

ORDINANCE NO. 43

AN ORDINANCE GRANTING A FRANCHISE TO THE TELESERVICE CORPORATION OF AMERICA, INC., ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN A COMMUNITY TELEVISION SYSTEM, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OR FRANCHISE, PROVIDING FOR CITY REGULATIONS AND USE OF THE COMMUNITY ANTENNA TELEVISION SYSTEM, AND PRESCRIBING PENALTIES FOR VIOLATION OF FRANCHISE PROVISIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAKEVIEW, ARKANSAS, AS FOLLOWS:

SECTION 1. Short Title. This ordinance shall be known and may be cited as the Lakeview, Arkansas, Television Franchise Ordinance.

SECTION 2. Definitions: For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" is the City of Lakeview, Arkansas.
- (2) "Council" is the Board of Aldermen of Lakeview, Arkansas.
- (3) "Community Antenna Television System" (hereinafter referred to as "CATV System" or "System") means a system of coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television or radio signals directly or indirectly off-the-air and transmit them to subscribers for a fee, but does not include the operation of a pay TV system.
- (4) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Grantee" is Teleservice Corporation of America, Inc., a Texas corporation, P.O. Box 6840, Tyler, Texas 75711. Grantee is registered as a foreign corporation with the Arkansas Secretary of State. The registered agent upon whom process may be served and his address are as follows:
Jerry Browers, Vice President, Operations
P.O. Box 4158
Batesville, Ar. 72501
- (6) This franchise will be interpreted under the laws of the State of Arkansas.

SECTION 3. Grant of Non-Exclusive Authority.

(a) There is hereby granted by the City to the Grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of the CATV System for the interception, sale and distribution of television and radio signals.

(b) The right to use and occupy said streets, alleys, public ways and places for the purpose herein set forth shall not be exclusive and the City reserves the right to grant a similar use of said streets, alleys, public ways and places, to any person at any time during the period of this License and permit.

SECTION 4. Compliance with Applicable Laws and Ordinances.

The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police and administrative powers of the City, and to such regulations as the City shall hereafter provide.

SECTION 5. Territorial Area Involved.

This franchise is related to the present territorial limits of the City and to any area henceforth added thereto during the term of this franchise.

SECTION 6. Liability and Indemnification.

(a) This Grantee shall pay and by its acceptance of this franchise the Grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting this franchise. These damages and/or penalties shall include, but shall not be limited to, damages arising out of copyright installation, operation, or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.

(b) The Grantee shall pay and by its acceptance of this franchise specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants, or any employees of the City.

(c) The Grantee shall maintain and by its acceptance of this franchise specifically agrees that it will maintain throughout the term of this franchise, liability insurance insuring the City and the Grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:

(1) \$100,000 for bodily injury or death to any one person; within the limit, however, of \$300,000 for bodily injury or death resulting from any one accident.

(2) \$100,000 for property damage resulting from any one accident.

(3) \$100,000 for infringement of copyrights, and,

(4) \$100,000 for all other types of liability.

(5) The Grantee shall maintain Worker's Compensation coverage for the protection of its employees.

(6) Grantee shall file one copy of the Certificate of Insurance with the City Recorder.

SECTION 7. Color TV.

The facilities used by the Grantee shall be capable of distributing color TV signals, and when the signals the Grantee distributes are received in color, they shall be distributed in color where technically feasible.

SECTION 8. Signal Quality Requirements. The Grantee shall:

(a) Produce a picture whether in black or white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production TV sets in good repair, and as good as the state of the art allows.

- (2) Transmit signal of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
- (4) Demonstrate by instruments and otherwise to subscribers that signal of adequate strength and quality is being delivered.

SECTION 9. Operation and Maintenance of System.

- (1) The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible, such interruptions, insofar as possible, shall be preceded by notice and shall occur during the periods of minimum use of the system.
- (2) The City shall appoint a person to act as TV Commissioner.
- (3) Complaints received by the City of Lakeview TV Commissioner relating to installation, service, repair, or picture and sound quality, shall be referred to Grantee in writing. Grantee shall be required to correct and repair its facilities to provide satisfactory subscriber service within seven (7) working days after receiving complaint. Should such repairs or connections not be accomplished within that seven-day period, the Grantee shall forfeit one month's total subscriber fee. Records relating to complaints, showing initial date of complaint, resolution of complaint and date satisfactory service was resumed, shall be maintained by the TV Commissioner or his designee. Such records shall be made available to Grantee on request.

SECTION 10. Carriage of Signals.

The Grantee shall receive and distribute television and radio signals which are disseminated to the general public without charge by broadcasting stations licensed by the Federal Communications Commission. All FCC regulations shall be complied with by the Grantee.

SECTION 11. Emergency Use of Facilities.

In case of any emergency or disaster, the Grantee shall make its facilities available to the City for emergency use.

SECTION 12. This franchise authorizes only the operation of a CATV System as provided for herein, and does not take the place of any other license or permit which might be required by law of the Grantee.

SECTION 13. Safety Requirements.

- (1) The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (2) The Grantee shall install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Safety Code Promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire Underwriters, and in such manner that they will not interfere with any installation of the City or of a public utility serving the City.
- (3) All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition and in good repair.

SECTION 14. New Development.

It shall be the policy of the City liberally to amend this franchise, upon application of the Grantee when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity to more effectively, efficiently, or economically to serve its customers. Provided, however, that this section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

SECTION 15. Conditions on Street Occupancy.

(1) All transmissions and distribution structures, lines and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(2) In case of disturbance of any street, sidewalk, alley, public way or paved area, the Grantee specifically agrees to fully abide by the provisions of Lakeview City Ordinance No. 27 cited as Lakeview, Arkansas Street Trenching Ordinance. This ordinance is adopted herein by specific reference as part of this franchise.

(3) If at any time during the period of this franchise, the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley or other public way, the Grantee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes, and other fixtures at its own expense.

(4) Any poles or other fixtures placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way.

(5) The Grantee will negotiate separate agreements with appropriate parties concerning pole rental, easements and land use.

(6) The Grantee shall, on the request of any person, temporarily raise or lower its wires to permit the moving of buildings. Expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(7) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public ways and places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee, except that at the option of the City, such trimming may be done by it or under its supervision and direction at the expense of the Grantee.

(8) In all sections of the City where the cables, wires, or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so.

SECTION 16. Preferential or Discriminatory Practices Prohibited.

The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations or in any other respect make or grant any undue preference of advantage to any person, nor subject any person to any prejudice or disadvantage.

SECTION 17. Removal of Facilities Upon Request.

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscribers upon his request.

SECTION 18. Transfer of Franchise.

Grantee shall not sell, lease, sublet or transfer its system and privileges granted herein without approval of the City; however, said approval shall not be unreasonably withheld.

SECTION 19. Filings and Communications with Regulatory Agencies.

Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communications Commission, Securities and Exchange Commission, or any other agency having jurisdiction in respect to any matters affecting CATV operation authorized pursuant to this franchise, shall also be submitted simultaneously to the City Council, if requested by the City.

SECTION 20. City Rights in Franchise.

(1) The right is hereby reserved by the City or the Council, to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations, or ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(2) The City shall be furnished with a statement compiled by a Certified Public Accountant reflecting and showing the gross income of service charges paid by users, and the City shall have the right to examine such of the Company's records relative to the gross income received by the company for service charges paid by users.

(3) The City shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures necessary for any municipal use on the condition that such wire and pole fixtures do not interfere with the CATV operations of the Grantee.

(4) The City shall have the right to supervise all construction or installation work performed subject to the provisions of the franchise and make such inspections as it shall find necessary to insure compliance with terms of this franchise and other pertinent provisions of law.

(5) At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the CATV system from all public ways within the City.

SECTION 21. Maps, Plats and Reports.

(1) The Grantee shall file with the City Recorder true and accurate maps or plats of all existing and proposed installations.

(2) The Grantee shall file the following current information with the City Recorder:

- (a) Full name and address of corporation(s)
- (b) State and date of incorporation
- (c) Secretary of State of Arkansas, or person as agent upon whom legal process may be served

SECTION 22. Forfeiture of Franchise.

(1) In addition to all other rights and power pertaining to the City by virtue of this franchise, or otherwise, the City reserves the rights to terminate and cancel this franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

(a) Violates any provision of this franchise or any rule, order, or determination of the City or City Council made pursuant to this franchise, except where such violation, other than of Section 24, or subsection (b) below, is without fault or through excusable neglect.

(b) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged as bankrupt.

(c) Attempts to evade any of the provisions of this franchise or practice any fraud or deceit upon the City, or

(d) Fails to complete construction and commence operation under this franchise according to provisions of Section 26.

(2) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the City's rights under this franchise or any provisions of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as made by the City Council or its representative shall be conclusive. Provided, however, that before this franchise may be terminated and cancelled under this Section, the Grantee must be provided with an opportunity to be heard before the City Council.

SECTION 23. Further Agreement and Waiver by Grantee.

The Grantee agrees to abide by all provisions of this franchise, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of the franchise are unreasonable, arbitrary, or void.

SECTION 24. City's Right of Intervention.

The Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party.

SECTION 25. Duration and Acceptance of Franchise.

(1) This franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and effect for a term of 15 years, provided that within 5 days subsequent to the date of the passage of this Ordinance the Grantee shall file with the City Clerk its unconditional acceptance of this franchise and promise to comply with and abide by all its provisions, terms, and conditions. Such acceptance and promise shall be in writing, duly executed and sworn to, by and on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

(2) Should the Grantee fail to comply with subsection (1) above, it shall acquire no rights, privileges, or authority under this franchise whatever.

(3) The Grantee shall have a right of renewal of this franchise upon such terms as the City and Grantee may agree upon, subject to such state or federal regulations as may be in effect as of the time of renewal.

SECTION 26. Service to be Rendered.

Grantee agrees to extend its cable lines and service to any location within the current city limit boundaries. Requests for new installation to users shall be completed within ninety (90) days from date of request or within ninety (90) days after necessary easements are obtained.

SECTION 27. The Grantee shall:

- (1) Provide the same programming offered in Mountain Home. Said programming is subject to change.

(2) Charge an installation fee of:

	Schedule
Main Stations	\$ 9.95
Extension, T.V. or F.M.	\$ 1.75
Installation Charges:	
Residential (One Outlet)	\$ 35.00
Business (One Outlet)	\$ 35.00

(3) Grantee agrees to submit all requests for rate increases to the City for approval and shall not make any change not specifically approved. Grantee shall not increase rates in City unless rates in area outside City are increased.

SECTION 28. Publication Costs.

The Grantee shall assume the entire cost of publication of this franchise as such publication is required by law. Such amount is payable upon the Grantee's filing or acceptance of this franchise.

SECTION 29. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof.

SECTION 30. Payment to City.

Grantee in consideration of the granting of this franchise agrees to pay to the City, as a tax and as compensation for the rights and privilege hereby conferred, a sum equal to three percent (3%) of the gross revenue received at the base rate from customers located within the corporate limits of the City of Lakeview, said sum to be paid monthly, within thirty (30) days after the end of the month for which said tax and compensation is due.

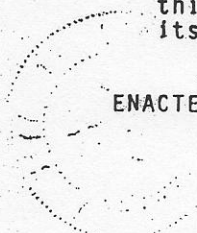
SECTION 31. Ordinance Repealed.

This ordinance repeals Lakeview City Ordinance 22-1. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 32. Emergency.

The welfare and convenience of the citizens of the City of Lakeview are of utmost importance and it is therefore declared that an emergency exists, that the rules may be suspended, and this ordinance shall be in full force and effect from and after its passage.

ENACTED this 17 day of SEPTEMBER, 1984.


William J. Harrison
Mayor

Barbara Danner
Recorder