

ORDINANCE NO. 108

AN ORDINANCE granting a nonexclusive franchise to Bates Cablevision, a Colorado corporation, its successors and assigns, to build, construct, operate and maintain a cable television system in, under and over public rights of way in Arriba, Colorado, an Incorporated Town.

BE IT ORDAINED by the Town Council of Arriba, Colorado:

SECTION 1. DESCRIPTION.

This ordinance shall be known and may be cited as the "Cable T.V. Ordinance, 108". No person shall construct, operate or maintain any CATV system upon, over, under, along, across or above, any public way (road, street, alley or sidewalk) or public property except under this or a subsequent ordinance of Arriba.

SECTION 2. TERMS AND DEFINITIONS.

The following terms and phrases, as used herein, shall have those meanings set forth below:

- (a) "Town" is Arriba, Colorado, a Town and municipal corporation.
- (b) "Town Council", "Council" or "Town Council", is the Board of Trustees of Arriba, Colorado.
- (c) "Cable Television System", or "CATV System" shall mean the system of antennas, towers, satellite earth stations, microwave, coaxial cable, fiber optics, waveguides, or other conductors, converters, equipment and facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, digital and other forms of electronic and electrical signals to persons who subscribe to programs and services delivered by such signals.
- (d) "Gross Revenue" shall mean any and all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent and any person in which the grantee has a financial interest from or in connection with the operation of a cable television system pursuant to this Ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service monthly fees, pay cable fees, installation and reconnection fees, leased channel fees, converter rentals and advertising revenues, and this shall not include any fees, payments or royalties paid to any program supplier or distributor or any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. This also does not include the converter deposit.
- (e) "Person" is an individual, firm, partnership, association, corporation, company or organization of any kind.

(f) "Proposal" is the same as "Application".

(g) "Grantee" is Bates Cablevision, a Corporation, organized under the laws of the State of Colorado, and it is the grantee of rights under this franchise. Grantee will, during the term hereof and any extension, retain its lawful status to do business under the laws of and in the State of Colorado, and remain solvent and not in receivership.

(h) "Town Manager" is the part-time Town Manager of Arriba so long as such position exists. If such position ceases to exist or is not filled at any time, then the duties and powers of such office, as created in this ordinance, shall pass to the office or offices of the Town as designated by the Town Council. If no such designation should be made, the Mayor of Arriba shall be the designated officer.

SECTION 3. PROVISIONS OF SERVICES - INCORPORATION BY REFERENCE - CONTINUING OBLIGATION.

The Grantee shall provide services, technical standards and system design specifically set forth in its proposal to provide cable television service within Arriba, and by its acceptance of this ordinance, the Grantee specifically grants and agrees that its proposal is hereby incorporated by reference and made a part of this Ordinance.

SECTION 4. GRANT OF AUTHORITY

(a) There is granted hereby to the Grantee, the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, public utility easements, public ways and public places not laid out or dedicated, and all extensions thereto in the Town and according to the technical specifications of the Federal Communications Commission all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the transmission of television signals and all other signals permitted by the Federal Communications Commission or its successor agency, either separately or upon or in conjunction with the public utility maintaining the same in the Town, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the Town to install, erect, operate or in any way acquire the use of, as by leasing of licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. Grantee shall have authority to trim trees that overhang the public right-of-way only when absolutely necessary and then in a good and workmanlike manner. This franchise and grant includes the right to use public property which shall have been acquired by the Town in the future as well as public property currently owned by it, upon approval being granted by the Town Council.

(b) The above grant to Grantee shall extend to its right to offer cable television service to all residents with the present boundaries of Arriba as those boundaries may change from time to time by annexation or otherwise; provided that Grantee shall not be required to extend such service to a resident requesting a connection at the standard connection charge if such connection would require more than 150 feet of drop line, unless in such cases the proposed subscriber makes payment to Grantee of a special connection charge to cover materials used and labor expended by Grantee to install the service line to said subscriber for distances in excess of 150 feet.

SECTION 5. POLICE POWER.

At all times during the term of this franchise, Grantee shall be subject to all lawful exercise of the police power of the Town. The right is hereby reserved to the Town to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or substantially alter the rights granted herein, and shall not conflict with the laws of the State of Colorado, the laws of the United States of America or the rules, regulations and policies of the Federal Communications Commission.

SECTION 6. LIABILITY - INDEMNIFICATION - INSURANCE.

(a) Damages. The Grantee shall pay, and by its acceptance of this authority, does specifically agree that it will pay all damages and penalties which the Town legally may be required to pay as a result of granting this franchise. These damages or penalties shall include, but shall not be limited to: Damages arising out of copyright infringement, defamation, unauthorized taking, antitrust and royalty payments; any and all damages, including personal injury, death and property damages, arising out of the installation, operation or maintenance of the CATV System authorized hereby. Provided, however, that this indemnification does not extend to causes of actions arising solely from the actions of the Town, its officers and employees and for which Grantee has no responsibility. And further provided that the Town shall be liable for damages to the equipment and facilities of the Grantee which are the result of negligent or deliberate acts of employees of the Town.

(b) Expenses of Litigation. Grantee shall pay and by its acceptance hereof specifically agrees that it will pay all expenses incurred by the Town in defending itself with regard to all damages and penalties mentioned in Subsection 6(a) for which Grantee has any responsibility, including expenses of investigation, except causes of action arising solely from the actions of the Town, its officers and employees and for which Grantee has no responsibility. These expenses include all out-of-pocket expenses, such as attorney fees, providing Grantee shall have exclusive right to retain counsel of its choice, and shall include also the reasonable value of any services rendered by the Town Attorney or his assistant(s) or any employees of the Town.

(c) Insurance. Grantee shall maintain, and by acceptance hereof specifically agrees that it will maintain, throughout the term of this authority and grant, liability insurance insuring the Grantee and the Town (the Town to be named insured) with respect to all damages mentioned in Subsection 6(a), in the following minimum amounts:

1. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for bodily injury or death to any one person; One Million and no/100 Dollars (\$1,000,000.00) for bodily or death resulting from any one accident;
2. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for property damages resulting from one accident.
3. Workman's Compensation Insurance as required by all applicable Federal, State, Maritime or other laws, including Company's Liability, with a limit of least One Hundred Thousand and no/100 Dollars (\$100,000.00).

(d) Casualty. Grantee shall keep the CATV system and system facilities continuously insured against such risks as customarily are insured against by businesses of like size and type, including, but not limited to, insurance upon repair or replacement, if available, and to the full insurable value of the system facilities (with reasonable deductible provisions) against loss or damage by fire or lightning, with uniform standard coverage endorsement as in use in the State of Colorado.

(e) Co-insurance. Grantee shall have the Town and all of its officers and employees, acting in their official capacities, included as co-insureds on all insurance policies referred to in Section 6(c) and (d). As evidence thereof, Grantee shall file with the Town copies of all such policies, or in the alternative, certificates thereof issued by the carrier(s). All such policies shall provide that the issuing insurance company will not cancel them without at least ten days prior notice to the Grantee and the Town.

SECTION 7. GENERAL CONSTRUCTION AND PERFORMANCE STANDARDS OF THE SYSTEM

(a) All system facilities shall be installed, repaired and replaced by Grantee, or by someone in its behalf, and Grantee shall be solely responsible for and shall pay the expenses thereof, including the cost of promptly restoring the surface of any street, alley, other public way or any point of excavation, whether on public or private property. All such facilities erected, constructed or replaced by the Grantee within the Town, including extensions of streets, alleys and other public ways and places, shall be erected so as to cause no interference with the rights or reasonable convenience of users or property owners whose property adjoins any of said streets, alleys, or public ways and places, and so as not to interfere with existing public utility installations or extensions thereof, or repair to either. All service lines shall be underground in those areas of the Town where either public utilities providing telephone or electric utility facilities are underground at the time of installation; otherwise the Grantee

may install its services above ground. If, subsequently, the electric utility facilities or other utilities go underground, then in that event the facilities of the Grantee also shall go underground simultaneously and the Grantee shall pay for the costs of the same. The grant of authority hereunder includes the right of the Grantee to cut and trim trees to protect its facilities and Grantee shall pay for the costs of the same. Grantee accepts all legal and economic responsibility for actions taken to protect its system, including the cutting and trimming of trees.

(b) Grantee shall have the right to make underground cable installations on property of the Town consistent with existing underground installations for other utilities, and the Town will make appropriate grants of easement to Grantee in such cases. Grantee shall advise the Town in advance of any excavation to be performed by Grantee. Grantee shall make no installation of poles on or adjacent to any public way or public property without the consent of the Town.

(c) During the term hereof, Grantee shall be responsible for all costs of moving any portions of the system in the event that the Town finds that the public need requires changes in the location or use of any public property, including street ways, grades and curbs and sewer and water mains.

(d) Grantee may be required by the Town to permit joint use by utilities of Grantee's system facilities located in the streets, alleys or other public rights-of-way in the Town insofar as such joint use reasonably may be practicable, and upon payment of reasonable rental therefor.

(e) Grantee shall construct, install, operate and maintain its system in manner consistent with all Federal, State, County and City laws, ordinances, construction standards and governmental requirements, and with technical standards of the Federal Communications Commission. In addition, Grantee shall provide the Town, upon request, with a written report of the results of Grantee's proof of performance tests conducted pursuant to the Federal Communications Commission standards and requirements.

(f) Construction, installation and maintenance of the Grantee's system shall be accomplished in an orderly workmanlike manner. All cables and wires shall be installed parallel with electric and telephone wires, where practicable. Multiple cable configurations shall be arranged in parallel and shall be bundled with due respect for engineering considerations. Grantee shall provide the Town with reports, every three (3) months during construction, of the progress made in constructing and activating the system.

(g) The system shall not endanger or interfere with the safety of persons or property in the franchise area, or in other areas in which Grantee may have equipment activated or situated.

(h) Any antenna structure used in the CATV system shall comply with construction, marking and lighting of antenna structures, as may be required by the United States Department of Transportation.

(i) All working facilities and conditions existing during construction, installation and maintenance of the CATV system shall comply with the standards of the Federal and State Occupational Safety and Health Administration.

Grantee shall at all times comply with the following:

1. National Electric Safety Code (National Bureau of Standards), as existing and as subsequently amended.
2. National Electric Code (National Bureau of Fire Underwriters), as existing and as subsequently amended.
3. Bell System Code of Pole Line Construction, as existing and as subsequently amended.
4. Applicable FCC or other federal, state and local regulations and codes, as existing and as subsequently amended.

(j) Grantee shall put, keep and maintain all parts of the system in good condition throughout the entire period of the franchise. Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice from Grantee to Town and shall occur during periods of minimum system use whenever possible.

(k) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner the operation of the various utilities serving the residents within the confines of the Town.

(l) Grantee shall maintain at a minimum, throughout the lifetime of this franchise, the technical standards and quality of said service set forth herein and Grantee will at its sole expense update and improve its system to maintain state of the art quality and equipment. The standard for determining "state of the art" quality and equipment will be based upon service and equipment which is technologically and economically reasonable and, to a lesser extent, based upon service and equipment provided to similar sized communities by unrelated cable companies in similar circumstances. Should the Town Council find, by resolution, that Grantee has failed to maintain these technical standards or quality of service, or "state of the art" quality and equipment, and in such resolution specifically sets forth reasonable improvements to be made, Grantee shall make such improvements. Failure to make such improvements within three (3) months of such resolution shall constitute breach of a condition for which the remedy of termination shall be applicable. Grantee shall, at least annually, advise the Town Council of "state of the art" technology not currently part of the Grantee's system.

(m) Grantee shall produce a picture, whether in black and white or in color, accompanied with proper sound on typical standard production television sets in good repair, that is as good as the state of the art reasonably and practically allows. Grantee shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than three (3) days after written notice by the Town to Grantee unless the failure is beyond the control of the Grantee.

SECTION 8. THE SYSTEM.

The Communications system permitted and required to be installed and operated hereunder shall:

(a) Be operated in conformance to the laws of the State of Colorado and with the FCC Technical Standards, 47 C.R.F., Section 76.601, et seq., as from time to time amended. Should there be any modifications of the provisions of said Standards which are inconsistent with the franchise hereby granted, this Ordinance shall be amended so as to conform to such modifications within one (1) year after the effective date of the FCC's adoption of the modification, or upon renewal of this franchise. Grantee will advise the Town of any such modifications in its annual report.

(b) Carry on the system all required broadcast signals pursuant to the FCC signals carriage rules and such other broadcast signals as are set forth in Grantee's application.

(c) The total capacity of the system, as constructed, shall be fifty-four (54) channels. The total number of channels which shall be available and initially utilized shall be at least thirteen (13). The system shall be designed, established, constructed, operated and maintained so as to provide for twenty four (24) hour per day continuous operation. The proposed programming to be initially offered by Grantee will be as follows:

<u>Channel</u>	<u>Origination</u>	<u>Affiliation</u>
2 KWGN	Denver	Independent
3 WGN	Chicago	United Video
4 KCNC	Denver	NBC
5 WTBS	Atlanta	Tempo
6 KRMA	Denver	PBS
7 KMGH	Denver	CBS
8 ESPN	Hartford, CT	Sports
9 KUSA	Denver	ABC
10 Nashville	Nashville	Group W
11 CBN	Virginia	CBN
12 Discovery		
13 KDVR	Denver	Independent
17 HBO	New York	Time, Inc.

Grantee shall alter any proposed programming to suit the needs of Arriba if such is within the capabilities of its system, but additional costs incurred by Grantee in altering programming shall be added to the monthly charges to subscribers hereinafter set forth.

(d) Grantee shall include in the system, at no additional cost to the City or its subscribers, a fully operational audio emergency override system.

(e) The system shall be designed, established, constructed, operated, maintained and fully capable of providing two-way video service when requested by the Town and when financially and technologically feasible.

SECTION 9. CONSTRUCTION TIMETABLE.

(a) Actual construction of the system shall commence, without fail, within sixty (60) days of the posting of the franchise ordinance. Posting shall be delayed up to ten (10) days to permit written acceptance of this franchise by the Grantee. If not accepted within such ten (10) days, the Town may declare this Ordinance void.

(b) The Town acknowledges that commencement of construction depends in large part on Grantee's obtaining pole attachment agreements with public utilities. The Grantee shall seek to retain and contract with such utilities and complete pole agreements with all due diligence. Failure to proceed expeditiously shall be conclusively established in the event construction is not commenced within sixty (60) days of the publication of this Ordinance.

(c) The Grantee will have completed in excess of ninety percent (90%) of the total projected construction (including that the system is operational and ninety percent (90%) of all subscribers are wired and operating) on or before one hundred twenty (120) days after the date of commencement of the construction, with all construction and wiring fully completed within one (1) full year of construction commencement.

(d) Any subdivision or property annexed to the Town, where completed homes in the new subdivision number enough to make it economically feasible, shall be serviced with the same service as is provided the core of the Town by the Grantee, upon request by the Town Council. Subscriber services shall be provided within twelve (12) months of the request of the Town Council. The burden shall be upon the Grantee to prove, by certified reports and analyses of its accounting firm, that expansion is not economically feasible.

SECTION 10. FORCE MAJEURE.

The Grantee shall not be responsible for delays in construction or extension of the system for any cause wholly behind Grantee's control, including acts of God, fire, flood, earthquakes, extraordinary delays in transportation, strikes, embargos, enemy action, energy shortages and similar events. In the event of such, the Town will grant extensions so long as the event is beyond the control of the Grantee.

SECTION 11. FRANCHISE TERM - RENEWAL AND REVIEW.

This franchise shall take effect and be in full force from and after acceptance by Grantee, as provided elsewhere herein, and the same shall continue in full force and effect for a basic initial term of fifteen (15) years. If the Grantee applies for extension or renewal of this grant at least six (6) months prior to the expiration of the term hereof, the Grantee may be considered by the Town for renewal of the grant. In determining, at its sole option and discretion, whether to grant the Grantee's application for an extended term, due consideration shall be given to Grantee's performance during the initial basic term, with such consideration pertaining to, but not being limited to: The extent to which the state of the cable TV art shall have improved, progressed or otherwise changed, and whether and to what extent Grantee proposes to provide services to subscribers in conformity therewith; whether and to what extent Grantee shall have performed in accordance with the requirements recited herein pertaining to complaints, quality of service, and the like; monthly charges and services in comparable communities. A public hearing shall be conducted on any request for extension, renewal or any new franchise and the selection process shall be open and competitive.

SECTION 12. TRANSFER OF CONTROL.

(a) Except as provided in subparagraph (e), no transfer of control of the cable system shall take place without prior notice to and approval by the Town Council which approval shall not be unreasonably refused. This notice shall include full identifying particulars of the proposed transaction, and the Town Council shall act by resolution. The Town Council shall have ninety days within which to approve or disapprove a transfer of control. If no action is taken within the ninety (90) days, approval shall be deemed to have been given.

(b) The consent or approval of the Town Council to any assignment of the Grantee shall not constitute a consent to any later assignment.

(c) For the purpose of this section the term "control" is not limited to majority ownership, but includes actual working control in whatever manner exercised.

(d) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting shares of the Grantee, but this shall not apply to any future public offering that Grantee may make of its capital stock.

(e) A mortgage or pledge of the cable system equipment or any part thereof by Grantee of said cable system equipment or part thereof for financing purposes may be made by Grantee without the consent of the Town. The Town acknowledges that, in the normal course of the Grantee's business, the entire system, after construction is completed, may be pledged to a lender to secure debts of the Grantee and the Town will not deny any bona fide pledge for such purposes.

(f) In the absence of extraordinary circumstances, the Town Council shall not approve any transfer or assignment of the franchise before completion of construction of the energized cable.

(g) For purposes of the consideration of any request for an increase in rates or changes as provided for herein, the transferee of any interest will retain the same cost basis as the Grantee.

(h) All of the provisions of this Ordinance shall be binding upon and inure to the benefit of the successors, assigns, heirs, (if the case may be), mortgagees, pledges and transferees of the Grantee.

SECTION 13. FRANCHISE FEE.

(a) For the reason that the streets of the Town to be used by the Grantee for the operation of its system within the boundaries of the Town of Arriba are valuable public properties acquired and maintained by the Town at great expense to its taxpayers, and the grant to the Grantee of the limited use of said streets is a valuable property right without which the Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee shall pay to the Town an amount equal to five percent (5%) of Grantee's gross annual revenue from all sources attributable to the operations of the Grantee within the confines of the Town (hereinafter the "franchise fee"). Failure to pay this franchise fee is a material breach of this Ordinance.

(b) This payment shall be in addition to any other tax or payment owed to the Town of Arriba by Grantee, including real and personal property taxes.

(c) The franchise fee and any other cost or penalties assessed shall be payable annually, to the Town Clerk's office and the Grantee shall file a complete and accurate verified statement of the gross revenue derived from the system covered by this franchise, during the period for which said annual payment is made, and said payment shall be made to the Town not later than one hundred twenty (120) days after close of the fiscal year of the Grantee, and at the same time as submission of the annual reports as provided in Section 18 hereof.

(d) The Town shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this Ordinance; provided, however, that such audit shall take place within twenty-four (24) months following the close of each of the Grantee's fiscal years. Any additional amount due to the Town as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the Town, which notice shall include a copy of the audit report. The Town Auditor is authorized to conduct said investigation or audit.

(e) In the event that any franchise payment or recomputed amount, cost or penalty, or any other moneys owed to the Town by the Grantee is not made on or before the applicable date herein specified, interest shall be charged daily from such date at the annual rate of eighteen percent (18%).

SECTION 14. RATES.

Grantee shall charge subscribers for the connection of system services, and for the providing of system services to subscribers in accordance with the following schedule:

(a) Connection charges:

Basic Cable if requested within the thirty days following the general advertisement of the availability of connection and subscriptions.	\$25.00
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Basic Cable after such thirty day period as described above.	\$30.00
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Each additional outlet	\$15.00
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Reconnection fees	\$15.00
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Connection fee to motels as follows: Free on all or none basis. If not all, \$37.50 per unit.

Handicapped, senior citizens, municipal outlets and school outlets.	First Outlet	Free
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The installation charge for any long digs, which are digs in excess of one hundred fifty (150) feet from Grantee's trunk lines, shall never exceed Grantee's actual costs.

The charge to any mover (i.e., for the temporary raising or removal of Grantee's lines to facilitate the movement of large objects in the public ways or elsewhere) shall never exceed Grantee's actual costs.

(b) Monthly charges for system services:

Cable only (basic)	\$13.95
First additional outlet	\$ 3.00
Two or more additional outlets	\$ 5.00
Each additional outlet (pay)	No Charge
Motel discount (basic)	\$ 6.00
Motel discount (pay)	\$ 7.00
HBO	\$10.00

(c) All charges for services in connection with this grant shall be uniform, reasonable, compensatory and nondiscriminatory. Reduced rates for senior citizens and the handicapped shall not be deemed discriminatory, nor shall multi-unit rates.

(d) Charges totally shall abate pro rata in the event service to a subscriber is interrupted for more than twenty-four (24) hours provided that notice is given to Grantee by the subscriber by telephone and provided that the interruption is not due to negligent or intentional acts on the part of the subscriber.

SECTION 15. PAYMENT BY SUBSCRIBERS.

Rate payment provisions are as follows:

(a) There shall be no requirements that payment be made more than one (1) month in advance.

(b) Grantee may require the monthly subscriber fee to be paid one (1) month in advance; and

(c) Grantee in any event may offer discounts to persons who prepay their monthly subscriber fee(s).

SECTION 16. BUSINESS OFFICE - RESIDENT TECHNICIAN - SERVICE CALLS - LOCAL FACILITIES - RECORDS - RULES AND REGULATIONS.

(a) The Grantee shall maintain in the Town a business agent for the purpose of receiving inquiries, requests and complaints concerning all aspects of the establishment, construction, maintenance and operation of the system. Payment of subscriber's service charges shall be through Grantee's Denver office which shall also provide a toll-free or collect telephone number for billing inquiries and complaints. The agent shall have a listed telephone and answering service and shall be available during reasonable business hours.

(b) The Grantee shall maintain in the Town a resident technician to provide prompt service and repairs to all of Grantee's facilities and equipment. Such resident technician shall be available during reasonable business hours. Grantee may combine the position of resident technician and business agent at its election, but in any event the person or persons performing such duties shall be fully trained, qualified and authorized to perform such duties.

(c) Grantee shall file with the Town copies of all of its rules and regulations in connection with the handling of inquiries, requests and complaints. Grantee shall furnish in writing to subscribers, at the time they connect to the system, information concerning procedures for making inquiries, requests and complaints about the system. The information shall include, at least, names, addresses and telephone numbers of the business agent. Grantee shall provide such information as reasonably will permit subscribers effectively to submit inquiries, requests and complaints, and to obtain satisfactory resolution or handling in connection therewith, especially in connection with the quality of Grantee's delivery of services.

(d) Grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system. At the least, such records shall identify the person contacting, the subject matter of the contact, and the resolution of the matter in question or the action taken by Grantee in connection with the contact.

(e) All records, reports, data and the like herein required to be kept or made by Grantee shall be open to the public.

SECTION 17. ANNUAL REPORTS.

(a) Within one hundred twenty (120) days of the end of each fiscal year of the Grantee, it shall file with the Town an annual report prepared, certified and audited by an agent of the Grantee in accordance with generally accepted accounting principles consistently applied, showing the financial status of the Grantee, gross revenues of the Grantee from the system for the report period, data on the number of subscribers, and such other reports as are required elsewhere in this Ordinance. Upon termination of the franchise at the expiration of a term or otherwise, Grantee shall continue to make the annual reports as provided in this section until such time as all payments due the Town pursuant to this Ordinance shall have been paid and accounted for to the reasonable satisfaction of the Town Council. Grantee will also file information, at least annually, regarding complaints of subscribers and the Grantee's response to such complaints, "state of the art" technology, and amendments to FCC or other applicable regulations or laws which are pertinent to the system and this Ordinance. The Town Council may make written request for the above information other than annually and require a response within fifteen (15) days. If the requested information is not provided within fifteen (15) days, the Grantee will be subject to monetary penalty as provided in Section 31.

(b) All reports submitted by Grantee to the FCC and other pertinent agencies shall be furnished to the Town within twenty (20) days of submission to such agencies.

SECTION 18. PUBLIC BUILDING.

Grantee agrees to and shall furnish without installation charge or monthly service fee, connections to Town-owned, designated sites, basic cable only; and unlimited connections to all public schools situated within the Town, basic cable only. The buildings which are served shall be responsible for internal wiring from such energized connection source. If any such connection is over one hundred fifty (150) feet from the Grantee's trunk line, Grantee may charge actual costs of installation arising from the additional distance.

SECTION 19. FORECLOSURE.

Upon the foreclosure or other judicial sale of all or a substantial part of the CATV system or upon the termination of any lease covering all or a substantial part of the CATV system, the Grantee shall notify the Town of such fact, and such notification shall be treated as a notification that a change in the control of the Grantee has taken place, and the provisions of this Ordinance governing the consent of the Town Council to such change in control of the Grantee shall apply.

SECTION 20. RECEIVERSHIP.

The Town Council shall have the right to cancel this Ordinance one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Grantee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults hereunder; and

(b) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance granted to the Grantee.

SECTION 21. PREFERENTIAL OR DISCRIMINATORY PRACTICES.

Grantee shall not, as to rates, charges, services, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, except with the consent of the Town Council in respect to handicapped and senior citizens, and multi-unit rates, nor subject any person to prejudice or disadvantage.

SECTION 22. ACCEPTANCE.

This Ordinance shall become effective thirty (30) days following posting of the Ordinance in three public locations within the Town. Grantee shall have ten (10) days after adoption by the Town Council to accept this franchise and, when accepted by Grantee, this Ordinance shall be and become a valid and binding contract between the Town and the Grantee; provided, however, that the Ordinance shall be void unless Grantee shall, within ten (10) days after the final passage of this Ordinance, file with the Town Clerk a written acceptance of this Ordinance, and the franchise herein granted, agreeing that it will comply with all of the provisions hereof and that it will refrain from doing any or all of the things prohibited by this Ordinance.

SECTION 23. UNLAWFUL ACTS.

It shall be unlawful for any person to:

(a) Make any unauthorized connection, whether physically, electrically, accoustically, inductively or otherwise, with any part of Grantee's television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or its approved successors, assigns or lessees.

(b) Without the consent of the Grantee, willfully to tamper with, remove or injure any cable, wire or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information of intelligence transmitted over the Grantee's cable system.

Any person who violates any provision of this Ordinance shall be guilty of a misdemeanor, and shall be punished by a fine of not more than Three Hundred and no/100 Dollars (\$300.00), or by imprisonment for a term not to exceed ninety (90) days, or by both such fines and imprisonment.

SECTION 24. GRANTEE'S REMEDIES FOR NONPAYMENT OF SUBSCRIBER FEES - COMPLAINTS - REQUESTS FOR SERVICE.

(a) Grantee has the right to disconnect any past due subscriber, at its sole discretion, for nonpayment of subscriber fees and may bring action in any court to recover unpaid fees and any other damages caused by the subscriber.

(b) Grantee shall respond to and resolve subscriber's complaints or request for service in connection with repairs and maintenance and malfunction of system facilities. Grantee shall respond to and correct such complaints and requests as soon as possible, but in any event not more than twenty-four (24) hours after receipt of the complaint or request for service. Grantee may, however, charge for a service call when such service call proves to be customer related as opposed to system related. Customer related problems are those arising from television equipment owned by the customer or from television equipment owned by the Grantee which has been damaged by the negligent or deliberate acts of the customer. System related refers to the deficiency in or failure of any equipment owned by the Grantee, whether or not leased to any customer.

(c) The Town Board is designated by the Town as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(d) The Grantee shall establish procedures for receiving, acting upon and resolving subscriber complaints to the satisfaction of the Town Board. The Grantee shall furnish a notice of such procedure to each subscriber at the time of initial subscription to the system.

(e) In the event that a customer complaint is not resolved to the mutual satisfaction of the customer and the Grantee, either the customer or the Grantee may request that the matter be presented to the Town Board for a hearing and resolution.

(f) When there have been similar complaints made or when there exists other evidence which, in the judgment of the Town Board, casts doubt on the reliability or quality of cable service, the Town Board shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system. Such report shall be delivered to the Town Board no later than fourteen (14) days after the Town Board formally notifies the Grantee and shall include the following information: The nature of the complaints which precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests and the method in which said complaints were resolved. All costs for such tests and reports shall be paid for by the Grantee, if found to be its fault, but otherwise said costs shall be paid by the complainant.

(g) Said tests and analyses shall be supervised by a professional engineer not on the permanent staff of the company who specializes in such testing and analysis. The aforesaid engineer should sign all records of the special tests and forward to the Town Board such records with a report interpreting the results of the tests and recommending actions to be taken by the Town or the Grantee.

SECTION 25. TERMINATION.

(a) In addition to all other rights and powers of the Town by virtue of this Ordinance, or otherwise, the Town reserves the right to terminate and cancel this franchise and all rights and privileges of the Grantee arising hereunder, in the event that the Grantee:

1. Violates any material provision of this authority or any rule, order or determination of the Town Council made pursuant to this authority, except where such violation (other than provisions concerning transfer without prior Town Council approval) is without fault of the Grantee;
2. Becomes insolvent, or is unable or unwilling to pay its debts, or is adjudged bankrupt, or placed in receivership, or is no longer authorized to do business in the State of Colorado;
3. Attempts to dispose of any of the facilities or property of its CATV system in violation of the terms of this authority;
4. Attempts to evade any of the material provisions of this authority or practices any fraud or deceit upon the Town;
5. Fails to begin or complete the construction and/or fails to provide service as required herein;

6. Fails to restore system-wide service following forty-eight (48) consecutive hours of interrupted service, except where prior approval of such interruption shall have been obtained from the Town, or in the event that any such action is caused by acts of God, national emergency, war, strikes or other actions beyond the control of the Grantee;
7. Is found to have misrepresented any material fact in its application; and

(b) Any termination proceeding initiated by the Town shall occur only after thirty (30) days' written notice to Grantee. The Grantee shall have an opportunity to respond to such a claim at a public hearing held in this matter. Grantee shall be a necessary part to all public hearings regarding operations or terminations of said franchise.

(c) Upon termination, cancellation or expiration of this authority, as provided for herein, the Town shall have the right to require the Grantee to remove, at its own expense, all portions of the CATV system from all public ways within the Town within three (3) months of said termination, cancellation or expiration. Any of Grantee's property not removed within said three (3) month period shall be deemed abandoned. By action of this Ordinance, such abandoned property shall be the property of the Town of Arriba. Provided, however, that, should the Town invoke this paragraph, Grantee may nonetheless negotiate the sale of the system subject to Section 12 hereof and consent to such sale not be unreasonably withheld.

SECTION 26. REIMBURSEMENT IN LIEU OF FIXED ACCEPTANCE FEE.

The Grantee shall pay all advertising and publication charges and other expenses incurred by the Town. Said expenses shall include, but not limited to, consultants' and attorneys' fees and expenses, reasonable value of service performed by the Town's employees, agents or contractors, the cost of elections and with publication of this Ordinance, and any other cost associated with the granting or renewing of this franchise. Such expenses shall be paid to the Town within thirty (30) days of billing thereof. Grantee's obligation under this section shall not exceed One Thousand and no/ 100 Dollars (\$1,000.00) prior to construction.

SECTION 27. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portion hereof, so long as the part held invalid or unconstitutional shall not go to the essence hereof, or increase the liability of the Town in any manner or form whatsoever.

SECTION 28. EFFECTIVE DATE.

In the opinion of the Town Board of the Town of Arriba, Colorado, an emergency exists with respect to this Ordinance for the following reasons: That this Ordinance is of a contractual nature and imposes contractual liabilities both upon the Grantee and upon the Town; that the contractual provisions of this Ordinance are necessary in every regard; that the provisions of this Ordinance are such that they are in direct conflict with any effective date other than the date commensurate with an emergency ordinance; that the contractual provisions of this Ordinance and jeopardize the entire purpose of this Ordinance; that the declaration of emergency is necessary for the immediate preservation of the public peace, health and safety, by virtue of such contractual provisions. Accordingly, this Ordinance shall be in full force and effect upon the expiration of five (5) days from and after its posting, said posting to be in accordance with law.

INTRODUCED, READ IN FULL, PASSED BY A MAJORITY VOTE OF THE TOWN BOARD OF THE TOWN OF ARRIBA, COLORADO, AND ORDERED TO BE PUBLISHED ON THIS 19th DAY OF May, 1988.

posted
LS
TOWN OF ARRIBA, COLORADO

ATTEST:

Dwight S. Schiffer
Town Clerk

Samuel K. Gilbert, Mayor
(Title)

ACCEPTANCE

COMES NOW, Bates Cablevision, and states:

1. That each of the undersigned holds the office in Bates Cablevision, a Colorado corporation, as set opposite each name;
2. That they are authorized by the Town Board of such corporation to execute this acceptance; and
3. That Bates Cablevision does hereby accept the Ordinance of the Town of Arriba, above, granting a nonexclusive franchise to Bates Cablevision, and all of the terms and provisions set forth herein, and agrees to be fully bound thereby pursuant to the terms hereof.

IN WITNESS WHEREOF, the undersigned have executed this Acceptance for on behalf of Bates Cablevision, a Colorado corporation.

BATES CABLEVISION

ATTEST:

Lynn A. Johnson
Lynn A. Johnson - President

(CORPORATE SEAL)