

ORDINANCE NO. 116

AN ORDINANCE AMENDING ORDINANCE NO. 80, APPROVING A REQUEST FOR TRANSFER OF CABLE TELEVISION FRANCHISE, AND PROVIDING CERTAIN CONDITIONS UPON WHICH TRANSFER WILL BE ALLOWED.

WHEREAS, the City has been approached by it's cable television franchise holder, McCaw CableVision Limited Partnership-Florence. (hereafter franchisee) and has requested the City approve a transfer of franchisee's cable television franchise to Cooke Cablevision, Inc. (hereafter transferee, and

WHEREAS, in the process of processing this application the City has appointed a Cable Television Commission, and

WHEREAS, that Commission has completed it's duties and made certain recommendations to City Council, and

WHEREAS, the Council has decided to adopt all/a portion of the Commission's recommendations,

Therefore the Dunes City Council does ordain as follows:

Section 1. REBUILD OBLIGATIONS: Section 1, 8 (5) of Ordinance 80 requires certain improvements will be made by the franchisee in the cable television system within Dunes City. The City has noted that the transferee is incurring substantial amounts of debt, which will likely require transferee to substantially increase it's subscriber fees, may cause a substantial fall off in the number of subscribers, and may adversely affect the ability of the transferee to complete the rebuild obligations set forth in Ordinance 80. The estimated cost of completing rebuild will be approximately \$100,000.00.

Subsection A: BONDING REQUIREMENTS: Therefore, the City will require the transferee to post a bond, letter of credit or other adequate security in favor of the City, which will adequately secure the City's rights to obtain on behalf of it's citizens the improved system required by Section 1, 8 (5) of Ordinance 80 in the amount of \$100,000.00.

Subsection B: RELIEF FROM BONDING REQUIREMENTS: The franchisee shall have the right to request the City reduce the amount of the bonding if the franchisee can demonstrate to the City's satisfaction that the costs necessary to complete rebuilding are less than the amount of bonding posted. In that event the City may authorize reduction of the amount to a sum equal to the costs of rebuilding.

Section 2. APPROVAL OF PURCHASE PRICE: The City has been asked to approve the transfer. Ordinarily that would include approving

the purchase price. However, as the City will be reasonably secure regarding the purchase price, the only remaining reason to review the purchase price would be to review the impact that might have upon future subscriber fees. The parties agree that would constitute regulation of fees. Both parties agree that the Federal Communication Act of 1984 (hereafter FCA) prohibits such regulation by the City.

Subsection A: CITY WILL NOT REVIEW, APPROVE OR DISAPPROVE THE PURCHASE PRICE: Therefore, the parties agree that the City will not review or approve the purchase price, because it has been precluded from doing so by the FCA.

Subsection B: CITY RESERVES RIGHT: The City reserves all rights relating to approval of purchase price and rate regulation that it would have but for preemption by FCA, and the parties agree that in the event FCA or its regulations change to allow some or complete regulation of rates and or purchase price, the City may then exercise all rights that might obtain therefrom, including, but not limited to, the right to review this purchase price.

Section 3. INCREASE OF FRANCHISE FEE: The City anticipates that it's costs relating to regulating Cable Television may substantially increase in the future. Therefore, the City has requested, and the franchisee has agreed that the City has the right at anytime, to, by resolution, increase franchise fee set forth in Ordinance 80 at Section 18 from three percent to five percent.

Section 4. REGULATION OF PROGRAMING. Ordinance 80 at Section 10 grants to the City the right to regulate programing. However, that right has been modified by the FCA. The FCA provides that the City may regulate programing to the extent that it can require it's franchisee to provide a comprehensive and well balanced programing. To the extent that Ordinance 80 exceeds that requirement, the City may not enforce that right.

Subsection A: Therefore, Ordinance 80, subsection 10 is amended to read:

The parties agree that

So long as the FCA and it's rules limit the cities authority to regulate programing, the City is obliged to abide by those statutes and regulations. Presently, those statutes and regulations limit program regulation. The City and Franchisee agree the City may regulate programming to the extent allowed by federal law, or regulation.

The parties further agree that Ordinance 80, subsection 10 shall be amended by including the following language:

In the event there are changes in the FCA or it's regulations relating to programing, the parties shall meet and will adopt new language which will be incorporated in the franchise that will enact the changes in the federal law or regulation. However, in no event shall the city's right to regulate exceed the rights contained in section 10 of Ordinance 80 as it was originally adopted in 1983.

Section 5. PEG ACCESS: The franchisee agrees to make available when the City so demands, one channel for PEG access.

Section 6. TRANSFEREE ASSUMES FRANCHISE: The transferee agrees to assume all responsibilities and duties of the franchisee as set forth in Ordinance 80 and this Ordinance.

Section 7. ISSUES RESERVED: The parties have agreed that certain issues that the City has presented during this process can be negotiated in the review process, as authorized in Section 20 of Ordinance 80. Based upon the franchisee's representation that said provision does contemplate negotiation during the review process, the city has agreed to defer until the review process the following issues:

1. Red Lining
2. Access Channels
3. Compliance with FCC technical minimums
4. Fees for secondary outlets
5. Other usual and customary issues that would be discussed during review process

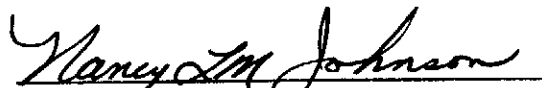
However, the franchisee did not waive any "defense" it may have had in this proceeding, including projections within the FCA during review negotiations.

Section 8. The City hereby declares the adoption of this Ordinance to be an emergency. This Ordinance shall become effective immediately.

Passed by the Dunes City Council of Lane County, Oregon, this 30th day of March, 1987, by the following vote.

Aye 6 Nays 0 Absent 0 Abstain 0

Approved by the Mayor this 1st day of April, 1987.

  
NANCY L. M. JOHNSON  
Dunes City Mayor

ATTEST:   
Betty Stuckring  
City Clerk