shall be made by it, and shall leave said streets and public ways and places in as good condition as the prevailing prior to the Company's removal of its property.

## SECTION 18. APPROVAL OF TRANSFER

The Company shall not sell nor transfer its plant or system to another, other than a parent company or a wholly-owned subsidiary of the Company, nor transfer any rights under this franchise to another without Council approval; provided that no sale or transfer shall be effective until the vendee, assignee, or lessee has filed in the office of the Town Clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the franchise, and agreeing to perform all conditions thereof. Such Council approval will not be unreasonably withheld and neither this section nor other sections of this franchise shall preclude the mortgaging, encumbering, or the assignment of certain rights in the system, or the pledge of stock by the Company for the purpose of financing.

## SECTION 19. MISCELLANEOUS PROVISIONS

- (a) When not otherwise prescribed herein, all matters herein required to be filed with the Town shall be filed with the Town Clerk.
- (b) The Company shall assume the cost of publication of this franchise as such publication is required by law. A bill for publication costs shall be presented to the Company by the Town Clerk upon the Company's filing of acceptance and shall be paid at that time.
- (c) The Company shall provide without charge one (1) outlet to each government office building, fire station, or police station that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be the option, duty, and expense of the building owner.
- (d) In the case of any emergency or disaster, the Company shall, upon request of the Town, make available its facilities to the Town for emergency use during the emergency or disaster period.

## SECTION 20. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

The Company shall at all times during the life of this franchise be subject to all lawful exercise of the police power of the Town. The Town reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be deemed necessary to the exercise of police power. Such regulations shall be reasonable and not destructive to the right herein granted and not in conflict with the laws of the State or other local laws or regulations.



## SECTION 21. VIOLATIONS

- (a) From and after the effective date of the ordinance, it shall be unlawful for any person to construct, install or maintain within any public street in the town, or within any other public property of the Town, or within any privately-owned area with proposed public streets on any tentative subdivision map approved by the Town, any equipment or facilities for distributing any television signals or radio signals through a CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- (b) It shall be unlawful for any person, firm, or corporation to make any authorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchise CATV system within the Town for the purpose of enabling himself or others to receive any television signal, radio signal, picture, program, or sound, without payment to the operator of said system.
- (c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cable, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sounds.

## SECTION 22. SEVERABILITY

If any section, sub-section, sentence, clause, or phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity or constitutionality of the remaining portion thereof.

## SECTION 23. FEDERAL REGULATION

Any modifications resulting from amendment of Section 76 of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of franchise renewal, whichever occurs first.

Passed by the Town Council of the Town of Yacolt, Washington on this 15<sup>th</sup> day of November, 2004.

AYES Stewart, Warren, Smith, Mason

NAYS None

ABSENT None

MAYOR James Melton ATTEST Brenda Finnegan

I hereby certify that this is a true and correct copy of Ordinance #433 as read before the Council and passed on the date herein mentioned and passed according to law.

ATTEST Brenda Finnegan  
Brenda Finnegan, Clerk/Treasurer