

ORDINANCE NO. 284

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO GALAXY TELECOM, L.P., ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF BASEHOR, KANSAS, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, AND PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BASEHOR, KANSAS:

**Section 1. DEFINITIONS.** When used in this ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural):

- (a) "City" means the City of Basehor.
- (b) "Council" means the governing body of the City.
- (c) "Grantee" means Galaxy Telecom, L.P., its successors and assigns, the grantee of rights under this ordinance.
- (d) "Person" means any natural person, company or entity of any kind.
- (e) "Franchise area" means that the area within the corporate limits of the City as now or hereinafter constituted.
- (f) "Street" means the surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley court, sidewalk, parkway, drive, communications or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.
- (g) "Property of Grantee" means all property owned, installed or used by the Grantee in the conduct of a CATV business in the City.
- (h) "CATV" means a cable television system.
- (i) "Cable Television System" means a system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving amplifying and distributing by coaxial cable radio, television or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.
- (j) "Basic CATV Service" means the distribution of broadcast television signals by the Grantee.

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- (k) "Subscriber" means any person or entity receiving and paying for basic CATV service.
- (l) "Revenues" means all gross remuneration received directly by the Company from the operation of the Cable System. The term shall include not only remuneration received from subscribers in payment for regularly furnished basic CATV service,

but also remuneration received from all other sources, including, but not limited to, premium services, advertising, or leased-access channels. The term shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency or instrumentality, and collected by the Grantee.

**Section 2. GRANT OF AUTHORITY.** There is hereby granted by the City to the Grantee the right and privilege to engage in the business of operating and providing a CATV system in the City, and for that purpose to erect, install, construct, repair, replace, reconstruct maintain and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system.

**Section 3. NON-EXCLUSIVE GRANT.** The right to use and occupy said street for the purposes herein set forth, shall not be exclusive in the Grantee.

**Section 4. TERM OF FRANCHISE.** The franchise and rights herein granted shall commence from the date of publication thereof and shall continue in force and effect for Ten (10) years after said effective date. Upon application by the Grantee to the City, the franchise may be renewed by mutual consent of both parties. No franchise shall be granted or extended unless a public hearing shall be held following at least one week of notice in the official city newspaper.

**Section 5. CONDITIONS OF STREET OCCUPANCY.**

- (a) All transmission and distribution structures, poles, lines, and equipment installed or erected by the Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets, the CATV system shall be construed and operated in compliance with applicable governmental construction and electrical codes.
- (b) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, replace and restore such street or paved area in as good condition as therefore.

- (c) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City; but, the Grantee shall in all cases have the right of abandonment of its property, subject to City ordinances.
- (d) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings, provided: (1) the expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and (2) the Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.
- (e) The Grantee may have the authority to trim trees over-hanging any streets in the franchise area so as to prevent branches from coming in contact with the Grantee's wires and cables, except that at the option of the city, such trimming may be done by it or under its supervision and direction at the Grantee's expense.
- (f) Subject to any applicable state or federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided: (1) such use by the City does not interfere with the use by the Grantee; and (2) the city holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits.

**Section 6. SAFETY REQUIREMENTS.**

- (a) 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.
- (b) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair.

**Section 7. SYSTEM CONSTRUCTION AND EXTENSION.**

- (a) Hereinafter no person in the Grantee's service area shall be arbitrarily refused service; but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 300 cable feet or when a subscriber density exists less than the density

specified herein, service may be made available on the basis of costs of materials, labor and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

- (b) Whenever the Grantee shall have received written requests for service from at least ten (10) subscribers within 1500 cable feet of its aerial trunk cable, or from at least fifteen (15) subscribers within 1500 cable feet of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 1500 cable feet shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.
- (c) For all residential structures hereinafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions; but otherwise the Grantee shall not be obligated to construct CATV system in such new development. Developer shall perform all trenching and backfilling necessary for the provision of cable television service, including furnishing of any imported backfill material required, and will furnish and install for the Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with the Grantee's plans and specifications. Developer may enter into a written agreement with the Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of fifty percent (50%) of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed ten (10) years.
- (d) Notwithstanding anything contained herein to the contrary, the Grantee shall, prior to the passage of this Ordinance, designate those geographical areas of the City which currently do not have cable service. As a condition subsequent to the execution of this agreement and the assumption of the Franchise Agreement, Grantee shall provide cable service to those areas located within the City which are not currently being served. This includes but is not limited to an area described as: Commencing at 147th Street East to 142nd Street to State Ave.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 300 feet outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by Grantee.

**Section 8. OPERATIONAL STANDARDS: FORCE MAJEURE.**

- (a) The Grantee shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.
- (b) The Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions including weather conditions incompatible with good quality workmanship.
- (c) The Grantee will stand all cost of removal of any abandoned equipment or material in the event destruction under the circumstances aforesaid in (b).

**Section 9. LOCAL OFFICE: COMPLAINTS.** The Grantee shall investigate and resolve all complaints regarding the quality of service, equipment, malfunctions and similar matters within forty-eight (48) hours after notification. The Grantees shall maintain a business office or agent which subscribers may telephone during regular business hours so that complaints regarding cable television operations may be promptly reported to the Grantee. Provided, however, if the city council determines at a later date that the response time of the Grantee is not adequate then it may require the Grantee to maintain a local business office or agent within the City to handle such complaints.

**Section 10. RATES.** The Grantee shall maintain the file with the City Clerk a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City Clerk at least thirty (30) days in advance of the effective date thereof.

**Section 11. FRANCHISE PAYMENTS.** In consideration of the rights, privileges and franchise hereby granted and as compensation to the City for the use of its public ways and places by the Grantee and to properly regulate the activities of Grantee, the Grantee shall, on or before the last day of January and the last day of July of each year to which this franchise is effective, pay to the City a sum equal to five percent (5%) of gross revenues, for cable television service within the then existing corporate limits of the City for the preceding six-month period ending on the last day of December and the last day of June respectively. The books of the Grantee shall be open to inspection by the City at all reasonable times to verify the accuracy of the computation and correctness of

the report which shall accompany payment. Grantee shall keep books and records pursuant to established practices using generally accepted auditing procedures. This portion of the franchise shall be renegotiated every two years. This fee shall be considered rent for the use of City owned right-of-ways, alleys, streets, easements, and property of any nature. The Grantee shall pay the City, on or before each March 31st, a franchise fee of 5% of all subscriber revenues received for cable television operations in the City for the preceding calendar year, and no other fee, charge or consideration. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscriber revenues in computing any sums due the City.

**Section 12. INDEMNIFICATION OF CITY.**

- (a) The Grantee shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Grantee in the ownership, construction, repair, replacement, maintenance and operation of said cable television system and by reason of any license, copyright, property right or patent or any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing. The Grantee shall maintain in full force and effect during the life of any franchise, general liability and property damage insurance for an amount of at least one million dollars (\$1,000,000.00) single limit liability from the time of commencement of construction of the CATV system.

All such insurance may contain reasonable deductible provisions not to exceed One Thousand Dollars (\$1,000) for any type of coverage. The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to the Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interests of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance.

**Section 13. PROCEDURES.**

- (a) Any inquiry, proceedings, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of the Grantee's cable television system, shall be taken only after thirty (30) days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.

- (b) The notice required by this section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such responses should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Company shall be a necessary party to any hearing conducted in regard to its operations.

**Section 14. PUBLIC, EDUCATIONAL AND GOVERNMENTAL ("PEG") ACCESS.**

The Grantee shall provide PEG access to any and all cable facilities as follows:

- (a) GOVERNMENTAL ACCESS FACILITIES. In the event the City, in its sole discretion, should chose to utilize the CATV system to perform any of its governmental or proprietary activities, the Grantee shall furnish facilities, at its cost, to the City for such purposes.
- (b) EDUCATIONAL USE. The Grantee shall make available to each public educational institution located within the City, at no cost, such facilities as are reasonably necessary for legitimate educational purposes within the institution, with a minimum of the lower of: (1) the facilities requested by the institution, or (2) one CATV connection per one hundred students.
- (c) CHANNEL ACCESS THROUGH THE GRANTEE FOR DIGITAL TRANSMISSION FOR THE SCHOOL DISTRICT OF BASEHOR-LINWOOD 458. Grantee shall also make available to the School District of Basehor-Linwood 458 a 2-channel access digital transmission under such terms and conditions as are mutually agreed upon between the Grantee and the School District. Reference is made herein to a letter dated October 31, 1995 from David Pendleton, Associate Superintendent of the Basehor-Linwood 458 School District referencing the equipment requirements and costs allocation of the same.

**Section 15. PROCEDURE UPON TERMINATION.** Upon expiration of the franchise, if the Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purposes of removing therefrom any or all of its property or otherwise. In so removing said property, the Grantee shall refill, at its expense, any excavation that it shall make and shall leave said streets in as good condition as that prevailing prior to the Grantee's removal of its property.

**Section 16. APPROVAL OF TRANSFER.** The Grantee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Grantee, nor transfer any rights under this franchise to another without Council approval. No sale or transfer of the Grantee's assets used in the performance of this franchise shall be effective until the vendee, assignee or lessee has

filed in the office of the City Clerk an instrument duly executed reciting the face of such sale, assignment or lease, accepting the terms of the franchise and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other Sections of this franchise shall preclude the mortgaging, hypothecating or assigning of rights in the system, or the pledge of stock of the Grantee for the purpose of financing.

**Section 17. MISCELLANEOUS PROVISIONS.**

- (a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Clerk.
- (b) The Grantee shall assume the cost of publication of this franchise ordinance when such publication is required by law. A bill for publication costs shall be presented to the Grantee by the City Clerk.
- (c) In the case of an emergency or disaster, the Grantee shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period.

**Section 18. 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 power by the City. The City reserves the right to adopt from time to time in addition to the provisions herein contained such ordinances as may be necessary to the exercise of police power. Such regulations shall be reasonable and not in derogation of the rights herein granted, nor in conflict with the laws of the State or other local or Federal laws or regulations.

**Section 19. VIOLATION: PENALTIES.**

- (a) 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 CATV system, unless a franchise authorizing such use of such street or property or area has first been obtained, and unless such franchise is in full force and effect.
- (b) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the franchised CATV system within this City for the purpose of enabling anyone to receive any television signal, radio signal, picture, sound, or other transmission, without payment to the Grantee.
- (c) It shall be unlawful for any person, without the consent of the owner wilfully to tamper with, remove or injure any cables, wires or equipment used for distribution of television signals, radio signals, pictures, sound or other transmission.

- (d) Any person violating or failing to comply with any of the provisions of this Section shall be guilty of a misdemeanor and for each day of violation or failure to comply may be punished by a fine not to exceed One Hundred Dollars (\$100.00), imprisonment for a term of not to exceed thirty (30) days, or both. Grantee will stand cost of action.

**Section 20. LINE SEVERING.** If at any time the Grantee's cable and/or other equipment is disturbed, damaged, or severed the cost of repair shall be paid by the party responsible for such damage. The Grantee may charge the responsible party for the time and materials expended for repair of said damage. The City will cooperate with the Grantee to assist in enforcing any charge or penalty arising from cable severing or other damage to Grantee's property.

**Section 21. SEPARABILITY.** If any part of this ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**Section 22. FACILITIES LOCATION MAP.** A map showing the exact location of all CATV related facilities will be furnished to the City.

**Section 23. PROGRAM OFFERINGS.** The grantee shall maintain on file with the City Clerk a schedule setting forth the nature and extent of the program offerings available to subscribers for the basic CATV service and for the various optional services available through the CATV franchise. The program offerings as filed with the City Clerk shall be amended to include additional services and programs as added by the CATV service. At a minimum, the Grantee shall provide access to the following channels which shall be included as basic service and the following premium channels: (See Exhibit A attached hereto and incorporated herein by reference.) Notwithstanding anything contained herein to the contrary, grantee agrees to offer 5-10 additional channels to the current service being provided by Douglas Cable.

**Section 24. EFFECTIVE DATE.** This ordinance shall take effect and be in force from and after its publication in the official city paper.

**Section 25. RENEWAL.** The renewal procedures shall be governed by the applicable sections of the Cable Communications Policy Act of 1984 and the Cable Television Consumer Protection and Competition Act of 1992.

Passed by the Governing Body this 18 day of December, 1995.

*Bryce D. Bettin*

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MAYOR BRYCE D. BETTIN

ATTEST:

*Mary Ann Mogle*  
MARY ANN MOGLE, City Clerk