

ORDINANCE NO. 127

AN ORDINANCE AMENDING ORDINANCE NO. 80, NO. 116, AND NO. 126, AUTHORIZING A REQUEST FOR TRANSFER OF CABLE TELEVISION FRANCHISE, AND PROVIDING CERTAIN CONDITIONS UPON WHICH TRANSFER WILL BE ALLOWED AND DECLARING AN EMERGENCY.

WHEREAS, the City has been approached by its cable television franchise holder, Cooke Cablevision, Inc., (hereinafter franchisee), and has requested the City approve a transfer of its cable television franchise to Falcon Cable Systems Company, (hereinafter transferee), and

WHEREAS, the City has appointed a Cable Television Committee, and

WHEREAS, that Committee has completed its duties and made certain recommendations to the City Council, and

WHEREAS, the Council has decided to adopt all (or a) portion of the Committee's recommendations,

THEREFORE, the Dunes City Council does ordain as follows:

SECTION I. TRANSFER APPROVAL

THE CITY AUTHORIZES THE TRANSFER OF ITS CABLE TELEVISION FRANCHISE TO FALCON CABLE SYSTEMS COMPANY.

SECTION II. REBUILD OBLIGATIONS

Section 1, 8 (5) of Ordinance 80 requires certain improvements be made by the franchise holder in the cable television system within Dunes City. The estimated cost of completing rebuild will be approximately \$100,000.00.

(1) Bonding Requirements: Therefore, the City will require 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 its citizens the improved system required by Section 1, 8 (5) of Ordinance 80 in the amount of \$100,000.00.

(2) Relief from Bonding Requirements: The transferee shall have the right to request the City reduce the amount of the bonding if transferee can demonstrate to City's satisfaction that the costs necessary to complete rebuilding are less than the amount of bonding posted. In that event, City may authorize reduction of an amount to a sum equal to the costs of rebuilding.

SECTION III. APPROVAL OF PURCHASE PRICE:

The City has been asked to approve the transfer. Ordinarily that would include approving the purchase price. The City has determined it will be reasonably secure regarding other issues in this transfer. As to the purchase price and the impact that might have upon future subscriber fees, the parties agree that would constitute regulation of fees. Both parties agree that the Federal Cable Act of 1984 (hereinafter Cable Act) prohibits such regulation by the City.

(1) City Will Not Review, Approve, or Disapprove 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 Cable Act.

(2) City Reserves Right: The City reserves all rights relating to approval of purchase price and rate regulation that it would have had but for preemption by Cable Act, and the parties agree in the event Cable Act 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 IV. ROADS:

It shall be the responsibility of franchisee (or transferee) to notify the City at least five (5) working days in advance of any replacement of cable that will require any road surface to be disturbed. The City shall inspect the road surface and agree as to location of planned cable burial prior to work being done. The work is to be completed in a timely fashion. Franchisee (or transferee) shall repair the road bed and surface to at least its original condition within ten (10) working days after completion of the project. The City shall inspect the repair work to insure compliance. If the work is not satisfactory, the City may, at its option, advise franchisee (or transferee) to bring the work into compliance within three (3) working days or the City may contract the work to be done at franchisee's (or transferee's) expense.

SECTION V. REGULATION OF PROGRAMING:

Ordinance 80, Section 10, grants to the City the right to regulate programing. However, that right has been modified by the Cable Act. The Cable Act provides that a City may regulate programing to the extent that it can require its franchisee provide comprehensive and well balanced programming. The City and the transferee agree that to the extent that Ordinance 80 exceeds that requirement, the City may not enforce that right.

(1) Amendment to Ordinance 80, Subsection 10: Therefore Ordinance 80, subsection 10 is amended to read as follows:

The parties agree that:

(a) So long as the Cable Act and its rules limit the city's authority to regulate programming, the City is obliged to abide by those statutes and regulations. Presently, those statutes and regulations limit program regulation. The City and transferee 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:

(b) In the event there are changes in the Cable Act regulations relating to programming, the parties shall meet and adopt new language which will be incorporated in the franchise which will enact the changes in the federal law or regulations. However, in no event shall the City's right to regulate exceed the rights contained in Section 10 of Ordinance 80 as originally adopted in 1983.

SECTION VI. PEG ACCESS:

The transferee agrees to make available, when the City so demands, one channel for PEG access.

SECTION VII. TRANSFEREE ASSUMES FRANCHISE:

Transferee agrees to assume all responsibilities and duties of the franchisee as set forth in Ordinance 80, Ordinance 116, and this Ordinance.

SECTION VIII. FRANCHISEE GUARANTEE:

Cooke Cablevision, Inc. by its signature below acknowledges that the City has not released Cooke Cablevision, Inc. from its obligations under Ordinance 116. Cooke Cablevision, Inc. acknowledges that in the event its transferee should default upon obligations to Dunes City arising out of Ordinance 116, Dunes City may seek recourse, not only against transferee, but also against Cooke Cablevision, Inc., pursuant to Ordinance 116, or any other liable party.

SECTION IX. TRANSFEREE ACCEPTANCE:

Transferee, by its signature below, agrees to be bound by this Ordinance, Ordinance 73, Ordinance 80, and Ordinance 116.

SECTION X. FINES:

In the past Dunes City has been entitled to receive certain information from its franchisee. It has demanded said information and that information has not been forthcoming. Therefore, the City reserves the right to impose a fine on the transferee of \$100 per day should transferee fail to deliver the information requested so long as the City is entitled to receive that information.

(1) The City Shall Not Be Entitled to Assess a Fine Unless:

(a) The City has provided notice in writing to the transferee that certain information is requested.

(b) Fifteen (15) days have elapsed without delivery of the information.

(c) Transferee has not requested an extension or arbitration.

(2) Imposing Fines. Any fines imposed shall be done administratively by the City Recorder in writing. A copy of the document shall be sent to the transferee. Transferee may appeal the decision to the City Council within fifteen (15) days of mailing to transferee by certified mail, return receipt requested.

(3) Delivery of Requested Information by Transferee. If the transferee determines part of the information requested is beyond the scope of the City's authority to demand, transferee shall so advise the City. Transferee shall deliver the remaining information not affected by extension requests or arbitration in a timely fashion.

(4) Dispute Regarding Requested Information. If there is a dispute regarding demanded information, that dispute will be resolved by arbitration pursuant to Ordinance 80. The City is not entitled to assess a fine so long as the matter remains in arbitration, unless the arbitrator finds the transferee sought arbitration in bad faith. The City then shall be entitled to assess a fine as if no arbitration had been filed.

SECTION XI. ADDITIONAL FRANCHISEE COMMITMENTS:

Transferee has voluntarily made additional commitments to the City. They are specifically set out in a letter dated October 11, 1989, signed by Howard J. Gan, Vice President, Falcon Cable Systems Company. Transferee agrees to abide by these commitments voluntarily made and acknowledges these promises are

part of the inducement which caused the City to approve this transfer.

SECTION XII. REIMBURSEMENT OF COSTS TO CITY:

Transferee agrees that if Cooke Cablevision, Inc. does not pay the City its reasonable costs incurred in supervising this franchise transfer, transferee will pay those costs.

SECTION XIII. EMERGENCY ADOPTION OF ORDINANCE:

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

Passed by the City Council of Dunes City, Lane County, Oregon, this 11 day of January, 1990, by the following vote.

Ayes 6 Nays 0 Absent 0 Abstain 0

Approved by the Mayor this 11th day of January, 1990.

Darryl R. Eastman
DARRYL EASTMAN,
Mayor of Dunes City
Franchisor

APPROVED BY:

COOKE CABLEVISION, INC., Franchisee

By: James Lacher
Name: James Lacher
Title: Executive Vice President

3/9/90
Date

FALCON CABLE SYSTEMS COMPANY, Transferee

By: Howard J. Gan
Name: HOWARD J. GAN
Title: V.P.

3/9/90
Date

ATTEST:

Kathleen Aitken
KATHLEEN AITKEN
City Recorder