

ORDINANCE # 08-89-03

WHEREAS, NORTHLAND CABLE PROPERTIES TWO LIMITED PARTNERSHIP desires the City of Jewett to grant a permit to construct, maintain, and operate a Cable Television System in the City of Jewett.

BE IT ORDAINED by the City Council of the City of Jewett as follows:

SECTION 1

"Definitions": For the purpose of this permit, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the future tense include the present, words in the plural number include the singular number, and words in the singular number include the plural number. Provisions of this permit shall be construed in accordance with the laws of the State of Texas.

(a) "City": The City named above, a municipal corporation of the State of Texas, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

(b) "Council": The present governing body of the City or any future board constituting the legislative body of the City.

(c) "Permit Property": All property owned installed or used under authority of this permit.

(d) "Street": The surface of, and the space above and below and public streets, road, highway, freeway, lane, alley, court, sidewalk, or drive, now or hereafter existing as such within the town.

(e) "Grantee": The person or corporation to whom or which this permit is granted by the council, and the lawful successor assignee thereof.

(f) "Community Antenna Television System" hereinafter referred to as

"CATV": Coaxial cables, wave guides, or other video service by cable or through its facilities as herein contemplated.

(g) "Subscribers": Any person or entity receiving for any purpose the CATV service of the permittee herein.

SECTION 2

That a permit is hereby granted to Northland Cable Properties Two Ltd Part... its successors and assigns, hereinafter called "permittee" to locate, construct, maintain and operate CATV system in the City of Jewett. This permit shall include, without limitation, the authority, right, privilege and power to construct, maintain and operate, in, over, under, across and upon the public streets, avenues, parkways, alleys, sidewalks, and public ground the necessary equipment for the operation of a CATV system in the City of Jewett.

SECTION 3

This permit shall be effective for a period of Twenty (20) years subject to the conditions and provisions herein contained. The City Council of the City of Jewett may terminate this permit in the event the Council shall have found, after notice and hearing that the Grantee has failed to comply with any material provision hereof and has failed to correct any failure after thirty (30) days written notice.

SECTION 4

This permittee shall defend the City against all lawful claims for injury to any person or property caused by the negligence of the permittee in the construction or operation of its property; and in the event of a determination of liability shall indemnify the town. More particularly the permittee herein, his successors and assigns, does hereby agree to indemnify and hold harmless the City of Jewett from any and all liability, claim, demand for judgment growing out of any injury to any person or property, as a result of the violation or failure on the part of the permittee, his successors and assigns, to observe their proper duty or because of negligence in whole or in part arising out of construction, repair, extension, maintenance, or operation of his equipment of any kind or character used in connection with this permit.

SECTION 5

This permittee shall at all times make and keep full and complete plans, maps and records showing the exact location of all CATV system equipment located and used by permittee in the City of Jewett.

SECTION 6

All of such installation of equipment shall be of a permanent nature, durable and of sufficient height not to interfere in any manner with the right of the public or individual property owners and shall not interfere with the travel and use of public places by the public nor during the construction, repair, and removal shall not obstruct nor impede traffic. The City of Jewett reserves the right of reasonable regulation of the erection and construction of any work by the permittee and to reasonably designate where such works and construction shall be placed. The permittee agrees when requested by the City to make minor changes in its equipment to conform to the reasonable necessary requirements within a reasonable time.

SECTION 7

The permittee shall have the right to operate a CATV system during the existence of this permit and shall have the right to extend its CATV system upon and/or under the streets, alleys, and public grounds of any addition hereafter made to the City's corporate territory and to use the streets, alleys, and public grounds to continue to points beyond the corporate limits of said City.

SECTION 8

The permittee shall have the right to assign this permit, subject to the approval of the City of Jewett.

SECTION 9

In the exercise of this permit, the permittee may, with the consent of the owner, use the poles and other equipment of public utilities holding franchises in the City of Jewett. The permittee may not use any of the poles of the City of Jewett without entering into a pole use agreement with such City on such terms, conditions and considerations as may be prescribed by the City of Jewett.

SECTION 10

The permittee shall pay the City of Jewett a minimum annual fee of 2% of service revenue from cable television subscribers only. However, no fee shall be paid the City for revenues acquired from hook up fees or charges not

involving cable television.

<u>Range of Gross Receipts</u>	<u>Per Cent of Gross Receipts Paid to City</u>
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\$100.00 through \$100,000.00	Two percent 2%
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The fee owed by permittee for the previous year shall be paid to the City no later than the 30th day of the third month following the end of each calendar year and shall be levied as a tax in lieu of all other license or permit fees. A failure to pay such license or permit fee by the 30th day of the third month following the calendar year in which it is due shall terminate this ordinance and render the same null and void.

SECTION 12

There is hereby reserved to the City every right and power which is required to be herein reserved or provided by an ordinance of the City, and the Grantee, by its acceptance of this permit, agrees to be bound thereby, and to comply with any action or requirement of the City in its exercise of any such right or power, heretofore or hereafter enacted or established.

(a) Neither the granting of this permit nor any of the provisions contained herein shall be construed to prevent the City from granting any identical, or similar permit to any person or corporation other than the Grantee.

(b) This permit shall not be construed to be a "franchise" within the meaning of the laws of the State of Texas and shall be non-exclusive.

SECTION 13

Permit property shall be constructed or installed in streets only at such locations and in such manner as shall be approved by the Council acting in the exercise of reasonable discretion. Construction or installation of permit property in all other public places shall be subject to approval of and regulation by the City Council.

SECTION 14

The provisions of this ordinance shall be construed to be severable and the holding of any provision hereof invalid or unconstitutional shall in no

way effect the remaining portion of this ordinance.

SECTION 15

The permittee shall, at his expense promptly repair any and all streets, sidewalks, or other public and/or private property damaged or destroyed by permittee, his agents, servants, or employees in exercising the privileges herein granted.

SECTION 16

(a) In the event that he use of any permit property is discontinued for any reason for a continuous period of twelve (12) months or that permit property has been installed in any street without complying with the requirements of this permit, or the permit has been terminated, cancelled or has expired, the Grantee shall promptly remove from the street all such property other than any which the Council 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 a condition satisfactory to the Council.

(b) Permit property to be abandoned in place shall be abandoned in such manner as the Council shall prescribe. Upon permanent abandonment of any permit property in place, the Grantee shall submit to the City of Jewett an instrument, satisfactory to the City Attorney, transferring to the City the ownership of such property.

SECTION 17

The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate, in the same street, alley, or public place, or remove from any street, alley or public place, any permit property when required by the City for reason of traffic conditions, public safety, street vacation, freeway, and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks of any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity, or any other structures or public

improvement; provided, however, that Grantee shall in all such cases have the privileges and be subject to the obligations to abandon permit property in place, as provided in Section 16.

SECTION 18

Upon failure of the Grantee to complete any work required by law or by the provisions of this permit to be done in any street, within the time prescribed and, to the satisfaction of the Council, the Council may cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts required by the City from the Grantee, within thirty (30) days after receipt of such itemized report.

SECTION 19

(a) Grantee agrees that at all times during the existence of this permit it will maintain in force, furnish and file with the City, at its own expense, a general comprehensive liability insurance policy, in protection of the City, its boards, commissions, officers, agents, employees, and the public, with a company authorized to do business in the State of Texas and in form satisfactory to the City Attorney, protecting the City and said persons against liability for loss or damages for personal injury, death, and property damage occasioned by the operations of Grantee under this permit, with a minimum liability limit of \$100,000.00 for personal injury or death of any one person, and \$300,000.00 for personal injury or death of any two or more persons in any one occurrence, and \$50,000.00 for damages to property for any one occurrence.

(b) The policies mentioned in the foregoing paragraph shall contain a provision that a written notice of a cancellation or reduction in coverage of said policy shall be delivered to the City ten (10) days in advance of the effective date hereof. If such insurance is provided in either case by a policy which also covers Grantee or any other entity or person than those above named, then such policy shall contain the standard cross-liability endorsement.

SECTION 20

City agrees to lease, and as part of this Ordinance does lease to grantee for and in consideration of \$200.00, payable annually on January 2nd, of each year, a tract of real estate owned by the City being approximately 75' x 75' and being located at the City Sewage Plant.

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The term of said lease being twenty (20) years as the term of the permit to operate granted by this Ordinance.

Further, the Mayor or Secretary are hereby authorized to execute a written lease agreement pursuant to the terms of this Ordinance.

SECTION 21

That Grantee shall establish a fair rate structure and will only raise rates as cost of operations necessitate.

SECTION 22

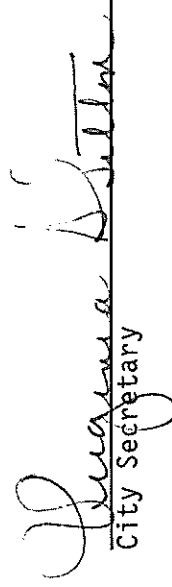
That Grantee shall have full responsibility for maintenance, ownership, and operation of the system.

SECTION 23

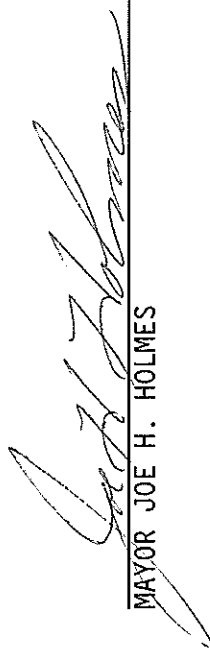
This permit takes effect upon the effective date of the approval by the City Council, City of Jewett.

PASSED, APPROVED, AND ADOPTED, this the 31st day of August, 1989, provided the land at the City Sewage Plant is available and adequate.

ATTEST:



City Secretary



MAYOR JOE H. HOLMES