

ORDINANCE NO. 114

AN ORDINANCE CREATING AND AWARING A CABLE COMMUNICATIONS
FRANCHISE IN THE CITY OF HOKAH AND CERTAIN OTHER AREAS AND
RULES GOVERNING THE OPERATION THEREOF.

The City Council of the City', Houston, County, Minnesota, hereby ordains:

SECTION I. DEFINITIONS.

1. "Franchisor" is the City of Hokah in its own behalf and in behalf of the Towns of Hokah and Union in said County, in accordance with and to the extent expressed in that certain Joint Powers Resolution dated May 3, 1983, incorporated herein by this reference as if set out hereat in full.

2. "Franchisee" is Valley Video Systems, Inc., Rushford, Minnesota 55971.

3. "Board" is the Minnesota Cable communications Board.

4. "FCC" is the Federal Communications Commission of the United States.

5. "Class IV Channel" means a signaling path provided by a cable communications system to transmit signals of any type from a subscriber terminal to another point in the cable communications system.

6. "Non-voice return communications" means the provision of appropriate system design techniques with the installation of cable and amplifiers suitable for the subsequent insertion of necessary non-voice communications electronic modules.

7. The words "shall" and "must" are mandatory.

8. The word "may" is permissive.

9. the words "may not" are unconditionally prohibitive.

SECTION II. GRANT OF AUTHORITY.

The City Council of the City of Hokah authorizes that a cable communications franchise for the installation, operation and maintenance of cable communications system within the corporate limits of the City of Hokah and those parts of Section 6, Township 103 North, and of Section 31, Township 104 North, of Range 4 West of the fifth Principal Meridian included in E. E. Bentsahl Fox Chase Road Subdivision to the Town of Hokah in said County and State, is granted to Valley Video Systems, Inc., Rushford, Minnesota, provided, however, that the franchise shall be subject to the following terms and performance conditions:

SECTION III. COMPLIANCE STANDARDS & CERTIFICATION OF
CONFORMATION.

A. COMPLIANCE WITH MINNESOTA CABLE COMMUNICATIONS
BOARD'S FRANCHISE STANDARDS.

The franchisee shall at all times be in compliance with the franchise standards of the Minnesota Cable Communications Board.

B. COMPLIANCE WITH STATE AND FEDERAL LAWS.

The franchisee and the franchising authority shall conform to all state laws and rules regarding cable communications not later than one (1) year after they become effective unless otherwise stated and to all federal laws and regulations regarding cable communications as they become effective.

C. CERTIFICATE OF CONFIRMATION.

The franchise shall cease to be in force and effect if the franchisee fails to obtain either a regular certificate of confirmation or renewal of a certificate of confirmation from the Board, provided, however, that the franchisee may operate the cable communications system while the Board is considering the application for the renewal of the certificate of confirmation.

SECTION IV. FRANCHISE TERM, RENEGOTIATION & EXCLUSIVITY.

A. The franchise shall have an initial franchise term of fifteen (15) years effective from and after the effective date of this Ordinance. Any renewal term, if granted by the franchising authority, shall be for no longer than fifteen (15) years, or for a period consistent with applicable laws, rules and regulations.

B RENEGOTIATION OF FRANCHISE TERMS.

Renegotiation between the franchisor and franchisee shall occur eighteen (18) months before the end of the franchise term unless franchising authority determines not to reissue the franchise to the franchisee or desires to consider additional applications for a franchise. Such renegotiation periods must be specified and must be mutually agreed upon by the franchisor and franchisee.

C. FRANCHISE EXCLUSIVITY.

This franchise is non-exclusive.

SECTION V. SALE OR TRANSFER OF FRANCHISE, SALE OR TRANSFER OF STOCK.

Sale or transfer of this franchise or sale or transfer of stock so as to create a new controlling interest is prohibited except with the prior, written approval of the franchising authority, which approval shall not be unreasonably withheld, and except that such sale or transfer is completed pursuant to Board rules, Chapter 12.

SECTION VI. RATES, RATE CHANGE PROCEDURE & RECORDS.

A. ACCESS TO FINANCIAL RECORDS.

The franchisor is granted the authority to at reasonable frequencies audit the franchisee's accounting and financial records upon reasonable notice. The franchise shall file annually with the franchising authority reports of gross subscriber revenues and other information as the franchising authority deems appropriate.

B. RATE CHANGE PROCEDURE AND RESIDENTIAL SUBSCRIBER CONTRACTS.

The rates set forth in Subparagraph C of this Section shall, except in the case of newly available services or in the case of a proposed reduction in rates, remain in full force and effect for a period of one year. Prerequisite to any rate changes and adjustments, franchisee shall submit application therefore to the City Council together with such accounting data in support thereof as the City Council may reasonably prescribe. Rate adjustments shall be predicated upon valid fiscal and other relevant factors in the cable television industry and shall be referenced to the rates hereinafter set forth, and like fiscal and other relevant factors impacting thereon, and the underlying supposition that the rates hereinafter set forth as of the day of the date of the enactment of this ordinance are compensatory. The City council may, in its discretion, conduct public hearings(s) to inform itself concerning rate increases. In any event no rate increase shall become effective until the expiration of sixty (60) days from and after the receipt by the city of application therefore including supporting financial and fiscal data. Franchisee, pursuant to its ongoing policy, does not contemplate individual residential subscriber contracts in connection with the implementation of this franchisee.

C. RATES

Franchisee shall pay a franchisee fee to the City in an amount equivalent to two (2%) percent of basic service revenue, which fee shall be paid annually, due and payable on the anniversary date of the effective date of this ordinance.

a) Installation Charges:

| | |
|--|-------------------|
| Basic Service Installation, primary outlet | \$14.95 |
| Secondary outlets, each | 8.50 |
| Add premium channel to basic service | 14.95 |
| Pre-wiring of multiple outlets | by quotation only |

Installation charges will be reduced during special promotions. Basic and premium rate service installation charges will be waived for those subscribers who hook up when the system is being constructed.

b) Monthly charges

| | |
|-------------------------------|---------|
| Primary Outlet, basic service | \$10.50 |
| HBO (optional) | 9.95 |
| Additional outlets, each | 1.50 |

The forestated rates are exclusive of state sales tax.

c) Reconnection charges.

| | |
|---------------------------------|---------|
| Reconnection of basic service | \$ 8.50 |
| Reconnection of premium service | 14.95 |

d) Other charges.

| | |
|---|---------|
| The moving or relocation of an outlet (with previous CATV Service) | \$ 8.50 |
|---|---------|

The policy proposed by applicant for unusual or difficult connections is to negotiate a mutually agreeable charge with subscriber prior to such installation.

SECTION VII. FRANCHISE ADMINISTRATOR.

The City Clerk-Administrator or such other officer as may be designated by Resolution of the city Council, duly enacted, shall be responsible for the continuing administration of this franchise.

SECTION VIII. LIABILITY INSURANCE, PERFORMANCE BOND & THIRD PARTY LIABILITY

A. LIABILITY INSURANCE.

The franchisee shall indemnify the hold harmless the franchisor at all times during the term of this franchise and shall maintain through the term of the franchise liability insurance in the amount of \$100,000.00 as to claim for wrongful death, \$100,000.00 to any claimant in any other case, and \$300,000.00 for any number of claims arising out of a single occurrence. Said policies of insurance shall claim franchisor as well as franchisee insured with regard to all damages and penalties which either or both may legally be required to pay as a result of any claim whatsoever arising out of this franchise and the exercise thereof by franchisee.

B. PERFORMANCE BOND

At the time this franchise becomes effective and at all times thereafter until the franchisee has liquidated all of its obligations with the franchising authority, franchisee shall furnish a performance bond, certificate of deposit or any other types of instrument approved by the franchising authority in the minimum amount of \$10,000.00. This bond is deemed by the franchising authority to be adequate compensation for damages resulting from the franchisee's nonperformance. The franchising authority may, from year to year, in its sole discretion reduce the amount of the performance bond or instrument.

C. LIABILITY FOR INJURY TO FRANCHISEE'S FACILITIES.

Nothing in this franchise shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the franchisee's facilities while performing any work connected with grading, regarding or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.

SECTION IX. PUBLIC HEARING RE: FRANCHISEE'S CREDENTIALS & FRANCHISE EXPENSES.

The franchisee's technical ability, financial condition and legal qualification were considered and approved by the franchising authority in full public proceeding pursuant to 4 MCAR @ 4.140 E.1. which afforded reasonable notice and a reasonable opportunity to be heard.

All costs and disbursements incurred by franchisor in connection with the entire franchising process, including the preparation of this ordinance, shall be paid by franchisee as a prerequisite to the effectiveness of this ordinance.

SECTION X. CHANNEL CAPACITY.

Franchisee shall construct a system to provide thirty-five (35) channels in the forward or down stream direction and will have the capacity to provide four (4) channels in the return or upstream direction. Twelve (12) of the downstream channels will be in use at the beginning of service. The remaining twenty-three (23) channels in the midband and high band are intended for future channel expansion.

SECTION XI. CONSTRUCTION SCHEDULE, AUTHORIZATION TO COMMENCE SONCTRUCTION, COMPLIANCE WITH APPLICABLE CODES & RELOCATION OF WIRES.

A. CONSTRUCTION SCHEDULE.

Within ninety (90) days of the granting of the franchise, franchisee shall apply for all necessary permits, licenses, certificates and authorizations. Energized trunk cable shall be extended substantially through the authorized area within 12 months after the receipt of all necessary governmental permits, licenses, certificates and authorizations. The provisions of this Subparagraph of this Section may be waived only by the franchising authority upon the occurrence of unforeseen events or acts of God.

B AUTHORIZATION TO COMMENCE CONSTRUCTION.

Franchisee shall obtain a permit from the City Clerk-Administrator of the City prior to commencing construction of the communication system contemplated to be constructed pursuant to this ordinance, and commencement of construction shall include the opening or disturbance of any street, sidewalk, driveway or public place. Franchisee shall in connection with the commencement and prosecution of construction comply with all other ordinances of the City regulating such construction activities and is likewise subject to all penalties and other remedies or corrective procedures prescribed in such ordinances, and to the extent here applicable are by this reference incorporated herein by this reference as if set out hereat in full.

C. COMPLIANCE WITH APPLICABLE CODES.

All wires, conduits, cable and other property and facilities of franchisee shall be located, constructed, installed and maintained in compliance with applicable codes. Franchisee shall keep and maintain all of its property so as not to unnecessarily interfere with the usual and customary trade, traffic or travel upon the streets and public places of the franchise area or endanger the lives or property of any person.

D. RELOCATION OF WIRES.

Prior to undertaking the relocation of wires, conduits, cables and other property located in and upon the streets, right-of-way, or other public places, franchisee shall secure a permit therefore from the City Clerk-Administrator for which application shall be made in writing including supporting documentation consisting of executed agreements entered into by franchisee with all other public and other utility firms whose plant facilities aforescribed are desired to be relocated authorizing the relocation or removal thereof. Such applications so filed shall be administered in the same manner as Building-Zoning Permits are processed by the City. In any event, no Building – Zoning Permit so applied for shall be issued prior to the expiration of a period of ten days from and after the receipt by the City of a complete application together with agreement with public and other utility companies and such other supporting data as the City Council may reasonably direct.

SECTION XII. TECHNICAL STANDARDS & SPECIAL TESTING.

A. TECHNICAL STANDARDS.

The rules of the Federal Communications Commission relating to cable communications systems contained in subpart K of part 76 of the Federal Communications Commission’s rules and regulations relating to cable communications systems are incorporated herein by this reference. The results of any tests required by the Federal Communications Commission shall be filed within ten (10) days of the conduct of such tests with the franchising authority and the Board.

B. SPECIAL TESTING.

In the event that special testing is required to determine the source of technical difficulties, the costs thereof shall be initially borne by franchisee. If, upon appropriate analysis of the results of such testing, it is determined that the cause of the difficulty is attributable to a subscriber of services rendered pursuant to this ordinance, franchisee may seek reimbursement thereof from such subscriber or subscribers. All other expenses entailed, whether for testing or correcting the cause of the difficulties, shall be borne by franchisee.

SECTION XIII. NON-VOICE RETURN, TWO-WAY CAPABILITY, SIGNAL CARRIAGE & MISCELLANEOUS COMMUNITY SERVICES.

A. NON-VOICE RETURN.

Franchisee shall construct and maintain a cable communications system having the technical capacity for non-voice return communications.

B. TWO-WAY CAPABILITY.

The system constructed and maintained by franchisee shall possess two-way capability in compliance with MCAR 4.202 V of the Rules of the Minnesota Cable Communications Board. The schedule for activating two-way transmission will be determined by mutual agreement between franchisee and franchisor consistent with local interests and realistic demands for effective utilization of such facilities.

C. SIGNAL CARRIAGE.

The signal carriage immediately available shall be minimally the following:

| | | | |
|------------|------------|------|-----|
| Channel 3 | Mason City | KGLO | CBS |
| Channel 8 | La Crosse | WKBT | CBS |
| Channel 10 | Rochester | KTTC | NBC |
| Channel 13 | Eau Claire | WEAU | NBC |
| Channel 19 | La Crosse | WXOS | ABC |
| Channel 31 | La Crosse | WHLA | PBS |

SATELLITE CHANNELS

| | |
|-------------------|--------------|
| WGN | Chicago, IL |
| WTBS | Atlanta, GA |
| ESPN | New York, NY |
| USA Cable Network | New York, NY |

LOCAL

| | |
|---------------|--------------|
| Public Access | Local System |
|---------------|--------------|

PREMIUM SERVICES

| | |
|-----------------|--------------|
| Home Box Office | New York, NY |
|-----------------|--------------|

C. MISCELLANEOUS COMMUNITY SERVICES

The following community services shall be provided by franchisee:

a) Return line for access channel: The system design is such as to provide capacity for return line for an access channel from an accessible point within the franchise area to the headend. A location mutually agreeable to franchisor and franchisee shall be chosen. Applicant will activate said system consistent with local interest and realistic demands for effective utilization of such facilities.

b) One free connection will be provided to the following locations:

Local Public Elementary School

St. Peter's Elementary School

Hokah City Hall

c) Franchisee will make available as an additional service reception from local and regional Fm and FM Stereo stations. The schedule for activating FM radio service will be determined by mutual agreement between franchisee and franchisor consistent with local demand and interest.

d) Franchisee will provide a weather service on the local access channel consistent with local demand and interest.

Franchisee shall provide competent service personnel to perform technical and maintenance duties, such person(s) to be located in the City of Hokah or in a neighboring community. Franchisee shall provide twenty-four hour response for all service calls except under circumstances where weather or other conditions render such service impossible. Franchisee assumes full responsibility for all repairs and maintenance of its system.

Whenever the franchise shall receive a request for service from a group of at least ten subscribers within a cumulative total of 1320 cable feet of its trunk cable, it shall extend its system to such subscribers at no cost to said subscribers for system extension, other than the usual connection fees for all subscribers, provided that such extension is technically and physically feasible.

No person shall be refused service arbitrarily. However, for unusual circumstances such as requirements for underground cable or where there is more than one hundred fifty (150) feet of distance from distribution cable to connection of service to subscriber, or density of less than forty subscribers per mile of trunk or distribution cable, service may be made available on the basis of a capital contribution in aid of construction including cost of material, and labor and easements. The purpose of this policy is to prevent existing subscribers from being unfairly burdened by the capital cost of system extensions.

SECTION XIV. ACCESS CHANNELS.

A. Franchisee shall provide to each of its subscribers who receive some or all of the services offered on the system, reception on at least one specially designated access

channel. The specially designated access channel may be used by local educational authorities and local government on a first-come, first served nondiscriminatory basis. During those hours that the specially designated access channel is not being used by the local educational authorities or local government, the franchisee may lease time to commercial or noncommercial users on a first-come, first served nondiscriminatory basis if the demand for that time arises. The franchisee may also use this specially designated access channel for local origination during those hours when the channel is not in use by local educational authorities, local government, or commercial or non-commercial users who have leased time. The VHF spectrum (channels 2-13) must be used for the specially designated access channel required in 4 MCAR @ 4.202DD.

B. Franchisee shall establish rules for the administration of a specially designated access channel. The operating rules governing the specially designated access channel shall be filed by the franchisee with the Minnesota Cable Communications Board within ninety (90) days after any access channel is put into use.

C. it is mutually understood that Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers.

SECTION XV. SUBSCRIBER PRIVACY & SUBSCRIBER COMPLAINTS AND REPAIRS.

A. SUBSCRIBER PRIVACY.

No signals of class IV cable communications channel may be transmitted from a subscriber terminal for purposes of monitoring individual viewing patterns or practices without the express written permission of the subscriber. The request for such permission shall be contained in a separate document with a prominent statement that the subscriber is authorizing the permission in full knowledge of its provisions. Such written permission shall be for a limited period of time not to exceed one year which shall be renewable at the option of the subscriber. No penalty shall be invoked for a subscriber's failure to provide or renew such authorization. The authorization shall be revocable at any time by the subscriber without penalty of any kind whatsoever. Such permission shall be required for each type or classification of Class IV cable communications activity planned for the purpose.

No information or data obtained by monitoring transmission of a signal from a subscriber terminal, including but not limited to lists of the names and addresses of the subscribers or any lists that identify the viewing habits of subscribers may be sold or otherwise made available to any party other than to the company and its employees for internal business use, or to the subscriber subject of that information, unless the company has received specific written authorization from the subscriber to make the data available.

Written permission from the subscriber shall not be required for the systems conducting system-wide or individually addressed electronic sweeps for the purpose of verifying system integrity or monitoring for the purpose of billing. Confidentiality of such information shall be subject to the provisions set forth in 4 MCAR @ 4.202 W.1.

B. SUBSCRIBER COMPLAINTS.

All complaints by franchisor, subscribers, or other citizens regarding the quality of service, equipment malfunction, billing disputes, and any other matters relative to the cable communications system shall be investigated and resolved by the franchisee. All complaints shall be resolved according to the following procedure:

Step 1. Upon receipt of the complaint by franchisee, franchisee shall forthwith resolve the complaint. If the complaint is not resolved to the satisfaction of the complainant within a period of two weeks of the initial notification to franchisee of a given complaint, the matter shall be referred by complainant to the City Council.

Step 2. All complaints not resolved in Step 1 shall be received by the City Council which shall consider such complaints at its next regular meeting when said complaint shall be on the agenda thereof, or at a special meeting duly convened for purposes of considering such complaint. Both a representative of franchisee and complainant shall be notified of the time and place of the meeting and both shall be afforded the opportunity to present facts and other data as justification for the position taken by each. The City Council shall thereupon make specific findings of fact concerning the complaint so considered by it and shall render a decision thereon.

Step 3. If either party feels aggrieved by the result of the determination made pursuant to Step 2 of this grievance procedure, it or he may appeal such determination to a local Court of competent jurisdiction or seek any other remedy available at law or in equity.

C. REPAIRS.

Franchisee shall provide to subscriber at least a toll-free or collect telephone number for the reception of subscriber complaints and franchisee shall maintain a repair service capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. Costs included in making repairs, adjustments, and installations shall be borne by the franchisee except as to such which are clearly the result of acts and omissions on the part of a subscriber or subscribers who shall in that event bear the expense thereof. All other expenses shall be borne by franchisee.

SECTION XVI. TERMINATION, ABANDONMENT, REMOVAL OF EQUIPMENT, & MUNICIPAL RIGHT TO PURCHASE EQUIPMENT.

A. TERMINATION. The franchising authority shall have the right to terminate and cancel the franchise and all rights and privileges of the franchisee if the franchisee substantially violates any provision of the franchise ordinance, attempts to evade any of the provisions of the franchise ordinance or practices any fraud or deceit upon the franchising authority. The municipality shall provide the franchisee with a written notice of the cause of termination and its intention to terminate the franchise and shall allow the franchisee a minimum of thirty days after service of the notice in which to correct the violation. The franchisee shall be provided with an opportunity to be heard at a public hearing before the governing body of the municipality prior to the termination of the franchise. In the event that the municipality determines to terminate the franchise, the franchisee has thirty days from the date of the conclusion of the public hearing at which the termination of the franchise is considered, within which to file an appeal with the Board pursuant to Minn Statutes 238.14. During the thirty day period and until the Board determines the appeal, if an appeal is taken, the franchise remains in full force and effect, unless the term of the franchise ends sooner. If the Board approves of the action of the municipality, the franchise terminates immediately; if the Board disapproves of the action of the municipality, the franchise remains in full force and effect during this term unless sooner terminated in accordance with law or 4 MCAR @ 4.001 – 4.250. Any appeal to the Board is a contested case to which the Board is not a party.

B. ABANDONMENT.

The franchisee may not abandon any portion of the cable communications service provided hereunder without having given three (3) months prior written notice to the franchising authority and the Board. The cable communications company may not abandon any cable communications service or any portion thereof without compensating the franchising authority for damages resulting to it from such abandonment.

C. REMOVAL OF CABLE EQUIPMENT UPON TERMINATION OR FORFEITURE.

Upon termination or forfeiture of a franchise, the franchisee shall remove its cable, wires and appliances from the streets, alleys and other public places within the franchise area if the franchising authority so requests.

In the event franchisee fails to remove its cable wires and appliances within a reasonable time of formal written demand to do so, the City reserves the right to itself remove such materials and the costs entailed in doing so shall be borne by franchisee.

D. MUNICIPAL RIGHT TO PURCHASE SYSTEM.

If the cable system constructed pursuant to this franchise is offered for sale, franchisee shall have the first right to purchase the system.

Passed and enacted by the City Council of the City of Hokah this 10th day of May, 1984.

Approved:

Martin Scholze
Mayor

Attest:

Ernest Sloan
City Clerk-Administrator

Acceptance By Franchisee
(signed)

Valley Video Systems, Inc. Rushford, MN