

ORDINANCE NO. 64-1998

**AN ORDINANCE GRANTING TO TCA CABLE PARTNERS II, THE RIGHT, PRIVILEGE AND FRANCHISE TO PROVIDE WITHIN THE BOUNDARIES OF THE CITY OF ABILENE CABLE SERVICES; AND PROVIDING THEREIN FOR SERVICES, EQUIPMENT AND FACILITIES; A TERM; FRANCHISE FEES; OTHER DUTIES; AMENDMENT; ACCEPTANCE OF FRANCHISE; PUBLICATION; AN EFFECTIVE DATE; A SAVINGS CLAUSE; NOTICE TO PARTIES; AND CALLING A PUBLIC HEARING.**

WHEREAS, TCA Cable Partners II, hereinafter referred to as "Grantee", has applied for a cable franchise pursuant to Section 2 of the City of Abilene Ordinance No. 63-1998 and

WHEREAS, the City of Abilene has heretofore caused this Ordinance to be read and passed at two regular meetings of the City Council which were at least one week apart; and

WHEREAS, the City of Abilene has heretofore called a public hearing on this Ordinance before final passage; and

WHEREAS, the City Council of the City of Abilene called such public hearing in order to determine whether Grantee has complied with the conditions of and performed its obligations under its existing franchise agreement to the satisfaction of the City and Grantee's Subscribers; and

WHEREAS, the City Council, following such considerations as are herein above set forth, has determined that Grantee has met such conditions of, and performed its obligations under, its existing franchise agreement; and

WHEREAS, the City of Abilene has authority to grant non-exclusive franchises under applicable state law and constitutional provisions pursuant to its authority to operate as a home rule municipality and to regulate and control the use of the Public Rights-of-Way; and

WHEREAS, Grantee's commitments hereunder are, in fact, given by Grantee in consideration of the grant of authority hereunder to make use of said Public Rights-of-Way; and

WHEREAS, the City Council, based upon the findings upon the Grantee's prior performance herein above set out and the Grantee's new proposal, and the public hearing held upon this matter, finds it to be in the public interest to enter into a non-exclusive franchise with Grantee upon the terms and conditions hereinafter set forth; NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

Section 1: GRANTING CLAUSE. That subject to the terms, conditions, and provisions of this Ordinance and of the City of Abilene Ordinance No. 63-1998, which ordinance is hereby incorporated herein by reference and which shall be a part hereof for all intents and purposes as

if said Ordinance No. 63-1998 were copied herein in its entirety, the City of Abilene does hereby grant upon TCA Cable Partners II, the right, privilege, and franchise to offer within the boundaries of the City of Abilene, as such boundaries now exist or may be hereafter extended, Cable Services with the right to enter upon and erect, construct, maintain, extend, repair, replace, and remove in, under, upon, within, over, above, across, and along any and all present and future Public Rights-of-Way of the City of Abilene such Facilities thereto as are necessary, proper, and reasonably needed for said Cable Services, to the extent that the City is authorized to grant such right.

Section 2: SERVICES, EQUIPMENT AND FACILITIES.

- (a) Grantee shall construct, maintain, and/or rebuild such services, equipment, and Facilities as are set out in the City of Abilene Ordinance No. 63-1998 and adhere to all construction standards as provided in Ordinance No. 63-1998
- (b) Grantee has indicated its intent to rebuild the current Cable System. As such, Grantee agrees that:
  - (1) The Cable System shall, within thirty (30) months from the effective date of this Ordinance, have sufficient capacity to provide:
    - (i) seventy-five (75) full channels of video programming which may include from time to time, retransmitted broadcast channels, satellite-delivered programming and locally-produced programs;
    - (ii) a Cable System capable of carrying and/or transmitting video and two-way voice, video and data.
  - (2) Grantee shall provide a strand map of the Cable System indicating all areas currently served and all areas proposed to be served as a result of the rebuild.

Section 3: TERM. The term of this agreement shall be set as follows:

- (a) The base term of the franchise shall be for seven (7) years from the effective date of this franchise.
- (b) If Grantee completes the rebuild of its Cable System, as indicated in Section 2 above, within thirty (30) months of the effective date of this franchise, the term of this franchise shall be extended an additional eight (8) years for a total term of fifteen (15) years from the effective date.
- (c) For each month the completion of the rebuild of the Cable System extends beyond thirty (30) months of the effective date of the franchise, the extended term of the franchise shall be shortened by three (3) months. The following schedule delineates the term relative to the number of months to complete the rebuild:

Months to complete rebuild from effective date of franchise	Base term (Years)	Extended term (Years)	Total term (Base + Extended) (Years)
30	7	8	15
31	7	7 3/4	14 3/4
32	7	7 1/2	14 1/2
33	7	7 1/4	14 1/4
34	7	7	14
35	7	6 3/4	13 3/4
36	7	6 1/2	13 1/2
37	7	6 1/4	13 1/4
38	7	6	13
39	7	5 3/4	12 3/4
40	7	5 1/2	12 1/2
41	7	5 1/4	12 1/4
42 or more	7	5	12

- (d) If Grantee cancels its plans to begin or complete the rebuild of the Cable System, the term of this franchise shall be seven (7) years.
- (e) At no time shall the term of this franchise exceed fifteen (15) years or be less than seven (7) years.

Section 4: FRANCHISE FEE. Grantee hereby agrees that it will pay a franchise fee of five percent (5%) of its Gross Revenues, as that term is defined in Ordinance No. 63-1998 and clarified therein, and that such franchise fee may be increased to the extent permitted by law.

Section 5: OTHER DUTIES. Grantee shall pay to the City all other monies; install all other services; and perform all other terms and conditions to be performed by the Grantee pursuant to this Ordinance and Ordinance No. 63-1998 The application fee for this franchise has been previously paid by Grantee.

Section 6: AMENDMENT. The City shall have the right to amend this Ordinance, except that such amendment shall not materially alter the terms of this Agreement without Grantee's approval.

If additional cable franchises are granted by the City which convey upon persons, corporations or entities, other than Grantee, privileges or benefits greater than those enjoyed by Grantee hereunder, or obligations less than those required of Grantee hereunder, the City and Grantee shall negotiate in good faith to amend this Ordinance accordingly.

Section 7: ACCEPTANCE OF FRANCHISE. Grantee shall, within thirty (30) days from the date of final passage of this Ordinance by the City Council of the City of Abilene, file with the City Secretary of the City of Abilene, a written statement signed in its name and behalf by officers of TCA Cable Partners II, all of whom hereby represent that they are duly authorized to sign and make such an agreement, in the following form:

The Honorable Mayor and the City Council of the City of Abilene.

TCA Cable Partners II, for themselves, their successors and assigns, hereby accepts the attached Cable Television Franchise Ordinance as finally passed by the City Council of the City of Abilene on the 17 day of December, 1998, and hereby agrees to be bound by all of its terms and provisions.

TCA Cable Partners II

BY: Fred R. Nichols

TITLE: President

DATE: 12/18/98

Section 8: PUBLICATION. The City Secretary shall cause notice of this Ordinance to be published at least one time within twenty (20) days after final passage in the official newspaper of the City.

Section 9: EFFECTIVE DATE. In accordance with the Charter of the City of Abilene, this Ordinance shall become effective thirty (30) days after the final passage of this Ordinance.

Section 10: SAVINGS CLAUSE. Should any section, paragraph, sentence, clause, phrase, or work of this Ordinance be declared unconstitutional or invalid for any reason, the remainder of this Ordinance shall not be affected thereby.

Section 11: NOTICES. All notices herein provided for shall be sent prepaid registered or certified mail addressed to the parties as follows:

To the Grantee:

TCA Cable Partners II  
3015 SSE Loop 323  
Tyler, Texas 75701  
ATTN: Fred R. Nichols

To the City:

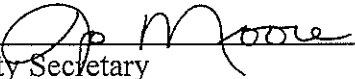
City of Abilene  
Attention: City Manager  
PO Box 60  
Abilene, Texas 79604

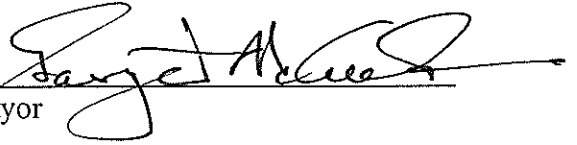
PASSED ON FIRST READING this the 10 day of December A.D. 1998.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 13 day of December 1998, the same being more than twenty-four (24) hours prior to the time designated for said hearing. After such opportunity for the public to be heard, said ordinance was passed on second and final reading.

PASSED ON SECOND AND FINAL READING this 17 day of December, A.D. 1998.

ATTEST:

  
\_\_\_\_\_  
City Secretary

  
\_\_\_\_\_  
Mayor

APPROVED:

  
\_\_\_\_\_  
City Attorney