



Agenda Commentary

Item Title/ Subject: Ordinance No. 952 regarding renewal of Cable One Franchise Agreement

Staff Source: Lisa Anders, City Clerk

History/Background Information: The fifteen year franchise agreement with Cable One will be expiring September 2014. Public Hearings were held on July 1, 2014 and August 5, 2014 to identify future cable-related community needs and interest and review the performance of the cable operator under the franchise during the current franchise term.

Item/Subject Summary: Ordinance No. 952 would renew the fifteen year franchise agreement with Cable One.

Price/Cost:

Recommendation:

CABLE TELEVISION ORDINANCE

FOR

CITY OF CLINTON, OKLAHOMA

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AN ORDINANCE GRANTING TO CABLE ONE, INC., FOR A PERIOD OF FIFTEEN (15) YEARS FROM AND AFTER THE PASSAGE, ACCEPTANCE AND EFFECTIVE DATE OF THIS ORDINANCE, THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN, UPON, ALONG, ACROSS, ABOVE, OVER, AND UNDER STREETS, ALLEYS, EASEMENTS, OPEN AREAS, PUBLIC WAYS AND PUBLIC PLACES, NOW LAID OUT OR DEDICATED, AND ALL EXTENSIONS THEREOF AND ADDITIONS THERETO, IN THE CITY OF CLINTON, OKLAHOMA: PROVIDING TERMS AND CONDITIONS FOR THE OPERATION OF SUCH CABLE TELEVISION SYSTEM AND THE PAYMENT OF FEES THEREFORE.

WHEREAS, prior to adoption of this Ordinance a full public proceeding affording due process was held and the legal, character, financial and technical qualification of Cable One, Inc., as well as the adequacy of the services it proposes and the adequacy and feasibility of its plans to provide service were considered; now therefore,

THE CITY OF CLINTON DOES ORDAIN:

SECTION 1. DEFINITIONS

For purposes of this Ordinance the following terms, phrases, words, abbreviations and their derivations shall have the same meaning given herein.

A. Cable Television System or System shall mean the Company's system of antennas, cables, amplifiers, towers, microwave links, waveguides, satellites, or any other conductors, converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying, storing, processing or distributing audio, video, digital, or other forms of electronic, electrical, or light signals capable of being transmitted by wire, cable, fiber optics or radio to subscribing members of the public in the City who pay for such services.

B. City shall mean the City of Clinton, Oklahoma, and all territory within its governmental authority.

C. City Council shall mean the present governing body of the City, or any successor to the legislative powers of the present government body.

D. Company shall mean Cable One, Inc., a Delaware Corporation.

E. Federal Communications Commission or FCC shall mean the agency as presently constituted by the U.S. Congress or any successor agency authorized by the Congress to regulate cable television systems.

F. Gross Revenues shall mean all revenue derived by the Company, its affiliates or subsidiaries from subscription to its cable television services in the City, but shall not include revenue from cable advertising, home shopping services, sale or exchange of assets or equipment, cable modem services, information or telecommunications services, any government regulatory fees, any taxes on services furnished by the Company and imposed directly upon a subscriber or user by the state, city, or other governmental unit and collected by the Company on behalf of the said governmental unit, or any amounts collected directly from subscribers to satisfy the franchise fee requirements of this Ordinance.

G. Person shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

H. Regular Subscriber Service shall mean that service regularly provided by the Company to all subscribers.

I. Street shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, or place, alley, court, boulevard, parkway, drive, or other easement now or hereafter held by the City for the purpose of public travel and shall include other easements or rights of way as shall be now held or hereafter by the City which shall, within their proper use and meaning, entitle the City and the Company to the use thereof for the purposes of installing or transmitting cable television system transmission over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to a cable television system.

SECTION 2. GRANT OF AUTHORITY

The City hereby grants to Cable One, Inc., a nonexclusive right, privilege, and franchise to construct, operate, maintain and remove a cable television system in, upon, across, above over and under, streets, alleys, easements, open areas, public ways, and public places now laid out or dedicated in the City and upon annexation of any territory to the City, this Franchise shall extend to the territory so annexed. The City will not grant a franchise to another company providing services similar to that provided by Franchisee or amend the franchises existing on the date hereof, if such franchise or amendment contains material terms that, when taken in their entirety, are more favorable or less burdensome than the material terms set forth in this Ordinance.

SECTION 3. DURATION OF FRANCHISE

(a) Term. The Franchise shall take effect on the effective date of this Ordinance and shall continue in force for a period of twenty (15) years, subject to the conditions and restrictions herein provided.

(b) Surrender. The Company may surrender this Franchise at any time upon

filing with the City a written notice of its intention so to do, at least six (6) months before the surrender date. All the rights and privileges and all of the obligations, duties, and liability of the Company under this Ordinance, except as to the extent previously accrued hereunder, shall terminate on the surrender date specified in such notice.

SECTION 4. RENEWAL PROCEDURES

This Franchise may be renewed by the City upon application of the Company pursuant to any procedures established by this Franchise, and in accordance with the Cable Acts of 1984 and 1992, and/or any future relevant laws.

SECTION 5. TRANSFER OF OWNERSHIP OR CONTROL

(a) Assignment or Transfer. This Franchise shall not be assigned or transferred without the prior approval of the City Council of the City of Clinton which shall not be withheld unreasonably. The purchaser, assignee, or transferee must demonstrate to the satisfaction of the City Council of the City of Clinton, its financial and technical ability to operate and maintain the System.

(b) Notice. The Franchisee under this document shall give the City of Clinton written notice of any proposed purchaser, assignee, or transferee of this Franchise and should the City fail to call a meeting of the City Council to consider and act upon such proposed sale, assignment or transfer within sixty days following receipt of written notice of such proposed sale, transfer, on assignment, the City shall be deemed to have consented to the proposed sale, transfer, or assignment.

SECTION 6. FRANCHISE PAYMENT

(a) Franchise Fee. For the use of the streets and other facilities of the City in the operation of the cable television system, the Company shall pay the City on or before April 1st of each year a franchise fee in an amount equal to five percent (5%) of the annual gross revenues received by the Company during the previous calendar year.

(b) Inspection. The City shall have the right to inspect the Company'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 twelve (12) months following the close of each of the Company's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Company by the City which notice shall include a copy of the audit report.

SECTION 7. BOOKS AND RECORDS

(a) Books and Records. The Company shall keep a full and accurate set of books showing the amount of gross revenues received by the Company from the area governed by the City, based upon which the franchise payments to be made hereunder are computed.

(b) Installation Map. The Company shall at all time maintain a complete working map showing the exact location of all the equipment of the cable television system installed or in use in streets and other public places in the City, and such map shall be accessible at normal business hours to the City for all proper purposes.

(c) Examination of Books and Records. At all reasonable times, the Company shall permit the City, or its duly authorized representatives, to examine all public books and records of the Company concerning operations of its cable television system in the area governed by the City, and to examine any and all maps and any other records kept or maintained by the Company which deal with the operations and affairs of the Company with respect to this Franchise.

SECTION 8. LIABILITY INSURANCE AND INDEMNIFICATION

Public Liability Insurance.

- (a) At all times during the existence of the Franchise granted hereunder, the Company shall, at its own cost and expense, maintain in full force and effect a general comprehensive liability insurance policy, protecting the City against liability for loss or damage for personal injury, death, and property damage, occasioned by the negligence or default of the Company under the Franchise, with maximum liability limits of One Hundred Thousand Dollars (\$100,000.00) for personal injury or death of any one person, and Three Hundred Thousand Dollars (\$300,000.00) for personal injury or death of two or more persons in any one occurrence, One Hundred Thousand Dollars (\$100,000.00) for damage to property resulting from any one occurrence, and Five Hundred Thousand Dollars (\$500,000.00) for all property claims in the aggregate.
- (b) The policy or policies of insurance mentioned in the foregoing paragraph shall name the City, its officers and agents, as an additional insured and shall contain a provision that a written notice of cancellation or reduction in coverage of said policy shall be delivered to the City thirty (30) days in advance of the effective date thereof.

SECTION 9. CONDITIONS OF STREET OCCUPANCY

(a) Location of Poles and Fixtures. The Company shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixtures, water hydrant, mains or public sewer lines, and all such poles or other fixtures placed in any street shall be placed in the right-of-way between the roadway and the property as directed by the City.

(b) Restoration. The Company shall, upon completion of any work requiring the opening of any street or public place, restore the same, including the paving and its foundations, to as good condition as formerly, and in a manner and quality approved by the City, and shall exercise reasonable care to maintain the same thereafter in good condition. Said work shall be performed with due diligence, and if the Company shall fail to perform and complete the work within a reasonable time, to remove all dirt and rubbish and to put the street or public place in good condition, the City shall have the right to put the street or public place in good condition at the expense of the Company; and the Company shall upon demand, pay to the City the cost of such work done for or performed by the City.

(c) Relocation of Facilities. Whenever the City shall grade, regrade, or change the line of any street or public place or construct or reconstruct any sewer or water system therein and shall, with due regard to reasonable working conditions, order the Company to relocate or protect its wires, conduits, cables, and other property located in said street or public place, the Company shall relocate or protect its facilities at its own expense. The City shall give the Company reasonable notice of plans to grade, regrade, or change the line of any street or public place or to construct or reconstruct any sewer or water system therein.

(d) Protection of Facilities. Nothing contained in this section shall relieve any person, or corporations, from liability arising out of the failure to exercise reasonable care to avoid injuring the Company's facilities while performing any work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

(e) Notice of Improvements. The City shall give the Company reasonable written notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that would affect the Company's facilities, which notice shall contain the nature and character of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the time when the City is going to start the work. The notice shall be given to the Company a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit the Company to make any addition, alterations, or repairs to its facilities deemed necessary.

(f) Facilities Not Hazardous to Public. All wires, conduits, cables, and other property and facilities shall be so located, constructed, installed, and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic, and travel upon the streets and public places of the City. The Company shall keep and maintain all of its property in good condition, order, and repair, so that the same shall not menace or endanger the life or property of any person. The Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the City. Adherence to the City requirements for placement of Company wires, conduits, cables and other property and facilities shall be deemed proof of compliance with this section.

(g) Moving of Buildings. The Company shall, on the request of any person holding a building moving permit, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance.

SECTION 10. MAINTENANCE AND REPAIRS.

(a) Maintenance of System. The Company shall erect and maintain all parts of the system in good condition throughout the entire franchise period.

(b) Interruption of Service. Whenever it is necessary to shut-off or interrupt service for the purpose of making repairs, adjustments, or installations, the Company shall use its best efforts to do so during periods of minimum use of the system by subscribers. Unless such interruption is unforeseen and immediately necessary, the Company shall give subscribers reasonable notice of any planned interruption of service. All costs incurred in repairing and correcting an interruption of service shall be borne by the Company; provided, however, that nothing herein shall prevent the Company from recovering the costs incurred from persons responsible for occurrences or acts which result in damage to the cable television system.

(c) Complaints. Any service complaints from subscribers shall be investigated within twenty-four (24) hours of receipt of such complaint. Any service complaint shall be resolved within seventy-two (72) hours. The Company shall keep a maintenance service log which will indicate the nature of each service complaint, the date and time it was received, the disposition of said complaint and the time and date thereof. This log shall be maintained for two (2) years and shall be made available for periodic inspection by City.

SECTION 11. SERVICE.

(a) Construction. Company has fully constructed an operational cable system currently serving the City.

(b) Availability. Where technically and economically reasonable, Cable television service shall be available to all areas within the corporate limits of the City which have a minimum of forty (40) dwelling units per street mile.

(c) Extensions. All applicants desiring cable antenna service at a location greater than 300 feet from the nearest distribution line shall pay to the Company its actual costs of labor and materials for said installation.

(d) Additional Territory. In the event additional adjacent territory is incorporated within the City's limits, by annexation or otherwise, the Company's rights and duties

under this Ordinance shall be deemed to include such additional territory.

SECTION 12. UNAUTHORIZED PRACTICES AND PENALTIES.

(a) Franchise Required for Cable Television System. From and after the effective date of the Ordinance, it shall be unlawful for any person to establish, operate, or to carry on the business of distributing to any person in the City any television signals or radio signals by means of a cable television system unless a franchise therefore has first been obtained pursuant to the provisions of a City Ordinance, and unless such franchise is in full force and effect.

(b) Franchise Required for Use of Right-of-Way. From and after the effective date of this Ordinance, it shall be unlawful for any person to construct, install, or maintain within any public street in the City, or within any other public property of the City, or within any privately owned area within the City which has not yet become a public street but is designated or delineated as a proposed public street on any tentative subdivision map approved by the City, any equipment or facilities for distributing any television signals or radio signals through a cable television system, unless a franchise authorizing use of such street, property, or areas has first been obtained pursuant to provisions of a City Ordinance, and unless such franchise is in full force and effect.

(c) Unauthorized Connections Prohibited. It shall be unlawful for any person, firm, or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of a franchised cable television system within this City for the purpose of taking or receiving television signals, radio signals, pictures, programs, data or sound.

(d) Tampering with Cable Television System Equipment Prohibited. It shall be unlawful for any person, without the consent of the Company, to willfully tamper with, remove, or injure any cables, wires, or equipment used for distribution of television signals, radio signals, pictures, programs, or sound.

(e) Penalties for Violation. The violation of any provision of Section 12 of this Ordinance is a misdemeanor, and under federal and Oklahoma law the same is punishable by fine and incarceration. Company and City agree to cooperate in the prosecution of offenders.

SECTION 13. COMPLIANCE WITH APPLICABLE LAWS.

The Company shall at all times comply with all laws, ordinances and regulations of the federal, state and City governments or any administrative agencies thereof. If any federal or state law or regulation shall be in conflict with the terms of this Franchise, or any ordinance of the City, then as soon as possible following knowledge thereof, the Company shall notify the City of the point of conflict.

SECTION 14. BREACH AND TERMINATION.

(a) Breach. In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to terminate the Franchise and all rights and privileges of the Company hereunder in the event of a substantial breach of its terms and conditions. A substantial breach by Company shall include, the following:

- (1) Violation of any material provision of the Franchise or any material rule, order, regulation or determination which the City is authorized to make under the terms of this Franchise.
- (2) Attempt to evade any material provision of the Franchise or attempts to practice any fraud or deceit upon the City or its subscribers or customers;
- (3) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(b) Excuse for Breach. The foregoing shall not constitute a substantial breach if the violation occurs, but it is without fault of the Company or occurs as a result of circumstances beyond its control.

SECTION 15. RULES AND REGULATIONS.

(a) In addition to the inherent powers of the City to regulate and control this Franchise, and those powers expressly reserved by the City herein, the right and power is hereby reserved by the City to promulgate such additional regulations as it shall find necessary in the exercise of its lawful powers and in furtherance of the terms and conditions of this Franchise.

(b) The City may also adopt such regulations at the request of the Company upon application.

SECTION 16. FAILURE OF CITY TO ENFORCE THIS FRANCHISE, NO WAIVER OF THE TERMS THEREOF.

The Company shall not be excused from complying with any of the terms and conditions of this Franchise by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

SECTION 17. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held illegal, invalid, or unconstitutional by any court of competent jurisdiction or the FCC, such decision shall not affect the validity of the remaining portions. The invalidity of any such portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by the City of the Company under the Franchise granted.

SECTION 18. ACCEPTANCE BY THE COMPANY.

The Franchise granted pursuant to this Ordinance and its terms and provisions shall be unconditionally adopted by written instrument executed and acknowledged by the appropriate officials of the City and delivered to the Company which shall accept same not later than twenty (20) days after receiving it by acknowledging the Company's acceptance in writing.

SECTION 19. NOTICE.

All notices called for in this Franchise shall be written notice and will be considered as being completed notice when mailed by registered mail or certified mail return receipt requested and addressed to the party to be notified as shown below:

To City:	City of Clinton P.O. Box 1177 Clinton, Oklahoma 73601
To Company:	Cable One, Inc. Attn: Vice President & General Counsel 210 East Earll Drive Phoenix, Arizona 85012-2626
With Copy to:	General Manager Cable One, Inc. P.O. Box 863 Elk City, Oklahoma 73648

PASSED by the Council of the City of _____ on this the _____ day of _____, 2014.

By _____
Mayor

ATTEST:

City Secretary

This Ordinance has been accepted by Cable One, Inc., this _____ day of _____, 2014.

CABLE ONE, INC.

By: _____
Vice President