

ORDINANCE NO. 3
(Series 1983)

AN ORDINANCE OF THE TOWN OF LAKE CITY, COLORADO, ENACTING REGULATIONS FOR THE ISSUANCE OF CABLE TELEVISION SYSTEM PERMITS, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF LAKE CITY, COLORADO, as follows:

Section 1.

Chapter 10 of the Lake City Municipal Code, is amended by the addition of a new Section 13 to read as follows:

CHAPTER 10

Section 13

CABLE TELEVISION SYSTEM PERMITS

10.13-1: General Provisions:

(A) For the purpose of this Section 10.13, "Town" shall mean the Town of Lake City, Colorado, the Lake City Board of Trustees, or any other officer, employee, agent or body thereof authorized to act on behalf of the Town for purposes of the administration, enforcement or implementation of this Section.

(B) "Company", as used in this Section, shall mean any person or legal entity granted a Cable Television System Permit pursuant to this Section.

10.13-2: Permit Required:

(A) It shall be unlawful for any person to use any Town owned street, alley, right-of-way, easement, or other property owned by the Town for purposes of the operation of a cable television (CATV) system or the installation or location of CATV lines, poles, cables or other facilities without a CATV System Permit granted in accordance with the provisions of this Section.

(B) Any CATV System Permit issued hereunder shall be non-exclusive.

(C) No CATV System Permit shall be granted until the Town Board determines that:

(1) The applicant, its proposed system and operation are financially viable.

(2) The applicant has the technical ability and necessary experience to successfully operate a CATV system.

(3) The applicant and its principals are of good moral character.

(4) The applicant is proposing adequate service to promote the public convenience and necessity.

(5) All requirements of this Section and other applicable requirements of law have been and will be complied with.

(D) Upon receipt of an application for a permit or renewal thereof, the Town Board may conduct such investigations and hold such hearings as it deems necessary and proper to determine if the criteria of this Section have been met. Reasonable notice of any hearings scheduled shall be given to the applicant.

(E) No CATV System Permit may be transferred or assigned. If the permit or the CATV system is transferred by bankruptcy, receivership, assignment for the benefit of creditors or by operation of law, this permit shall terminate 120 days thereafter, unless an extension is granted by the Town Board to allow time for application for a new permit to be filed. A new permit to an assignee will not be unreasonably denied.

10.13-3: Term of Permit:

Any Permit granted pursuant to this Section shall be valid for a term of 10 years, unless terminated prior to 10 years in accordance with other provisions of this Section. The 10 year term shall commence upon approval of the permit by the Town Board.

10.13-4: Application for New CATV System Permit:

(A) Applications for a new Permit shall be made on forms provided by the Town. The burden shall be on the applicant to prove that it meets the criteria for issuance of the Permit as specified in Subsection 10.13-2(C) above. The applicant may submit such information as it desires to meet its burden, but, as a minimum, the application form shall be fully completed and accompanied by the following:

(1) An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$2,000. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.

(2) The general description of all aspects of the

proposed operation, including services to be provided, programming, office hours and location, etc.

(3) The proposed rates along with a guarantee that these rates will not be increased for a period of at least 1 year following original initiation of service.

(4) The complete plans for the construction of the proposed system and proposed system map unless the application is for a change of ownership of an existing system, in which event the existing system maps should be submitted.

(5) A list of other cable television franchises or permits held by the applicant, its parent, subsidiaries, or interlocking companies.

(B) The Town reserves the right to require any additional information necessary for its determination of whether or not the applicable criteria for granting the permit are met.

(C) Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Section, and certifies that the applicant will comply with all provisions of this Section.

10.13-5: Required Construction Schedule and Bond:

(A) Within 6 months after approval of a permit for a system which is not installed, the company shall commence significant construction of the system and shall complete system construction with due diligence.

(B) Within 15 days after approval of a permit for a system which is not installed, the company shall file with the Town a corporate surety bond, in a form acceptable to the Town in the amount of \$20,000 to guarantee the timely construction and full activation of the proposed cable system within 2 years of the date the Board of Trustees grants the permit.

(C) The Bond shall provide that the Town may recover against it, jointly and severably, from the principal and surety, any and all damages, loss or costs suffered by the Town resulting from the failure of the company to fully install and activate the cable TV system in accordance with the provisions of this Section.

10.13-6: Renewal of Existing Permit:

(A) Applications for renewal of an existing CATV System Permit shall be submitted on forms provided by the Town and at a minimum accompanied by the following:

(1) An application fee as necessary to cover actual costs incurred by the Town in investigating and approving the permit, including publication costs and attorney's fees, not to exceed \$200. The Town shall give the applicant an initial estimate of such costs subject to adjustment for actual costs.

(2) The Company's existing rate schedule if not previously filed with the Town.

(3) Accompanying the application shall be a notarized certificate of the applicant stating that it accepts the authority of the Town to grant the permit, acknowledges the validity of all requirements of this Section, and certifies that the applicant will comply with all provisions of this Section.

(B) The Town may require any other additional information it deems necessary to determine whether or not the applicant for renewal meets the criteria set out in Subsection 10.13-2 above.

10.13-7: Revocation:

(A) Any permit issued under this Section may be revoked by the Town Board if it determines that the company has failed to comply with any provision of this Section or the permit, or is in violation of any applicable provision of any federal, state or local law, and the Company fails to remedy the situation as provided in this Subsection.

(B) The Town shall provide the company with at least 10 days notice of the hearing on the alleged failure or violation during which time the company may remedy the situation. If the Board determines, following the hearing, that the grounds specified in Subsection (A) above exist, it may, but need not allow, a reasonable time period in which the company may remedy the situation. If the company fails to remedy the situation in such period, or because of the circumstances no such period is justified, the Board may revoke the permit or take such other action as it deems appropriate.

10.13-8: Acquisition of the System by the Town or Removal:

(A) (1) If the company shall cease operations or abandon its system during the term of the permit, the Town may acquire the system for the net book value thereof. If the permit is revoked by the Town Board, the Town may acquire the system for its fair market value as a going concern as if the company's permit had a remaining term of 5 years.

(2) The Town shall mail or deliver written notice to the company of its intent to purchase the system. Within 15 days after deposit in the mail or delivery of

the notice, the company and the Town shall each appoint an arbitrator. These arbitrators shall within 15 days thereafter appoint a third arbitrator. The arbitrators shall then determine fair market value or the net book value, as the case may be, of the property to be acquired and make a report to the Town and the company of their determination within 60 days of the date of the notice of intent to purchase.

(3) The Town shall have 30 days after receiving the report on the value to make a final determination whether or not to purchase the system. If the Town elects to purchase the system it shall specify the closing date, which shall be within 1 year thereafter, at which time the payment determined in accordance with this Subsection shall be made to the company and the system transferred to the Town. In the time prior to closing the company shall continue to operate the system and maintain it in good working order.

(4) If the Town elects not to purchase the system, any permit in effect shall remain in effect unless previously revoked.

(5) The expenses of the third arbitrator and common expenses of the three arbitrators shall be shared equally by the Town and the company. The expenses of the arbitrator appointed by each shall be paid by the Town and the company respectively.

(6) If the company fails or refuses to appoint an arbitrator or otherwise comply with this Subsection, the Town shall unilaterally determine the purchase price to be paid within the time limits provided in this Section or it may seek a court order enforcing compliance with this Subsection.

(B) The Town shall not be liable for severance damages on account of portions of the company's system located outside of the Town limits which will be severed because of the purchase by the Town; however, the Town will, upon request of the company, purchase such severed portions of the system located outside the Town on the same terms as it may purchase the system within the Town.

(C) In the event of termination of a permit without renewal, or revocation of the permit, if the Town does not elect to acquire the system in accordance with the procedures outlined in Subsection (A) above, the Town may require the company to remove all of its cables, lines and facilities from Town streets, alleys and easements within a period of 6 months, repairing and restoring any damage caused thereby. If the company fails to remove such components within that period they shall become the property of the Town.

(D) The provisions of this Subsection are alternatives to the Town's power of eminent domain which power is expressly reserved.

10.13-9: Use of Streets, Alleys and Easements:

(A) Any permit issued under this Section gives the company the right to use Town owned streets and alleys, and those easements owned by the Town which, by their terms may be used for cable television facilities. Such use shall allow the installation and maintenance of wires, conduits, cables, poles and other appurtenant facilities used in the distribution and transmission of cable television. Such use shall be subject to the conditions of this Subsection. Nothing herein shall limit the Town's rights to vacate, sell or encumber any Town owned property if easements are reserved for any existing CATV lines or facilities.

(B) The location of the lines and other facilities shall be designed to minimize interference with other uses of the Town streets, alleys and easements. The company shall use the poles of the telephone company or power company whenever possible for its lines subject to the requirements of this Subsection for undergrounding, unless such poles are unfit or unfeasible for use, in which event the lines shall be underground. The company shall not erect poles of its own unless power or telephone poles are unavailable and the Town determines that undergrounding is technically infeasible or economically too costly.

(C) The company shall submit to the Town prior to construction, plans showing the location of all proposed lines and facilities to be installed in Town streets, alleys or easements. No such facilities or lines may be installed therein until the location has been approved by the Town. Within 24 hours of request by the Town, the company shall advise the Town of the location of any underground lines.

(D) The Town may require that any lines or other facilities be relocated or removed whenever necessary for the use, operation, maintenance, construction of Town streets, alleys and easements or other Town facilities. The cost of removal or relocation shall be borne by the company.

(E) No excavation may be made in any Town street, alley or easement without obtaining a permit from the Town in compliance with the provisions of the Town's ordinances. The company, at its expense, shall repair any damages or disturbance to any public streets, alleys or easements or pavement, sidewalk or improvement thereon caused by the company's operations.

(F) The company shall furnish copies of its "as built" system map and keep an updated copy on file with the Town.

(G) All cables and lines shall be constructed underground

when required by Town Subdivision Regulations or when located in areas where the power or telephone lines are underground.

(H) The company shall convert any of its overhead lines to underground lines upon the request of any person willing to pay for the cost of such conversion, or if the costs are paid in accordance with provisions of C.R.S. 1973, 29-8-101 et. seq., the Colorado Underground Conversion of Utilities Act.

(I) In the event that a overhead cable route is eliminated because of inability to continue the use of the poles of the telephone or power company, the company shall underground its lines and facilities if the other utility is undergrounding its lines and facilities. If such is not the case, then the company may install its own overhead pole lines if the Town determines that undergrounding is technically infeasible or too expensive.

10.13-10: Rates:

(A) Rates charged to customers within the Town shall be just, reasonable and nondiscriminatory. Rates shall be based solely upon operations of the company and revenues and expenses therefrom within the Town. The company shall be entitled to fair and reasonable rates and charges for basic CATV service no higher than necessary to cover costs of service, assuming efficient and economical management, including a fair return on the fair value of the property devoted to such service.

(B) A current copy of the company's rates, charges, rules and regulations, including charges for connections and extensions, shall be kept on file with the Town at all times. This shall include the company's rules for termination of service for failure to pay charges due.

(C) No rate or charge may be increased unless a notice of intent to increase the rates or charges is filed at least 45 days in advance with the Town and a copy of such notice is sent with a bill to each subscriber.

(D) If requested by a petition signed by 2/3 of the company's subscribers within the Town prior to the proposed effective date of a rate increase, the Town Board shall hold a public hearing, notice of which shall be published at the expense of the company in the local newspaper. The company shall have the burden of proving that the requested rate increase is necessary, just, reasonable and nondiscriminatory. The effective date of any rate increase may be suspended by the Town for a period of up to 90 days, or until a final decision is reached by the Town, whichever occurs first. Any expense the Town incurs in investigating a requested rate increase, including reasonable legal and expert fees, shall be reimbursed to the Town by the company. Provided that such charges shall be estimated by the Town in advance and added to the allowable expenses of the company for the ensuing 12 month period in determining the

projected expenses of the company for rate making purposes.

10.13-11: Permit Fee:

(A) In consideration of the rights and privileges granted under a permit, the company shall pay to the Town a permit fee of 3% of gross revenues from operations within the Town. Such gross revenue shall not include sales taxes collected on behalf of the Town or State but shall include all service revenue and standard connection charges from operations within the Town.

(B) Payments shall be made quarterly to the Town. Payments are due within 30 days after each 3 months quarter of the calendar year, with the first payment for each year due on April 30. This permit fee is in addition to any and all taxes, fees or charges imposed by the Town or other governmental entity.

10.13-12: Insurance and Liability:

(A) The company shall fully indemnify, defend and hold harmless the Town and its officers, boards, commissions, employees and agents against any and all claims, suits, actions, liabilities, and judgment for damages, including but not limited to expenses for reasonable legal fees and disbursements and liabilities assumed by the Town in connection therewith, in anyway arising out of or through the acts or omissions of the company, its agents or employees, or the company's cable television operations under the CATV System Permit. This shall include any liability with regard to a claim for a violation of any law, including civil rights or anti-trust claims, and any litigation contesting the validity of this Section or the permit granted hereunder.

(B) The company shall maintain throughout the terms of the permit, liability insurance insuring the Town and the company in amounts equal to or exceeding the current limits of the liability of the Town under the Governmental Immunity Act. Certificates of the insurance shall be filed with the Town for each policy containing an endorsement that it cannot be cancelled unless 30 days written notice of cancellation is provided to the Town. The company shall also maintain adequate fire and casualty insurance.

(C) By acceptance of the grant of any permit pursuant to this Section, the company covenants and agrees that it will not at anytime or in any manner or proceeding set up against the Town any claim or proceeding challenging this Section or the grant of the permit pursuant to this Section as being invalid for any reason.

10.13-13: Service Area and Line Extensions:

The company shall be required to provide and extend service to all persons within the Town limits desiring service who pay the company's standard connection charge and monthly fee.

10.13-14: Minimum Service and Operation Requirements:

(A) The company shall make adequate arrangements to handle customers complaints and service requests. The public shall be able to contact company officials conveniently concerning such matters. Complaints from consumers shall be responded to promptly and courteously by the company and a log listing all complaints, service requests and their dispositions shall be kept by the company available for inspection by the Town.

(B) The company shall at all times comply with the regulations and laws of the State of Colorado and the United States and any of its agencies.

(C) Construction and the operation of the system shall comply with the Town's Building and Electrical Codes and any other applicable regulations and ordinances.

(D) The system shall be designed to provide subscribers with a uniform high-quality of reception throughout the Town and shall be operated continuously. The system shall have a minimum capability of not fewer than 12 video channels.

(E) The company shall provide continuous service to all subscribers in return for the payment of their fee. In the event the company fails to provide substantially all CATV services for any five consecutive days, the Town shall have the right to operate the system until such time as a new operator is approved and shall be reimbursed for any costs or expenses incurred as a result of the company's failure to operate the system, unless such failure is on account of technical impossibility, acts of god, disaster, war, or other such reasons beyond the company's control. Financial problems, misfeasance or malfeasance of the company or its employees shall be no excuse for failure to operate.

(F) The company shall, to the extent economically feasible, take advantage of new technical developments in the field of transmission of television or radio signals which would afford the company the opportunity to be more efficient and to provide better service, and shall as far as reasonably practical, maintain the current state of the art with regard to cable television systems.

(G) The company shall temporarily move or relocate any of its lines, cables or other facilities when necessary for construction, moving a building or otherwise, if the expense of such operation will be paid by the person requesting it.

10.13-15: Local Access:

(A) The Town or other governmental entity shall be authorized to make emergency use of the company's system and the company shall install a capability for emergency messages to be transmitted on all channels simultaneously, if economically feasible to install such capability.

(B) The company shall provide at least 1 channel which can be used non-exclusively as a public access channel.

10.13-16: Financial Reports and Access to Records:

The Town shall have access to all business records and financial records of the company pertaining to operations within the Town, upon request, as necessary, to audit payment of permit fees.

10.13-17: Reservation of Rights:

(A) The Town reserves the right to adopt additional regulations and ordinances governing the operation of CATV systems in accordance with the lawful exercise of its police power.

(B) Any costs incurred by the Town to amend this Section because of requirements due to changes in State or Federal law shall be reimbursed pro rata to the Town by each holder of a CATV permit based on their respective annualized gross revenues for the last twelve (12) months.

10.13-18: Notices:

Any notices required to be given to the Town shall be delivered to the Mayor at Town Hall. Notices to the company may be delivered or sent certified mail to the company's current address which the company shall keep on file with the Town.

10.13-19: Free Connections:

The company shall provide, free of charge, one cable television connection outlet to each public school located within the Town, each public library within the Town, and to the Armory Chambers and Armory Main Room. This shall not require the company to provide channels which are premium pay channels.

10.13-20: Tampering with CATV Facilities:

It shall be unlawful for any person to interfere with, tamper with, damage, destroy, or operate any part of any CATV system, or to connect to such system, or utilize service from such system without lawful authorization to do so.

10.13-21: Enforcement:

In addition to any other remedies, this Section may be enforced by an action for specific performance or injunction in a court of competent jurisdiction.

Section 2.

It shall be unlawful for any person to violate any of the provisions of this Ordinance. Any person convicted of such a violation may be punished by a fine of up to \$300, or a jail sentence of up 90 days, or by both such fine and imprisonment; provided, however, no person under the age of 18 years shall be subject to any term of imprisonment, except for contempt of court.

Section 3.

If any provision of this ordinance or the application of it to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provisions or applications. The provisions of this ordinance are expressly declared to be severable.

Section 4.

Additional Provisions for the Initial Cable Television Permit:

(A) The Board of Trustees makes the following findings, based upon a careful review of available information:

(1) No cable television system presently exists within the Town of Lake City, but it appears that two and perhaps more companies are interested in competing to obtain a permit to install cable television in Lake City.

(2) Because of the small size of Lake City, economies of scale do not justify granting separate permits for different geographical areas of the Town, nor is it likely that if more than one permit is granted that any company will install a system overlapping another system initially at this time.

(3) It is unlikely that any company will actually install a cable television system after receiving a permit unless it is the only permit initially issued, because of problems associated with financing, planning, customer commitments and other matters related to feasibility.

(4) The use of public rights-of-way for CATV facilities is a substantial benefit to any CATV company. These rights-of-way are owned by the Town and used by its citizens for many purposes. The regulations of use of these rights-of-way is necessary to protect the public health, safety and welfare and to insure compatibility of the various uses.

(5) Economies of scale realized from a single initial permit will promote a stable and certain economic marketplace and will benefit the Town in terms of lower rates and better services.

(6) A single integrated system will better serve emergency broadcasting and public access services.

(7) Other alternatives to a single initial permit will not promote the above considerations and the public health, safety and welfare as well.

(8) Awarding the permit based upon evaluation of competing proposals to the applicant whose proposal will best serve the public interest will encourage competition, and best serve the Town and its citizens.

(B) In addition to the requirements and procedures for an application for a new CATV permit provided in Subsection 10.13-4 of the Lake City Code, the following procedure shall apply for the first CATV permit issued:

(1) For a period of 30 days after the effective date of this ordinance, applications for the CATV permit shall be accepted. A notice of the application period shall be published once.

(2) The application shall be accompanied by a consent by the applicant to the competitive process, as provided herein, and the applicant's agreement to bring no action questioning the legality of this process to the awarding of a single initial permit.

(3) If more than one application is received, a formal public hearing shall be scheduled to consider the applications.

(4) Thereafter, the Board of Trustees shall award the permit to an applicant who meets the minimum criteria of Subsection 13.13-2 of the Lake City Municipal Code and whose proposal will best promote the public convenience, necessity, health, safety and welfare and provide the best service.

Section 5.

In order for a CATV permit to be issued in time for construction during the 1983 summer construction season, it is necessary that this ordinance take effect immediately and, therefore, the Board of Trustees declares that an emergency exists.

INTRODUCED, READ and ADOPTED by the Board of Trustees of the Town of Lake City, Colorado, by a ^{unanimous} unanimous vote this 4th day of May, 1983.

TOWN OF LAKE CITY, COLORADO

By

Robert E. Hill, Mayor

ATTEST:

Lisdi L. Slato
Town Clerk