

430.2 (p 7)

ORDINANCE NO. 430.2

AN ORDINANCE INVITING BIDS FOR A PERMIT FOR THE CONSTRUCTION AND OPERATION OF A BROADBAND COMMUNICATIONS SYSTEM WITHIN THE COUNTY OF SIMPSON.

Be it ordained by the Fiscal Court of the County of Simpson as follows:

SECTION 1. County of Simpson, Kentucky, will receive separate sealed bids and award a contract for a 15 year nonexclusive permit to install and operate a cable television system in said county.

Bids will be received until 10:00 a.m., CDT, ~~August 20~~ Sept 4, 1984, at the office of County Judge Executive, at which time and place bids will be opened and read aloud. All bids must be accompanied by a certified check in the amount of \$100.00 which will be applied to the cost of advertisement in the case of the successful bidder and the balance refunded. The entire amount will be refunded to unsuccessful bidders.

The successful bidder will enter into a contract with the county pursuant to the specifications, conditions and bid terms.

Run: Aug 23, 1984

J. U. GROW, CLERK
SIMPSON COUNTY COURT KY.

FILED FOR RECORD
1984 SEP 24 PM 3:59

STATE OF KENTUCKY }
COUNTY OF SIMPSON } SS

I, J. U. Grow, Clerk of Simpson County Court, do certify that the foregoing instrument was this day lodged to be and is, with this and the foregoing certificate duly recorded in my office.

Given under my hand this 24 day of Sept, 1984

J. U. Grow, Clerk
By Ann [Signature] D.C.

430.2
(Pg. 8)

430.2 (Pg. 8)

CATV PERMIT

ORDINANCE NO. 430.2

AN ORDINANCE GRANTING A PERMIT FOR THE CONSTRUCTION AND OPERATION OF A BROADBAND COMMUNICATIONS SYSTEM WITHIN THE COUNTY OF SIMPSON.

Be it ordained by the Fiscal Court of the County of Simpson as follows:

SECTION 1. There is hereby created a contract for the construction and operation of a CATV system within the County of Simpson. This contract between the County and the grantee thereof, shall be in the words and figures as follows, to wit:

CONTRACT

SECTION 1. Definitions: As used in this contract the following words shall have the meaning given herein:

- (a) "County" for the County of Simpson, acting through its Fiscal Court.
- (b) "Court" shall mean the Fiscal Court of Simpson County, Kentucky.
- (c) "Community Antenna Television System" ("CATV System") is the broadband communications facility to be constructed, operated and maintained pursuant to this contract.
- (d) "Company" means the person, firm, company or other business entity with which this contract is made by the County.
- (e) "FCC" shall mean the Federal Communications Commission of the United States.
- (f) "Channel" means a band of frequencies six megahertz wide in the cable electro-magnetic spectrum which is capable of carrying one audio-video television signal.
- (g) "Subscriber" means a purchaser of Basic (Economy) Service (as herein defined) delivered over the system.
- (h) "Basic (Economy) Service" means the simultaneous delivery of the Company to television receivers (or any other suitable audio-video communications receiver), to subscribers in the County of all signals outlined as Economy Service in the Franklin Franchise.
- (i) "Additional Service" means any communication service other than basic service provided under the system of the Company including, by way of example but not limited to, tiered services, pay cable, burglar alarms, advertising, data or other electronic intelligence transmission, facsimile reproduction, meter reading and homeshopping.

SECTION 2. Privileges granted: The County hereby awards to the Company a non-exclusive permit and privilege to construct, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid or dedicated, and all extensions thereof and additions thereto, in the County, poles, wires, cables, underground conduits, and other television conductors and fixtures necessary for the operation and maintenance in the County of a CATV system, for a period of fifteen (15) years from the effective date of this contract.

15
(a) Conditions on Street Use. Utilizations of Existing Utility Facilities: Where feasible to do so, the Company will endeavor to obtain rights to use facilities belonging to utility companies within the County. Approval of the assignment of such rights to the Company by such other utility companies is hereby expressly given by the County, it being the intention of the County that the Company will utilize existing public utility facilities where feasible.

(b) All transmission and distribution structures, lines, and equipment erected by the Company within the County shall be located so as not to interfere with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways and places, and not to interfere with existing public utility installations.

(c) If the Company disturbs any pavements, sidewalks, driveways, or other surfacing, it shall, at its own expense, and in the manner provided by the County, replace and restore all such pavings, sidewalks, driveways or other surfaces of any streets or alleys thus disturbed.

(d) If at any time during the period of the contract, the County shall lawfully elect to alter, or change the grade or location of any street, alley or other public way, the Company shall upon reasonable notice by the County, remove, relay and relocate its poles, wires, cable, underground conduits, manholes and other fixtures at its own expense, and in each instance comply with the requirements of the County.

(e) The Company shall not place poles, conduits, or other fixtures above or below ground where the same will unreasonably interfere with any gas, electric, telephone fixtures, water hydrant or other utility, and all such poles, conduits or other fixtures placed in any street shall be so placed so as to comply with all requirements of the County.

(f) On request of any person holding a moving permit issued by the County, the Company shall temporarily move its wires or fixtures to permit the moving of buildings or other objects, the expense of such temporary removal, to be paid in advance by the person requesting such removal. The Company shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary changes.

(g) The Company shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks, and public places of the County so as to prevent the branches of such trees from coming into contact with the wires and cables of the Company.

SECTION 3. Application to FCC:

(a) The Company shall make proper application to the FCC for all permits, licenses or approvals required by law for the construction and operation of a CATV system.

(b) Time of Construction: Within twenty-four (24) months after the County's acceptance of the Company's contract, the Company shall have an operable basic (economy) service completed, with total coaxial cable required to make available CATV to substantially all of the citizens of Simpson County adjoining the Franklin system. However, the Company shall not be required to provide CATV service to any area having a density of less than 50 homes per road mile, and expansion of service shall be required into contiguous areas only of such density.

SECTION 4. Type and Capacity of Equipment and Standard of Service:

- (a) The Company shall engineer, install, maintain, operate and equip the CATV system herein provided so as to meet the technical standards of the FCC.
- (b) The signals distributed by the Company shall be the best possible signals available under the circumstances existing at the time and shall provide the best possible quality reception to each subscriber.
- (c) The system shall be engineered and designed for a fifty-four (54) channel capacity.
- (d) The standards of equipment and service specified herein to be utilized and rendered by the Company are intended as a minimum standards and nothing herein shall be construed as an attempt to relieve the Company from complying fully with existing FCC regulations nor from meeting future standards of the FCC within the times for compliance specified by the FCC.

SECTION 5. Subscriber Rates:

(a) The Company will provide Basic (Economy) Service to its subscribers at reasonable rates for services rendered. "Reasonable rates" shall mean the rates as stipulated in the franchise with the City of Franklin which shall permit the Company to render efficient service, derive a reasonable profit from its operation, provide sufficient capital to meet technical advances in the cable television industry, and provide fair rates to its subscribers. No such rate, term or conditions relating thereto shall make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage; provided, however, that nothing herein shall be deemed to prohibit the establishment of different classes of customers, e.g., private and commercial, or a graduated scale of charges or a classified rate schedule to which any customer, within such classification, shall be entitled.

Subject to FCC regulations, and approval, where necessary, the Company may install and attach encoder-decoder devices or similar devices to subscribers' terminals so that subscribers will be able to receive special CATV-network, syndicated, or other than basic CATV system -- provided services and programming for which programming or services a separate charge may be made.

SECTION 6. Service:

- (a) The Company shall distribute all television signals disseminated to the general public without charge by FCC licensed television stations (including education and foreign language stations) which may be distributed within the County under regulations of the FCC.
- (b) As part of the consideration for the rights and privileges herein granted, the Company agrees to provide one free drop, with no monthly service charge to the Simpson County Courthouse, County Fire and Police Stations, County Public Library, and to all public and parochial primary and secondary schools located within the County which are passed by a cable.
- (c) The Company shall maintain a competent staff of employees sufficient to provide adequate and prompt service to its subscribers. Except where an emergency requires a more expedited procedure, the Company may interrupt service for the purpose of repairing or upgrading the system during periods of minimum use.

SECTION 7. Compensation to the County:

(a) The Company, in consideration of the terms of this contract, agrees to pay to the County a sum equal to three-percent (3%) of the gross income received by the Company for the distribution of Basic (Economy) Service television signals on the CATV system within the County of Simpson.

It is understood by and between the parties that such revenues as may be obtained from advertising on the CATV system and for other services, supplemental to the presentation of television signals, shall not be included in said gross. It is further provided, that if the FCC should impose a percentage varying from the rate set out above, then the percent above shall be changed to comply with FCC standards.

The above fee shall be payable one-half ($\frac{1}{2}$) thereof in semi-annual payments. Said semi-annual payment dates shall be the 30th day of June and the 31st day of December of each year, and each semi-annual payment shall be made within thirty (30) days thereafter.

The Company shall keep complete records of accounts showing dates and payments received.

(b) In the event this contract should be terminated or forfeited prior to the end of the basic fifteen-year term, the Company shall immediately submit to the County a statement showing the Basic (Economy) Service gross receipts of the Company for the time elapsed since the last period for which the Company has paid to the County the required percentage of such gross annual receipts, and the Company shall pay to the County not later than thirty days following the termination of the franchise a like percentage of such Basic (Economy) Service gross receipts.

(c) In the event that any payment is not made on or before the applicable date fixed in Subsections (a) and (b) hereof, interest on such payments shall apply from such date at the yearly rate of ten (10%) percent.

(d) The County shall have the right to inspect the Company records showing its gross receipts for Basic (Economy) Service from which its contract payments are computed, and the right of audit and recomputation of any and all amounts paid under this contract shall be always accorded to the County. No acceptance of any payment by the County shall be construed as a release of or an accord or satisfaction of any claim the County might have for further or additional sums payable under the terms of this ordinance or for any other performance or obligation of the Company hereunder.

SECTION 8. Indemnification and Insurance:

(a) Indemnity: Company shall at its sole cost and expense fully indemnify, defend and save harmless the County, its officers, boards, commissions, and employees against any and all claims, suits, actions, liabilities, and judgment for damage. These damages or penalties shall include but shall not be limited to damages arising out of copyright infringement and all other damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this contract. The Company shall and by its acceptance of this contract specifically agrees to pay all expenses incurred by the County in defending itself with regard to all damages and penalties mentioned above. The Company shall provide and pay for all legal services necessary to defend the County in this regard.

(b) Insurance: At all times during the term of the contract, the Company shall obtain and pay all premiums for a general comprehensive public liability insurance policy and a property damage insurance policy with limits of \$300,000.00/\$100,000.00 and \$25,000.00

SECTION 9. Transfer of contract: This contract shall not be assigned or transferred, in whole or in part, without the consent of the County and such consent shall not unreasonably be withheld.

SECTION 10. Other Business Activities: The Company shall not, directly, or indirectly, engage in the business of selling, repairing, or installing television receivers or radio receivers within the County during the term of this contract.

SECTION 11. Filing of Plats, Maps and Records: The Company shall file with the County Engineer a true and correct copy of maps and plats of existing and proposed installations and these maps and plats shall be up-dated every 12 months.

SECTION 12. Improving and Modifying CATV System: The Company shall maintain its CATV system in accordance with accepted industry and FCC technical standards, and shall endeavor to make reasonable efforts to improve and modify its CATV system, as technology and the state of the art permit. As many television signals as possible will be transmitted by the CATV system to its subscribers, subject to FCC approval, where necessary.

SECTION 13. Forfeiture:

(a) The County may declare a forfeiture of the contract herein granted in the event of substantial violation of any of the terms hereof, upon written notice to the Company specifying the nature of the violation, unless such violation is corrected or ceases to exist within sixty (60) days from the date of the written notice of same to the Company.

(b) Notwithstanding the provisions of Paragraph (a), the Company shall not be considered to be in default or in violation of any of the terms hereof if prevented from fulfilling such obligations or terms by reason of uncontrollable forces. The term "uncontrollable forces" shall be deemed for the purpose of this contract to mean earthquake, storm, lightning, flood, backwater caused by flood, fire, epidemic, accident, failure of facilities, war, riot, civil disturbance, strike, labor disturbances, restraint by court or public authority, or other similar or dissimilar causes beyond the control of the Company, which causes the Company could not have avoided by exercise of reasonable care. The Company, when unable to fulfill any obligation or term of this contract by reason of uncontrollable forces shall remove such disability with reasonable dispatch.

SECTION 14. Right of Intervention: The Company agrees not to oppose intervention by the County in any suit or proceeding to which the Company is a party.

SECTION 15. Conflicting Laws, Rules, or Regulations: In the event the laws of the United States or the Commonwealth of Kentucky or rules and regulations of any agency of the United States or Commonwealth of Kentucky, whether presently in existence or hereinafter enacted or set in force, are in conflict with any provision (s), or portions thereof, of this Ordinance, those provision (s) (or portions thereof) of this Ordinance which are in conflict therewith shall be deemed amended so as to comply with said laws, rules, and/or regulations.

SECTION 16. Removal of Facilities: At the end of the term of this contract or upon its termination prior to the end of its specified term, the Company, upon the request of the County and, at the Company's expense, shall remove such facilities from all public property. Upon termination of service to any subscriber, the Company shall promptly remove all its facilities and equipment from the premises of each subscriber upon his written request at no cost to the subscriber.

SECTION 17. Severability: If any provision of this contract or the particular application thereof shall be invalid, the remaining provision hereof and its application shall not be affected thereby.

Adopted
September 11, 1984

Kenneth J. Harper
County Judge Executive

STATE OF KENTUCKY }
COUNTY OF SIMPSON } SS

I, J. U. Grow, Clerk of Simpson County Court, do certify that the foregoing instrument was this day lodged to be and is, with this and the foregoing certificate duly recorded in my office. Given under my hand this 24 day of Sept, 19 84

J. U. Grow, Clerk
By *[Signature]* D.C.

LODGED FOR RECORD
1984 SEP 24 PM 4:00
J. U. GROW, CLERK
SIMPSON COUNTY COURT KY.