

ORDINANCE NO. 26-A

AN ORDINANCE GRANTING A FRANCHISE TO CUSTOM CABLE SYSTEMS INC., A COLORADO CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE TELEVISION SYSTEM WITHIN THE TOWN OF STRATTON, COLORADO, USING THE STREETS, ALLEYS, AND PUBLIC WAYS OF THE TOWN; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT; AND PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF STRATTON, COLORADO:

Section 1. Definitions: For the purpose of this Ordinance the following terms shall have the meanings set forth in this Section.

(a) "Town"- The Town of Stratton, Colorado, a municipal corporation created and existing under the laws of the State of Colorado.

(b) "Grantee"- Custom Cable System Inc., a Colorado Corporation.

(c) "Town Board"- The Board of Trustees of the Town of Stratton.

(d) "Federal Communications Commission (F.C.C.)"- The Federal agency of that name constituted by the Communications Act of 1934, or its successor agency.

(e) "Person"- Any individual, firm, partnership, association, corporation, company or organization of any kind.

(f) "Cable Television System"- A system of antennae, cables, wires, lines, towers, wave guides, and other conductors, converters, equipment or facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signal.

(g) "Gross Service Revenues"- Any and all revenues derived directly or indirectly by Grantee, its affiliates, subsidiaries and any other person in which the Grantee has a financial interest, from or in connection with the operation of the cable television system pursuant to this Ordinance, and such revenues shall include, but not be limited to, basic subscriber service fees, pay cable fees and leased channel fees, but shall not include fees and charges for installation, reconnection, inspection, repairs, and modification, and any taxes on services imposed directly upon a subscriber.

Section 2. Grant of Authority: There is hereby granted by the Town to Grantee the right and privilege to erect, construct, operate and maintain, in, upon, across, above, over and under the streets, alleys, public utility easements, public ways and public places now in existence and which may be created or established during the term of this franchise, any poles, towers, lines, cables, wires, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation of a cable television system for the interception, sale, transmission and distribution of television programs and other audio, visual, electronic and electric signals and all other signals permitted by the F.C.C., the laws of the State of Colorado, and the ordinances of

the Town of Stratton. The rights granted herein shall not be exclusive and the Town reserves the right to grant similar uses, on terms no more favorable than those herein, to any other person at any time during the term of this franchise; provided, however, that nothing contained herein shall be deemed to require the granting of additional cable television franchises if, in the opinion of the Town Board, it is in the public interest to restrict such franchise to one or more.

Section 3. Term of Franchise: This franchise shall take effect and be in full force from and after final passage hereof, as required by law, and upon filing of the acceptance by Grantee and payment to the Town of all publication and other costs, all as elsewhere provided herein; and, shall continue in force and effect for a term of fifteen (15) years, commencing with the effective date of this Ordinance.

Section 4. Renewal: At any time no later than 120 days before the expiration of the term of this franchise, Grantee may apply for renewal, and the Town Board shall promptly consider such application and may renew the franchise for a period not to exceed ten (10) years if, upon a review of Grantee's performance during the initial franchise term it is determined that such renewal would be in the Town's best interest.

Section 5. Service Area: Grantee shall offer cable television service to all residents within the boundaries of the Town, as those boundaries may change from time to time, 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, provided a special connection charge not to exceed the actual installation costs, including material and labor, incurred by Grantee for the distance exceeding 150 feet.

Section 6. Compliance with Applicable Laws, Ordinances and Regulations: The Grantee, at all times during the term of this franchise, shall be subject to all lawful exercise of the police power by the Town, and to such reasonable regulation as the Town shall hereafter, by ordinance or otherwise, provide; provided that such regulation shall not be destructive of the rights herein granted and not in conflict with the laws of the State of Colorado or the United States of America or its regulatory agencies having lawful jurisdiction of the subject matter, and Grantee shall comply with all such laws and lawful regulations.

Section 7. Inspection by Town: The Town shall have the right to inspect all construction and installation work performed subject to the provisions of this Ordinance, and making such inspections as the Board may deem necessary to ensure compliance with this Ordinance and any other applicable rules and regulations.

Section 8. Indemnification: The Grantee shall, at its sole cost and expense, fully indemnify, defend and hold harmless the Town, its officers, board and employees against any and all claims, consents, actions, liability and judgments for damages (including but not limited to, expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in Connection therewith):

(a) In any way arising out of or through the acts or omissions of Grantee, its agents or employees, or to which Grantee's negligence shall in any way contribute;

(b) Arising out of any claim for invasion of the right of privacy, for defamation, or violation of any other right of any person, and arising from Grantee's business hereunder; and

(c) Arising out of Grantee's failure to comply with the provisions of any federal, state or local statute, regulation or ordinance applicable to the Grantee in its business hereunder.

The Town shall give Grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by this section. To secure its obligations under this section, the Grantee shall maintain throughout the term of the franchise liability insurance insuring the Town and the Grantee in the minimum amount of \$500,000.00 for property damage to any one person; \$1,000,000.00 for property damage in any one accident; \$500,000.00 for personal injury to any one person; and \$1,000,000.00 for personal injury in any one accident. The insurance policy obtained by Grantee in compliance with this section, along with evidence of payment of required premiums, shall be filed and maintained with the Town Clerk during the term of the franchise, and all such policies shall contain an endorsement prohibiting cancellation for nonrenewal until thirty (30) days after notice to the Town Clerk.

Section 9. Conditions of Street Occupancy; Standards of Construction and Maintenance: (a) All structures, lines, and equipment erected by Grantee within the Town shall be so located as to cause minimum interference with the proper use of street, alleys and other public ways and with other public utility easements therein, and to cause minimum interference with the rights and reasonable convenience of those owning and occupying private property.

(b) In case of any disturbance of pavement, sidewalk, curb or gutter, driveway or other such street installation, the Grantee shall, at its own cost and expense and in a manner previously approved by the Town Manager or other town official designated by the Town Board, and subject to the jurisdiction and powers of the Town respecting the subject, replace and restore all such street installation in as good condition as existed prior to said disturbance.

(c) In the event that at any time during the term of this franchise the Town shall lawfully elect to alter or change the grade utility easement, thereby requiring the relocation of any of Grantee's facilities, then in such event Grantee, upon reasonable notice by the Town, shall remove, relay and relocate its facilities at its expense.

(d) Grantee shall, upon the request of any person holding a building moving permit issued by the Town and upon five (5) working days notice, temporarily raise or lower its lines as necessary to permit the moving of the building and the actual expense thereof incurred by Grantee shall be paid by the person requesting the same and Grantee shall have the authority to require such payment in advance.

(e) Grantee shall have the authority to trim trees upon and overhanging all streets, alleys and other public ways and public utility easements in the Town so as to prevent the branches of such trees from interfering with the function of the Grantee's facilities. The Grantee shall make every effort to preserve the integrity and viability of any trees trimmed, and all resulting trimmed branches and other refuse shall be removed by the Grantee at its expense.

(f) All poles, lines, cables, conduits and other facilities of Grantee shall be so located, constructed, installed and maintained so as not to endanger or necessarily interfere with the usual and customary use of the streets, alleys and public ways and other public utility easements in the Town. The Grantee shall keep current and accurate maps and records of all its facilities and furnish copies thereof to the Town.

(g) All wires, cables, conduits and other facilities shall be constructed and installed in an orderly and workmanlike fashion, and shall be at all times maintained in a safe and substantial condition. Such construction and maintenance shall be in accordance with the provisions of the National Electrical Safety Code, the National Electrical Code of the National Board of Fire Underwriters, and all applicable codes and other ordinances and regulations now or hereafter adopted by the Town of Stratton affecting such installations. All installations shall be underground in those areas of the Town where the lines and other facilities of the telephone and electrical utilities are underground; in those areas where either telephone or electrical facilities are above ground at the time of Grantee's installation, Grantee may install its facilities above ground, provided, however, that at such time as either telephone or electric facilities are placed underground, Grantee shall likewise place its facilities underground.

(h) Public buildings within the Town, namely the municipal building, the fire station of the Fire Protection District serving the Town, and all public school facilities, shall be connected to the cable system at no charge upon the request of the proper authorities, and there shall be no monthly charges for providing basic subscriber services to said facilities, provided, however, that all wiring within said public buildings shall be done at the expense of the owners of the buildings, and provided that in cases where the connection requires more than 150 feet of drop line, the Town shall pay the actual installation costs, including material and labor, incurred by Grantee for the distance exceeding 150 feet.

(i) Grantee shall incorporate into its facilities the capability for an emergency override alert which will permit the Town, in a time of emergency, to override the audio portions of at least one channel as designated by Grantee for such purposes. In the event of an emergency or disaster, Grantee shall, upon request of the Town, make available its facilities to any level of local, state or federal government at no cost for emergency use during the period of such emergency or disaster and shall make available such of its personnel as is necessary to operate the system under such circumstances.

(j) Grantee may enter into contracts with public utility companies or any other owners or lessees of any poles located within the Town to whatever extent that such contracts may be expedient or useful to Grantee for the installation of its facilities. It is the policy of the Town to encourage the joint use of poles, towers, and other facilities where such joint use avoids unnecessary duplication of such facilities and minimizes the effect on other uses of the streets,

alleys, and other public ways within the Town. In those locations where Grantee may, at its option, install its facilities on poles on prior notice and approval by the Town, which approval shall not be unreasonably withheld.

(k) The interception disc or discs which will be used by the Grantee to provide the T.V. signals shall be placed on land and real estate owned or leased by the Grantee and if such land and real estate is within the incorporated limits of the Town, such disc or discs shall be surrounded by a chain link fence of sufficient height and topped out in such a manner as to protect any person from injury they might incur by trespassing on said property and tampering with the disc and/or controls.

Section 10. Rates: The Grantee for and in consideration of the granting of this franchise and other good and valuable consideration does agree, as a matter of contract between the Grantee and the Town Board (Town of Stratton), as well as by statutory authority now existing or hereinafter enacted, that the Town Board has the right to reasonably regulate the rates charged by the Grantee for services provided to its consumers who are residents and live within the boundaries of the Town of Stratton, as such boundaries now exist or may hereafter be extended by annexation. The right to regulate the rates in a reasonable manner shall include but shall not be limited to, approval or disapproval of the rates submitted by application by the Grantee. Approval of rates, if granted, shall be by separate ordinance.

The Grantee shall not make or grant any preference or advantage to any person, firm or corporation or subject them to any prejudice or disadvantage when providing service, service facilities and/or in promulgating its own rules and regulations regarding the operation of the cable television system contemplated hereunder.

The Grantee agrees to provide, at a free of charge, "hook up" (installation) to all senior citizens (age 65 or older) who reside within the limits of the Town.

The Grantee may provide its service free of charge to those public buildings within the limits of the Town, as heretofore set forth.

Section 11. Franchise Fee: The Grantee shall pay to the Town for the use of the streets, alleys and other facilities of the Town in the operation of its cable television system and for the Town's undertaking the inspection thereof during the term of this franchise, a sum equal to Three Percent (3%) of the Grantee's gross service revenues.

The Grantee shall, within thirty (30) days after the end of the Grantee's fiscal year, file with the Town an annual report showing the fiscal year's gross service revenues prepared by a certified public accountant and verified by the oath of an officer of the Grantee. In addition, and at the same time, the Grantee shall file a financial statement with the Town regarding the Grantee's operation within the Town, such statement shall conform to the accounting standards of the National Cable Television Association and shall be prepared by a certified public accountant.

The Grantee, within fifteen (15) days after the presentation of the annual report and the financial statement, shall pay to the Town the franchise fee of Three Percent (3%) of the Grantee's gross service revenues.

The Grantee, after it has secured the minimum number of customer hook ups as may be required by it to accept the franchise, shall make its best estimate of its annual "gross service revenue" for the next two fiscal years and thereupon the Three Percent (3%) franchise fee thereon shall be determined and such amount shall be prepaid to the Town in the form of a certified check and shall be a condition precedent to the acceptance of this franchise by the Grantee. Any under payment shall be taken into consideration upon completion of the annual fiscal audit of the "gross service revenue" account. In the event that this franchise is, for any reason, terminated prior to the end of the next two fiscal years of the Grantee, the Grantee shall have no right to the refund of the prepaid franchise fee or any part thereof.

In addition, the Grantee on or before August First (1st) of any year in which this franchise is in operation, shall present to the Town its best estimate of the franchise fee to be paid during the next ensuing fiscal year of the Town, in order to provide the Town with the necessary information to make up its budget for the next fiscal year.

The franchise fee shall be paid in lieu of any occupation tax, license tax, or similar levy. Nothing contained herein shall in any way relieve the Grantee, its survivors and assigns from the obligation of paying ad valorem taxes to the Town of Stratton or any other taxes lawfully levied by the Town or any other governmental agency or sub-agency of the State of Colorado.

Section 12. Standards of Service: The cable television system operated under this franchise shall be capable of distributing signals or impulses for a minimum of twelve (12) television channels, all with color capability, including one public television channel, if available.

It shall be the duty of the Grantee to take advantage of all new technological development and improvements in cable television systems and to add these developments and improvements to the system it operates in the Town. It is the intent of the Town and the Grantee that the cable television system operated under this franchise shall, at all times, be to the extent reasonably possible, kept in the best possible current operating condition.

The signal quality requirement shall include, but shall not be limited to the following:

(a) Produce a picture, whether in black and white or in color that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production T.V. sets which are in good repair.

(b) Transmit signals of adequate strength to produce good sound at the outlets without causing cross modulation in the cables or interfering with other electrical or electronics systems.

(c) Limit failures to a minimum by locating and correcting malfunctions promptly.

(d) When requested by subscribers to demonstrate by instruments and otherwise that a signal of adequate strength and quality is being delivered.

The Grantee shall distribute, on its system, all television channels which can be acquired off the air locally and all other channels which can be acquired from additional signals under applicable F.C.C. rules and regulations, provided, however, that the Grantee shall not be required to distribute duplicate commercial or public network channels.

Section 13. Operation and Maintenance of System: Grantee shall maintain a local business office or agent with the Town so that it can receive, by way of telephone calls, inquiries or complaints regarding quality of service, equipment, any malfunctions, building disputes and similar matters during customary business hours.

All complaints and inquiries shall be investigated and acted upon as promptly as possible, it being the intent of the Grantee to render efficient service, make repairs and interrupt service only for good cause, including an act of God and for the shortest possible time. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

Grantee shall maintain a written log indicating the date, time and nature of any and all complaints, the action taken regarding the problem and when such action was taken. This log shall be available for inspection by the Town Board or its authorized agent.

Section 14. Transfer of Ownership: This franchise shall not be assigned, transferred or leased in whole or in part without the prior written approval and consent of the Town. The approval of the Town shall not be unreasonably withheld, after taking into consideration the length of time any proposed assignee has been in existence, its experience and expertise in the field of operating cable television systems, its financial responsibility and reputation.

Section 15. Time of Construction and Commencement of Service: Construction shall start no later than thirty (30) days after the acceptance of this contract, as hereinafter set forth and completed within ninety (90) days of such acceptance.

In the event that adverse weather conditions or other acts of God delay construction of the system, the Town does agree to review the matter upon written application of the Grantee for an extension of the completion date and if the Town shall find that construction has been delayed, as set forth in the application, the Town will grant a reasonable extension of the completion date.

If the Grantee fails to make available the service, as provided for hereunder by the completion date or any extension thereof granted by the Town, the Grantee shall pay to the Town the sum of Fifty and no/100 Dollars (\$50.00) for each day that the service is delayed after the agreed completion date or extension thereof.

Section 16. Prohibited Activity: Grantee shall not engage in the business of selling, renting, leasing or repairing television receivers owned by its subscriber.

Section 17. Forfeiture: In addition to all other rights and powers retained by the Town under this franchise or otherwise, the Town reserves the right to terminate and cancel this franchise and all rights and privileges of Grantee thereunder in the event of a substantial breach by Grantee of the terms and conditions of this Ordinance. A substantial breach by Grantee shall include but shall not be limited to the following:

(a) Violation of any provision of this franchise or any rule or order or determination of the Town made pursuant to this franchise, except where such violation is without fault.

(b) Becomes insolvent, unable or unwilling to pay its debts or is adjudged bankrupt.

(c) Attempts to dispose of any of the facilities or property of its cable television system in violation of the terms of this Ordinance.

(d) Attempts to evade any material provision of this franchise or practices any fraud or deceit upon the Town or its subscribers.

(e) Fails to begin or complete construction or fails to provide services as required by this franchise.

(f) Fails to restore system-wise service following seventy-two (72) consecutive hours of interrupted service, except where prior approval for such interruption shall have been obtained from the Town, or in the event such failure is caused by circumstances beyond the control of Grantee.

Action by the Town Board to terminate this franchise may be taken only after thirty (30) days written notice to Grantee, setting forth the grounds for such termination and after Grantee shall have had a reasonable opportunity to respond to such notice and after public hearing before the Town Board. In its discretion and upon a finding of violation, the Town Board may impose a lesser penalty than forfeiture of this franchise or may excuse the violation.

In the event of forfeiture and termination of this franchise, as provided in this Section, Grantee shall be afforded a period of six (6) months from the effective date of such forfeiture, as it may be extended by any lawful appeal, within which to sell the cable television system to a qualified purchaser, and during such period Grantee shall have the right to operate the cable television system in accordance with the provisions of this franchise. If, at the end of such period for sale of the system, such a sale has not been completed, the Grantee shall remove, at its own expense, all of the physical properties of its system from all public ways within the Town.

Section 18. Abandonment or Removal of Facilities: (a) It shall be unlawful to make any unauthorized connection, by any means, with any part of Grantee's cable television system for the purpose of receiving signals, pictures, sounds or other information transmitted by said system without the consent or permission of Grantee.

(b) It shall be unlawful to cut, remove or interfere in any way with any of Grantee's structures, equipment, transmission lines or fixtures, without first



giving Grantee five (5) working days notice stating the time and place where lines are to be cut or such structure or equipment are to be interfered with, in order that Grantee may arrange to perform or oversee such work, and Grantee may demand and receive reasonable compensation or damages therefor for such work as undertaken or prosecuted; provided, however, that the prohibition contained in this subsection shall not apply to the Town to its agents or employees in the event of emergency.

(c) It shall be a misdemeanor punishable 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 both, for any person to violate any of the provisions of this Section.

Section 20. Company Rules and Regulations: The Grantee shall have the authority to promulgate such rules, regulations and terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this Ordinance and to ensure an uninterrupted service to all of its customers; provided, however, that such rules, regulations, and terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. The Grantee shall file with the Clerk of the Town of Stratton, copies of all such rules, regulations, terms and conditions, and amendments and supplements thereto from time to time as adopted by Grantee.

Section 21. Town Use of Grantee Facilities: The Town shall have the right, during the term of the franchise, to install and maintain, free of charge, upon the poles of the Grantee any wire and pole fixtures that do not unreasonably interfere with the cable television operations of Grantee; and the Town shall indemnify, defend, and hold Grantee harmless from actions resulting from such use by the Town.

Section 22. Acceptance: Grantee shall, within thirty (30) days after passage and publication of this Ordinance, file with the Town Clerk its acceptance of this Ordinance in writing, whereupon this Ordinance shall become a valid and binding contract between the Town and Grantee; if such acceptance is not filed as provided herein, this Ordinance shall be null and void.

Section 23. Costs of Franchise Ordinance Proceedings: Grantee shall pay all direct costs incurred by the Town in connection with the adoption of this franchise Ordinance, including costs of preparation of all notices and copies of the Ordinance, and all reasonable attorneys' fees for services directly related to the negotiation preparation and adoption of this Ordinance. The Town shall present Grantee with statements for such costs from time to time as they are incurred, and Grantee shall promptly pay such statements after credit for any deposit or advance payment made thereon.

Section 24. Severability: If any section, subsection, sentence, clause or phrase or other portion of this Ordinance is for any reason held illegal, invalid, unconstitutional or void by any Court or agency of competent jurisdiction, such holding shall not affect the validity of all other portions of this Ordinance.

Passed, adopted and approved this 2nd day of June, A.D. 1983.

EZRA YODER, Mayor

(SEAL)

ATTEST: JACKIE L. GARRETT, Town Clerk