

AN ORDINANCE RELATING TO AN ISSUE OF FRANCHISE RIGHTS FOR THE CREATION, SALE, AND CONVEYANCE OF A FRANCHISE TO OCCUPY AND USE THE PUBLIC STREETS, ALLEYS, EASEMENTS, AND GROUNDS OF THE COUNTY OF MARSHALL, KENTUCKY, IN THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF A COMMUNITY ANTENNA TELEVISION SYSTEM.

BE IT ORDAINED by the Fiscal Court of the County of Marshall, Commonwealth of Kentucky, that from and after the passage, approval and publication of this Ordinance as required by law, that there is hereby established a non-exclusive franchise to engage in the business of operating and providing a community antenna television (CATV) service in the County of Marshall outside the present corporate limits of any of the incorporated cities located therein and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in streets, roads and public ways, 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 properties purchased, rented or leased from other persons, firms, or corporations for such purpose.

I. DEFINITIONS

For the purpose of this Ordinance, the following words and phrases shall have the meanings ascribed to them in this section:

1. Fiscal Court - shall mean Marshall County Fiscal Court.
2. County - shall mean County of Marshall.
3. Bidder - shall refer to cable companies placing a bid for franchise.

III. MARSHALL COUNTY'S AUTHORITY

That as authorized by Chapter 164 of the Constitution of the Commonwealth of Kentucky, non-exclusive right or rights may be issued by the Court to engage in the business of operating and providing a community antenna television (CATV) service in the County of Marshall outside the present corporate limits of any of the incorporated cities located therein and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in streets, roads and public ways, 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 properties purchased, rented or leased from other person, firms, or corporations, for such purpose.

III. REQUIREMENTS OF FRANCHISE HOLDERS

That in order for such franchise to issue, the Court shall cause to be advertised, as provided by law, solicitations for bid proposals, and bidder's proposal must meet with each and every one of the following requirements, which bid proposal as accepted by the Court and as evidenced by the appropriate executed contract are made a part hereof and incorporated herewith by reference:

1. Each bidder must give his name, firm or company and his or its address.
2. The bidder must give the amount of capital available and proposed to be devoted to the franchise business.
3. The bidder must give the amount of the proposed annual payment to Marshall County, Kentucky for award of the franchise, and the time and manner of payment.
4. The successful bidder shall at all times under the terms of this franchise render CATV services to all persons and organizations, public and private, without discrimination and of reasonable rate.
5. The successful bidder shall be an independent agency solely responsible for the operation of the franchise service.
6. Each bidder must further detail in bid:
 - a. Organizational structure of the applicant company.
 - b. Television services proposed.
 - c. Management policy.
 - d. Financial projection and debt structure.
 - e. Rates and charges.
 - f. Cable Television experience.
 - g. Technical capabilities.
 - h. Area of the County to be served by the system and commitments for extensions; all areas being bid must be clearly indicated in color on a map of the County; commitments for extensions shall also be indicated on a map of the County.
7. The successful bidder shall be required to comply with all applicable state, national and local laws, ordinances and regulations.
8. The successful bidder further agrees by the acceptance of this franchise to indemnify, keep and save the county and its officers, agents, officials, and employees free and harmless from liability on account of injuries or damages to persons or property growing out of the construction, maintenance, repair and operation of its CATV. In the event that suit shall be brought against the County or its officers, agents, officials and employees, either independently or jointly, with the bidder on account thereof, the said bidder upon notice by the County shall defend the County and other persons named above in any such suit at the cost of the bidder and in the event of final judgment being obtained against the County or any of its officers, agents, officials and employees, either independently or jointly with the bidder, the successful bidder shall pay such judgment with all costs and hold the County, its officers, agents, officials and employees harmless therefrom.
9. The successful bidder further agrees to obtain and keep continuously in effect public liability insurance with an insurance company approved by the County; with the policy to be in a form satisfactory to the County, and the coverage represented by said policy or policies shall be for the protection of the County, its officers, agents, officials and employees against liability for loss or damage, for bodily injury, death or property damage, occasioned by the activities of the successful bidder under the policy to be \$500,000 for personal injury or death of any one person, and \$1,000,000 for personal injury or death of two or more persons in any one occurrence, and \$500,000 for damage to property as the result of any one occurrence. Additional persons shall be added as insureds subject to the same provisions at the request of the County. Proof of such insurance shall be furnished with a minimum cancellation term of 30 days, said time to commence after delivery of said notices to the County at the address of Marshall County Fiscal Court.
10. The successful bidder, if and when he comes within the provisions of the Workmen's Compensation Act of Kentucky, shall carry in a company authorized to transact business in the State of Kentucky, a policy of insurance fulfilling all requirements of occupational disease.
11. The County, through its Fiscal Court, County Judge/Executive, or such assistants as it may employ or designate, may, at all reasonable times, examine or verify all or any of the accounts, books, records, contracts, documents or papers of the company reasonably necessary to the administration of this franchise.

IV. TERM OF THE FRANCHISE

This franchise shall be for a period not to exceed 15 years from and after the date same shall become effective, but is not exclusive.

V. BANKRUPTCY

This agreement shall terminate in the case of bankruptcy, voluntary or involuntary or insolvency of the bidder. The time of termination in the event of bankruptcy shall be the day and time of filing of the petition of bankruptcy.

VI. NOTICE

A letter addressed and sent by certified United States Mail to either party to its business address shown hereinafter shall be sufficient notice whenever required for any purpose in this agreement.

VII. ASSIGNMENT

No franchise granted pursuant hereto shall be assigned or sublet in total or in part without the prior written consent of the Court.

VIII. RIGHT TO REQUIRE PERFORMANCE

The failure of the County at any time to require performance by the bidder of any provisions of the agreement shall in no way affect the right of the County thereafter to enforce same. Nor shall waiver by the County or any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of provisions or as a waiver of any provision itself.

This franchise is granted pursuant to the laws of the Commonwealth of Kentucky relating to the granting of such rights and privileges by Marshall County, Kentucky, and if any article, section, sentence, clause or phrase of the agreement is for any reason held illegal, invalid or unconstitutional, then such invalidity shall not affect the validity of the agreement or any of the remaining portions. Any validity of any portion of this franchise agreement shall not abate, reduce or otherwise affect the obligations required of the bidder.

By acceptance of this franchise, the bidder agrees that it will not at any time set up against the County or any official thereof in any claim or proceeding any condition or term of this franchise as unreasonable, arbitrary, void of that the County had no authority or power to make such term or condition, but shall be required to accept the validity of the terms and conditions of this franchise in its entirety.

Furthermore, the County expressly reserves the right to reject any and all bids, to accept bids in whole or in part, to waive formalities and informalities and to accept the bid that appears the most advantageous and to the best interest of the citizens of Marshall County, Kentucky.

IX. CONSTRUCTION OBLIGATIONS

1. When the successful bidder shall enter upon any road for the purpose of constructing, erecting, operating, maintaining and/or removing equipment and apparatus, it shall prosecute the work, at its own cost and expense, with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the roads in reasonably the same condition as when it entered the same for said purpose or purposes.
2. In the construction or reconstruction or maintenance or removal of any of said equipment and apparatus, the successful bidder shall have due regard for the rights of the County and others and shall not interfere with, or in any way injure the property of the County or others, under on or above the grounds. Said purchaser shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the County as to placing lights, danger signals or warning signs and shall be liable for any and all damages that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the successful bidder hereunder shall be done in a workmanlike manner and so as not to unnecessarily interfere with the public use of any of said roads.
3. Whenever the County or any of its departments, agencies, and/or agents, servants or employees shall grade, regrade, construct, reconstruct, repair, maintain or alter any other public works (including, but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the successful bidder, when so ordered by the County, to change its equipment and apparatus in the road at its own expense so as to conform to the established grade or line of such road and so as not to interfere with such public works so constructed, reconstructed or altered; provided that where the law otherwise provides for or permits recovery by the successful bidder of expenses associated with the changing of its equipment and apparatus, recovery of such expenses shall not be restricted on account of this section.
4. The successful bidder shall be given access to road plans and specifications in the possession of the county and any proposed changes thereto.
5. The minimum clearance of wires and cables placed above the roads of the County, and also the placement of underground facilities, shall conform to the standards of the latest edition of the National Electrical Safety Code, National Bureau of Standards, U. S. Department of Commerce.
6. Copies of any pole use agreements made with third parties shall be filed with the Fiscal Court.

X. SALE OF FRANCHISE

It shall be the duty of the County Judge/Executive or his designate, as soon as practicable after the passage of this ordinance to offer for sale said franchise and privilege. Said franchise and privilege shall be sold to the highest and best bidder at a time and place fixed by the County Judge/Executive or his designate after due notice thereof has been given by appropriate advertisement.

XI. RIGHT TO REJECTION

Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the County Judge/Executive or his designate upon the date and at the time fixed in said advertisement for receiving same. Thereafter, the County Judge/Executive shall report and submit to the Fiscal Court, at the time of its next regular meeting, said bids and proposals for its approval. The said Fiscal Court reserves the right, for and in behalf of the County, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the County Judge/Executive shall be rejected by the Fiscal Court, it may direct, by resolution or

ordinance, said franchise and privilege to be again offered for sale, from time to time until a satisfactory bid shall be received and approved.

XII. FRANCHISE PAYMENT

Bids offered for purchase of this franchise shall state the bidder's acceptance of all conditions set forth in this ordinance. If any bid shall include an offer of payment over and above the terms of this franchise, then a certified check for said amount, payable to the County, shall be remitted with the bid. Any check deposited by an unsuccessful bidder shall be returned.

XIII. FORFEITURE OF FRANCHISE

Any violation by the successful bidder, its vendee, lessee, or successor of the provisions of this franchise or any material portions thereof, or the failure promptly to perform any of its provisions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder after written notice to the successful bidder and its failure to correct such violation, failure or default within thirty (30) days.

XIV. RIGHT TO ASSIGN

Upon completion of the construction of the system by the successful bidder, the bidder is hereby given the right to assign the franchise created by this ordinance to any person, firm or corporation able, ready, and willing to carry out the terms of this franchise, but shall, prior to such assignment, obtain written consent from the County to such assignment which consent shall not be unreasonably withheld.

XV. FRANCHISE EFFECTIVE DATE

The franchise created by this Ordinance shall become effective thirty (30) days after the bid for it is accepted by the County.

XVI. OTHER AUTHORITY

This franchise authorizes only the operation of a cable television system and service as provided for herein and does not take the place of any other franchise, license, or permit which might be required by the law of the County now or in the future.

XVII. FILINGS AND COMMUNICATIONS WITH REGULATORY AGENCIES

All petitions, applications and written communications submitted by the company to the Federal Communications Commission Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise, shall also be submitted simultaneously to the Fiscal Court.

XVIII. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES

1. The bidder shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the County including all codes, zoning ordinances, and subdivisions regulations.
2. The right is hereby reserved to Fiscal Court to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power provided that such regulations shall be reasonable and shall not be in conflict with the rights herein granted.

XIX. SERVICE QUALITY

1. The bidder shall comply with all Federal Communications Commission technical standards.
2. The bidder shall maintain the CATV system in good condition, render efficient service, make repairs promptly, and interrupt service only for good cause during the franchise period. Such interruptions shall, where possible, occur during periods of minimum use and be preceded by notice to subscribers.
3. The bidders shall be required to periodically test its equipment and the system to insure that all technical standards and quality are being maintained.

XX. PROCEDURE UPON TERMINATION

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

XXI. LOCAL OFFICE COMPLAINTS

The bidder shall maintain and staff a local business office, which subscribers may telephone during regular business hours, so that CATV complaints may be logged and maintenance service shall be promptly available. Should a subscriber have an unresolved complaint regarding the quality of cable service, equipment malfunctions or similar matters, the subscriber shall be entitled to file his complaint with the County Clerk and the bidder, according to the bidder's established procedures for resolving complaints which procedure must be approved by the Fiscal Court, and thereafter should the complaint not be resolved, to meet jointly with a representative of the Fiscal Court and a representative of the company within thirty (30) days to fully discuss such matter and thereafter to resolve same in the manner provided for in the procedures adopted for resolving complaint.

XXII. SERVICE TO PUBLIC BUILDINGS

The bidder, upon request, shall provide without charge one outlet offering basic cable service to each governmental or publicly owned building including, but not limited to, fire stations, courthouse, and public school buildings that

are passed by its cable. If more than one outlet is required at any of the said locations, the bidder shall install such other outlets at the cost of time and material only. Premium service and tiered service above the basic service shall be charged at regular subscriber monthly rates. The distribution of the cable facility inside such buildings and the extent thereof shall be the responsibility of and at the expense of the building owner.

XXIII. CONSIDERATION FOR FRANCHISE

In consideration of the terms of this franchise the successful bidder agrees that within thirty (30) days after the first anniversary date of this franchise and within thirty (30) days after such succeeding anniversary date of this franchise, it will pay to the County an amount determined at three per cent (3%) of the franchisee's gross revenue derived from all franchisee's cable services in the County. The successful bidder agrees that upon request it shall within ninety (90) days after its fiscal year ends furnish a certified audit of the system's finances and shall permit the Fiscal Court to have access to all cable systems and books upon request.

XXIV. LIMITATIONS OF GRANT

1. No privilege or exemption is granted or conferred by this franchise except those specifically prescribed herein.
2. Any privilege claimed under this franchise by the Grantee in any street shall be subordinate to any prior lawful occupancy of the streets, or other public property, or which in the future may interfere with public safety or necessary public improvements as determined by the Fiscal Court.

XXV. RIGHTS RESERVED TO COUNTY

There is hereby served to the County, every right and power which is required to herein reserved or provided by any ordinance of the County, and the Grantee, by its acceptance of this licensee, agrees to be bound thereby and to comply with any action or requirement of the County in its exercise of any such right or power, heretofore or hereafter enacted or established. The Fiscal Court specifically reserves the right to negotiate with the bidder for a public access channel on the CATV system for any governmental, educational, civic or other public purpose or purposes upon reasonable terms and conditions.

XXVI. TIME OF PERFORMANCE

1. Installation of the CATV system shall begin within one hundred and twenty (120) days and the system shall be substantially completed within two (2) years after the effective date of this franchise and extensions and service pursued with due diligence thereafter. Construction shall commence at the most densely populated area contemplated to be served and shall be extended to serve all contiguous areas where the concentration of residential housing units reaches at least 40 per linear mile which can be served from the area of original construction. The areas initially proposed to be serviced shall be illustrated on a map of the County and filed with the bid.

2. To assure that the CATV system is constructed by the Grantee as provided in this section, the Grantee shall deposit a cash bond of \$5,000 with the Fiscal Court which shall be forfeited if the Grantee fails to construct the system within two (2) years as provided in this section. The bond shall be returned at the end of the two (2) year construction period if not forfeited.

XXVII. LOCATION OF FRANCHISE PROPERTIES

Franchise property shall be constructed or installed in streets and roads only at such locations and in such manner as shall be approved by the Fiscal Court acting in the exercise of reasonable discretion. Construction or installation of franchise property in all other public places shall be subject to approval of and regulation by the Fiscal Court.

XXVIII. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY

1. In the event that the use of any franchise property is discontinued for any reason for a continuous period of twelve (12) months or that franchise property has been installed in any street without complying with the requirements of this license, or the license has been terminated, cancelled or has expired, the Grantee shall promptly remove from the street all such property other than any which the Fiscal Court may permit to be abandoned in place. In the event of any such removal, the Grantee shall promptly restore the street or other area from which such property has been removed to condition satisfactory to the Fiscal Court.
2. Franchise property to be abandoned in place shall be abandoned in such manner as the Fiscal Court shall prescribe. Upon permanent abandonment of any franchise property in place, the Grantee shall submit to the County, an instrument satisfactory to the County Attorney, transferring to the County the ownership of such property.

XXVIX. COMMENCEMENT AND COMPLETION OF SYSTEM

The Grantee shall commence actual construction of the community antenna system within a period of six months from the date of this agreement and proceed with due diligence to substantial completion within a period of two (2) years.

XXX. ESTABLISHED RATES FOR SERVICE

The rates for services and charges submitted by the bidder and accepted by the Fiscal Court shall be and remain in effect for a period of three (3) years or until the franchised territory shall be covered by the bidder. At the conclusion of that period, the bidder shall be required to file all proposed rate modifications with the Fiscal Court sixty (60) days prior to the date the rates are sought to become effective and the Fiscal Court shall have the right to approve or disapprove the proposed modifications. If no action is taken by the Fiscal Court within thirty (30) days after the filing of the proposed modifications, the modifications shall be deemed approved. The Fiscal Court shall have the right to conduct public hearings and review any required documents or information that it may deem necessary or appropriate for it to make a determination of the appropriateness and reasonableness of the proposed rate modifications.

XXXI. ORDINANCE EFFECTIVE DATE

This Ordinance shall become effective on the date of its passage.

ADOPTED THIS THE 18th DAY OF May, 1982.

MARSHALL COUNTY FISCAL COURT

BY M. B. Miller
MARSHALL COUNTY JUDGE/EXECUTIVE

ATTEST:

James R. English
MARSHALL COUNTY CLERK