

4:14 P. M. Dec. 19 89
County Ordinances
93-6599
Clerk of office
County Clerk, Grant Co., N.M.

ORDINANCE NO. 11-30-89a

AN ORDINANCE GRANTING A FRANCHISE TO AMERICAN COMMUNICATIONS ENTERTAINMENT, INC. (ACE), A NEW MEXICO CORPORATION, AND GRANTING A CABLE TELEVISION (CATV) FRANCHISE, TO OWN, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE COUNTY OF GRANT, NEW MEXICO, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, PROVIDING FOR REGULATION AND USE OF SAID SYSTEM AND PROVIDING PENALTIES FOR UNAUTHORIZED CONNECTION AND TAMPERING WITH THE FACILITIES.

BE IT ORDAINED BY THE COUNTY COMMISSION OF THE COUNTY OF GRANT, NEW MEXICO AS FOLLOWS:

Section 1. Short Title: This Ordinance shall be known as "The County of Grant Cable Television Franchise Ordinance."

Section 2. Definitions: For the purpose of this Ordinance, the following terms, phrases, words, and their derivations shall have a meaning given herein.

- a. "County" is the County of Grant in the State of New Mexico.
- b. "Commission" is the County Commission of the County of Grant.
- c. "Company" is the grantee of the rights under this Ordinance awarding a franchise, known as American Communications Entertainment, Inc.
- d. "Person" is any person, firm, partnership, association corporation, company or organization of any kind.
- e. "Cable Television System" or "CATV System" shall mean a system of antennas, cables, wires, lines, towers, waveguides, or any other conductors, converters, equipment or facilities by which the signals of one or more television or radio stations are received directly, or indirectly, over the air and are amplified or otherwise modified and distributed primarily by wire or cable to subscribing members of the public who pay for such service.
- f. "FCC" is the Federal Communications Commission located in Washinton, D.C. 20554.
- g. "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit

license or otherwise to construct, operate, and maintain a CATV System in the County of Grant, New Mexico.

h. "Subscriber" shall mean any person or entity receiving for any purpose the CATV service of the Company.

i. "Subscriber's Revenues" shall mean the revenues collected by the Company from subscribers within the County of Grant, after the actual cost of service paid by the Company for programming costs are deducted and not including charges for subscriber installation.

Section 3. Grant of Authority: There is hereby granted by the County to the Company the non-exclusive right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, and over and under the streets, alleys, public ways, easements and public places now laid out or dedicated and all extensions, thereof, and additions thereto, in the County, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the County of a CATV System for the interception, sale and distribution of television signals to the inhabitants of the County.

Section 4. Term of Franchise: The term of this franchise shall be fifteen (15) years, provided, however, the company, if it complies with the terms of this Ordinance shall have the right to renew this franchise for two successive five (5) year terms thereafter.

Section 5. Compliance with applicable Laws and Ordinances: The Company shall, at all time during the life of this franchise, be subject to all lawful exercise of authority by the County.

Section 6. Liability and Indemnification:

a. The Company agrees to indemnify and hold the County harmless against any and all claims, demands, causes of action, costs and expenses, that might be asserted against or incurred by the County which arise out of the negligence by or intentional misconduct of Company's agents, representatives, or employees in the installation, operation or maintenance of the cable television system authorized under this ordinance.

b. The County agrees to notify Company's representatives within fifteen (15) days after presentation of any claim or demand to the County, either by suit or otherwise, asserted against the County on account of any negligence or intentional misconduct on the part of Company or company's agents, representatives and employees in the installation, operation or maintenance of the cable television system authorized under this ordinance.

c. The County shall be liable for any damages, penalties, and claims, incurred by the Company as a result of the negligence or intentional misconduct of the county's representatives, employees or agents.

d. The company shall comply with all provisions of the New Mexico Workmen's Compensation Act.

Section 7. Signal Quality Requirements: The Company shall produce a state of the art picture accompanied with proper sound on typical standard production TV sets in good repair.

Section 8. Installation and Operation of the System: One hundred twenty (120) days after the effective date of this Ordinance, the Company shall make applications to the Federal Communications Commission as are required by that agency for operation of the System. Within one year of the effective date of approval by the Federal Communications Commission, the Company shall begin installation of the System.

The poles used for the Company's distribution system shall be those erected and maintained by Texas, New Mexico Power Company or any other franchise provider of electric power in Grant County, when and where practicable, provided mutually satisfactory agreements can be entered into between the parties. Where such agreements are not practicable or mutually satisfactory, the Company shall have to erect and maintain its own poles as may be necessary. Location of poles by the Company must be approved by the County Commission or its agent.

The Company's system shall be located so as not to endanger or interfere with lives of person, or to interfere with new improvements the County may deem proper to make, or to unnecessarily hinder or obstruct the free use of the streets, alleys or property adjoining the streets and shall not interfere with any gas, electric, or telephone facilities, water hydrants or water or sewer mains. Removal of any Company equipment to avoid such interference as listed above shall be at the expense of the Company.

In case of any disturbance of pavement, sidewalks, landscaping or other surfacing, the Company shall replace or restore all areas disturbed to substantially the same condition as before the disturbance and shall abide by provisions of Grant County Ordinance 80-6-6 (Road Excavation Ordinance).

The Company may trim trees which infringe upon easements, rights of way or roads of the County to prevent the tree branches from coming in contact with the system.

The Company, at the request of any person holding a moving permit issued by the County, shall temporarily remove, raise or lower

its wires to permit the moving of buildings or equipment. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

The system shall be installed and maintained in accordance with the highest and best accepted standards of the industry to the effect that subscribers shall receive the best possible service. The Company's System shall comply with the applicable technical standards specified by the Federal Communications Commission in existence at the time of Commission approval or any succeeding rules and regulations as they become applicable. The Company shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, if possible, shall be preceded by notice to all subscribers.

In the maintenance and operation of the System, and in the course of any new construction or addition to the facilities, any opening or obstruction in the roads or other public places made by the Company shall be made only after the Company obtains prior written permission from the County, and any opening or construction in the streets or other public places shall be guarded and protected at all times by adequate barriers and/or warning lights.

Section 9. Complaint Procedure: Company shall provide prompt investigation and resolution of any complaints regarding cable television operations. CATV maintenance service shall be promptly available to subscribers on telephone request during reasonable business hours. All subscriber complaints regarding the quality of service, equipment malfunctions and similar matters shall be acted upon by the Company as soon as possible, but in no more than four (4) business days from the date complaint is received by the Company.

Section 10. Public Service: The Company shall provide, upon request, a "service drop" at no cost for the purpose of public education and information to any County-owned building housing a County-operated department or division and all public schools "in the County." A "service drop" shall mean that one service connection shall be made available to each site herein specified with no internal wiring to be required of the Company such internal wiring to be and remain the responsibility of the individual site concerned. In the case of any emergency or disaster, the Company shall, upon request of the County, make communication facilities of CATV available to the County for emergency use.

Section 11. Termination by Customer: The use of the Company's services is voluntary on the part of the inhabitants of the County and any user who desires to discontinue such use may do so by

giving five (5) days written or oral notice to the company through an authorized agent of the Company, and no charge except for any disconnect fee or deposit shall be made for any service at the end of five (5) business days after the notice or the end of the service month whichever is later.

Section 12. Change of Ownership: Should the Company sell, assign, or transfer its system or any rights under the franchise to another, written notice of such sale, assignment or transfer shall be given to the county not less than thirty (30) days prior thereto and shall be conditioned upon the vendee, assignee or transferee filing with the County an instrument duly executed, reciting the act of such sale, assignment, or transfer, and containing an acceptance of the terms of this franchise and agreeing to perform all requirements thereof. Prior approval of County is required for any change of ownership, which approval shall not be unreasonably withheld.

Section 13. Payment to the County: The Company shall pay to the County for the uses and operations hereunder a sum equivalent to 5% of the Company's subscriber's revenues as defined in this Ordinance from operations in the County. Payments shall be made semi-annually for each preceding six (6) months operation or portion thereof ending on the last day of December and the last day of June. Payment shall be made on or before the last day of January and the last day of July accompanied by a statement of account therefore. The County shall have access during all reasonable hours to the Company's financial records to verify the accuracy of the payments made hereunder.

The Company will pass through no more than 30% of the payment to the County to its subscribers under the provisions of the Cable Communications Act of 1984 and regulations thereto.

Section 14. Lock-outs: The Company will provide the opportunity for any subscriber to request and receive a lock-out (as defined in the Cable Communications Act of 1984 and applicable regulations). The Company will provide lock-outs for subscribers at no cost, except for deposit on the lock-out, to subscribers. The deposit shall not exceed the cost of the lock-out unit. All lock-outs shall remain the property of the company.

Section 15. Company Rules: The Company shall have the authority to enforce such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations hereunder, and to assure an uninterrupted service to its subscribers, provided however, that such rules and regulations, terms and conditions shall not be in conflict with the provisions hereof or the laws of the State of New Mexico.

Section 16. Rights of the County: The County may amend or make additions to any provisions of this Ordinance and may adopt the regulations it finds necessary in the exercise of the police power; provided, however, that such amendments, additions, and regulations are agreed to by the Company and shall not conflict with Federal or State statutes and regulations.

The County shall have the right to inspect all construction or installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to insure compliance with the Ordinance. The Company shall file with the County documents showing the location of all system equipment installed or in use in streets, roads, alleys, utility and public easements and other public places in the County.

Section 17. Rates: The Company may establish and collect its rates and charges. Company may add to the monthly service charge all specified taxes and fees, including county and state gross receipts tax.

Section 18. Theft of Service: From and after the effective date of this Ordinance, it shall be unlawful for any person, firm or corporation to make or use any unauthorized connection whether physically, electrically, inductively or otherwise, with any part of a franchised cable system within this County for the purpose of enabling such person, firm or corporation or other to receive or use any television signal, radio signal, picture, program or sound, without payment to the owner of said system.

It also shall be unlawful for any person, firm or corporation to willfully or maliciously damage or cause to be damaged any wire cable, conduit, apparatus or equipment of Company. Any person, firm or corporation found to be in violation of Section 18 of this Ordinance shall be subject to a fine not to exceed \$300.00 and 90 days in jail.

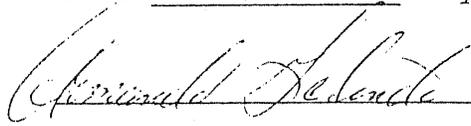
Section 19. Termination of Franchise: The authority granted under this ordinance may be terminated before its expiration if the Company violates any provisions of this ordinance and fails to cure such violations within thirty (30) days after receipt of written notice from the County specifying the violation. If the Company does not cure the default or correct the violation within the thirty (30) day period, then the County shall have the right to terminate the authority granted hereunder on three (3) days written notice. The Company shall have the right to appeal any decision of the County to the court of first impression for a de novo hearing and determination thereon and to further appeal as may be provided by law. Any attorney's fees incurred by the County or the Company regarding the termination of franchise under this section may be decided by the District Court hearing the appeal de novo.

Section 20. Acceptance to be filed: The Company shall file a written acceptance of this Ordinance and the terms and conditions thereof with the County within thirty (30) days after the effective date of this Ordinance.

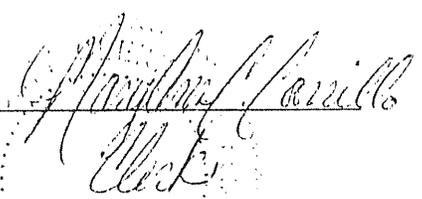
Section 21. Severability: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 22. Insurance Protection: The Company shall indemnify, protect and save harmless the County from and against losses and physical damages to property and bodily injury or death to persons, including payments made under any Workmen's Compensation Law, maintenance, presence, use or removal of attachments on poles within the County or by any act of negligence by the Company, its agents or employees. The Company shall carry insurance to protect the parties heretofrom and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury, or damage. The Company shall file with the County certificates evidencing that public liability insurance with limits of at least \$300,000.00 on any one person and \$500,000.00 for any one accident and property damage insurance of at least \$25,000.00 for any one loss is currently being maintained by the Company. The Company shall also carry such insurance as it deems necessary to protect it from all claims under any Workmen's Compensation Law in effect that may be applicable to the Company, All insurance required by the franchise shall be kept and remain in full force and effect for the entire life of this agreement. The County shall notify the Company's representative within fifteen (15) business days after the presentation of any claim or demand, either by suit or otherwise, made against the County on account of any negligence herein above referred to on the part of the Company.

PASSED, ADOPTED AND APPROVED this 30 day of Nov., 19 89.


FOR GRANT COUNTY, NEW MEXICO

ATTEST:


Clerk

