

ORDINANCE No. 1983-1

TITLE
&
PURPOSE

AN ORDINANCE GRANTING A FRANCHISE TO LA JARA CABLE TV, A SOLE PROPRIETORSHIP OWNED BY KENT REMMEL, ALSO D/B/A AS REMMEL ENTERPRISES, HIS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF LA JARA, COUNTY OF CONEJOS, AND STATE OF COLORADO, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THIS FRANCHISE.

SECTION 1 - DEFINITION: For purpose of this Ordinance, the following terms shall have the meaning set forth below. The word "shall" is mandatory and not merely directory or discretionary;

(A) "Town" is the town of La Jara, County of Conejos, State of Colorado;

(B) "Town Council" is the Board of Trustees of the Town of La Jara;

(C) "Grantee" is La Jara Cable TV, a sole proprietorship owned by Kent Remmel, also d/b/a as Remmel Enterprises, his successors and assigns as may be in accordance with the provisions of the franchise. La Jara Cable TV's principal office and place of business is located at P. O. Box 1008, Gruver, Texas, 79040;

(D) "Cable Television System", hereinafter also referred to as CATV System, means a system for transmission of audio and/or video signals by coaxial cable or other means and such related services as the State-of-the-Art permits and as Grantee chooses to provide upon application, consideration, and approval of the Town Council. These services include, but are not limited to "basic services" or "premium services";

(E) "Basic Service" shall consist of those television broadcast station signals required to be carried by the Grantees CATV System pursuant to rules and regulations of the Federal Communications Commission. Basic Service generally includes each of the three major networks (ABC, CBS, and NBC) and most educational and independent stations that are receivable in the town off-the-air directly from television broadcast stations. Additional program services may be included in "Basic Service", at the option of the grantee;

(F) "Premium Service" is comprised of any communication or program service not included within the definition of "Basic Service" such as, but not limited to, movie services, sporting events, and other satellite-delivered programming, as well as advertising, leased channels, shopping services, and the transmission of other programming and electronic information for which a per-program or per-channel charge is made;

(G) "Gross Revenues" shall mean all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent and any person in which the grantee has a financial interest, from or in connection with the operation of a cable television system pursuant to this Ordinance; PROVIDED, HOWEVER, that all revenue shall include, but not be limited to, basic and premium subscriber service monthly fees, pay-cable fees, leased channel fees, converter rentals, and advertising revenues; but specifically excluding installation and reconnection fees, and that this shall not include any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, town, or other governmental unit and collected by the company on behalf of said governmental unit;

(H) "Person" is any person, firm partnership, association, corporation, company, or organization of any kind;

(I) "Subscriber" is a person who purchases a service offered by the CATV System; and

(J) "Franchise" is a term applied to this Ordinance following adoption by the Town Council and acceptance by the Grantees.

SECTION 2 - GRANT OF AUTHORITY: For construction and operation of a CATV System, there is hereby granted to the Grantee for a period of fifteen (15) years, from the effective date of this franchise, the nonexclusive right and privilege to 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 addition thereto, and on the town poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the construction, maintenance, and operation in the town of a CATV System. This franchise is nonexclusive and it is further reserved unto the town the right to grant such additional franchises as the members of the Town Council may deem fit and proper under the circumstances to other legal entities engaged in providing similar service.

SECTION 3 - COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES: The grantee shall, at all times during the life of this franchise, be subject to the lawful exercise of the police power of the town and such reasonable regulations as the town shall hereafter adopt in the exercise of the police power; PROVIDED, HOWEVER, that such additional ordinances shall be reasonable and lawful.

SECTION 4 - CONSTRUCTION AND MAINTENANCE: (A) All structures, lines, and equipment erected by the grantee within the town shall be so located as to cause minimum interference with the proper use of streets, alleys, public utility easements, and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and grantee shall comply with all reasonable, proper, and lawful ordinances of the town now or hereafter in force. Grantee is authorized to use existing poles, posts, conduits, and other such structures of any electrical power system, telephone company, or other public utility located in the town to the extent the grantee is able to negotiate the use of said facilities with any other companies which have an interest, ownership, or otherwise, in said facilities. To the extent that existing poles, posts, conduits, and other structures are not available or are not available under reasonable terms and conditions, including excessive costs or unreasonable limitation upon the use of grantee's cable television system, grantee shall be permitted to make efforts to purchase, or lease, rights of way or easements upon or under which to erect or maintain its own poles, conduits, and other structures as may be necessary for the construction and maintenance of its cable television system.

(B) In case of any disturbance by grantee of pavement, sidewalk, driveway, or other surfacing, grantee shall, at its own cost and expense, replace and restore all paving, sidewalk, driveway, or surface so disturbed in as good condition as before said work was commenced.

(C) In the event that at any time during the period of this franchise the town shall lawfully elect to alter or change any street, alley, public utility easement or other public way requiring the relocation of grantee's facilities, then in such event grantee, upon reasonable notice by the town, shall remove, relay, and relocate the same at its own expense; PROVIDED, HOWEVER, that where public funds are available for such relocation pursuant to law, grantee shall not be required to pay the cost.

(D) Grantee shall have the authority to trim trees upon and overhanging on streets, alleys, public utility easements, sidewalks, and public places of the town so as to prevent the branches of such trees from coming into contact with grantee's facilities.

(E) All poles, lines, structures, and other facilities of grantee in, on, over, and under the streets, sidewalks, alleys, public utility easement, and public grounds or places of the town shall be kept by grantee at all times in a safe and substantial condition and in good order and repair.

SECTION 5 - CATV SERVICE AREA AND LINE EXTENSIONS: Grantee shall make CATV service available to all of the area designated on the map which is attached as Attachment "A" and made part of this franchise. The agents and officers of the grantee, in their discretion, may designate an "initial service area" on said map. The designation of the "initial service area" will be governed by the economic considerations involved in extending service to the various subscribers. After the designation of the "initial service area," grantee shall, whenever it shall receive requests for service from at least eight potential subscribers within 1,000 feet from its existing system, extend

such system to said subscribers at no cost to the subscribers for system extension other than the usual connect fees for all subscribers. The 1,000 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 the necessary service brought to the subscriber's home or premises. In addition, the town council may, on complaint from any potential subscriber residing within the town, order the extension of the system to such subscriber after opportunity for hearing and notice to grantee, provided costs of the extension are paid by such subscriber.

SECTION 6 - PAYMENT TO THE TOWN: In consideration of the terms of this franchise, grantee agrees to pay the town a sum of money equal to three percent (3%) per year of grantee's gross revenues as said term has hereinabove been defined. Such annual sum shall be payable one-half thereof at the end of each semiannual period. The semiannual anniversary shall be the last day of June and last day of December of each year, and each semiannual payment shall be paid within sixty (60) days thereafter. Grantee shall file with the town with each semiannual payment a sworn statement of the number of its subscribers within the town, a statement of its gross revenues as that term has hereinabove been defined upon which payment to the town is based, and a computation of the franchise fee due the town. All other license fees or taxes levied upon grantee by the town shall be credited against the payment required herein.

SECTION 7 - RIGHTS RESERVED TO TOWN: (A) The right is hereby reserved to the town 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 its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable.

(B) The Town Council shall have the right to inspect and the grantee shall make available its books, records, maps, plans, and/or other like material of the grantee pertaining to the operation of said CATV System at any time during normal business hours, provided that thirty days (30) notice shall have been given to grantee as to what records are to be produced for such inspection;

(C) The Town Council may hold hearings on any matter pertaining to this franchise, and grantee shall make available its representatives or agents at such hearings.

SECTION 8 - DURATION AND ACCEPTANCE OF FRANCHISE: (A) This franchise is hereby granted to operate a CATV System in the Town of La Jara, Colorado, and shall take effect and be in force from and after adoption hereof by the Town Council as provided by law and shall continue in force and effect for a term of fifteen (15) years. The original term of this franchise shall be automatically extended for successive additional five-year periods unless one of the parties hereto shall give six (6) month written notice to the other party of its intention not to extend this franchise or any extension thereof on these terms and conditions. Notwithstanding such notice, the town and grantee agree to negotiate in good faith changes proposed by either party which would apply to a renewal or extension of this franchise so as to ensure continuity of service to the public.

SECTION 9 - FORFEITURE: If grantee should violate any of the material terms, conditions, or provisions of this franchise, or if grantee should fail to comply with any reasonable provisions of any ordinance of the town regulating the use by grantee of the streets, alleys, public utility easements, or public ways of the town, and should grantee further continue to violate or fail to comply with the same for a period of thirty (30) days after grantee shall have been notified in writing by the town to cease and desist from any such violation or failure to comply as so specified, grantee may be deemed to have forfeited and annulled, and shall thereby forfeit and annul all the rights and privileges granted by this franchise; PROVIDED, HOWEVER, that such forfeiture shall be declared only by written decision of the Town Council after an appropriate public proceeding before the Town Council affording grantee due process and full opportunity to be heard and to respond to any such notice of violation for failure to comply; and further provided the Town Council may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by grantee of mitigating circumstances.

Grantee shall have the right to appeal any finding of violation or failure to comply and any result of penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this Cable Television System to a qualified purchaser at fair market value. The qualifications of the purchaser shall be subject to review by the members of the Town Council and any sale, transfer, or conveyance shall be subject to its approval. During this six-months period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

SECTION 10 - SURRENDER RIGHTS: Grantee may surrender this franchise at any time upon filing with the Town Clerk of the town a written notice of its intention to do so at least six (6) months before the surrender date. On the surrender date specified in that notice, all of the rights and privileges and all of the obligations, duties, and liabilities of grantee in connection with the franchise shall terminate. In the event the grantee exercises any of the rights afforded by this section, grantee agrees to leave in place all transmission lines, poles, guidewires, and other structures which have been placed upon the town's property, rights of way, and easements and in furtherance of its original objectives.

SECTION 11 - TRANSFERS: All of the rights and privileges and all of the obligations, duties, and liabilities created by this franchise shall be passed to and be binding upon the successors of the town and the successors and assigns of grantee, and the same shall not be assigned or transferred without the written approval of the Town Council, which approval shall not be unreasonably withheld; PROVIDED, HOWEVER, that this section shall not prevent the assignment or hypothecation of the franchise by grantee as security for debt without such approval; PROVIDED, further that transfers or assignment of this franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior approval of the Town Council.

SECTION 12 - LIABILITY, INDEMNIFICATION, AND INSURANCE: Grantee shall save the town harmless from all losses sustained by the town on account of any suit, judgment, execution, claim or demand whatsoever against the town resulting from negligence on the part of the grantee in the construction, operation, or maintenance of this cable television system in the town. For this purpose, grantee shall carry property damage and personal injury insurance as follows:

(1) A general comprehensive public liability insurance policy indemnifying, defending, and saving harmless the town, its officers, boards, council members, agents, or employees from any and all claim by any person whatsoever for injury to or death of a person or person occasioned or alleged to have been occasioned by the operation of grantee under the franchise granted herein, in the amount of at least TWO HUNDRED THOUSAND DOLLARS (\$200,000) per personal injury or death for any one person and SIX HUNDRED THOUSAND DOLLARS (\$600,000) for personal injury or death of two or more persons in any one occurrence;

(2) Property damage insurance indemnifying, defending, and saving harmless the town, its officers, boards, council members, agents, or employees from or against all claims by any person whatsoever for property damage occasioned or alleged to have been occasioned by the operation of grantee under the franchise granted herein, in the amount of at least TWO HUNDRED THOUSAND DOLLARS (\$200,000) for property damage of any person and SIX THUNDRED THOUSAND DOLLARS (\$600,000) for property damage of two or more persons in any one occurrence;

(3) All of the foregoing insurance contracts shall be in force in a form satisfactory to the town, shall be issued and maintained by companies authorized to do business in the State of Colorado and acceptable to the town and shall be kept in full force and effect by grantee during the term of this franchise and until completion of all obligations of this franchise, including any required removal of equipment, structures, facilities, apparatus, and appurtenances. The insurance contracts shall contain provisions requiring that

ninety (90) days written notice of any cancellation be given to both the town and grantee.

(4) During the construction phase of this franchise agreement, the grantee shall assure the town, if its own crews are involved in the construction of said facilities, that adequate workmen's compensation coverage has been purchased by grantee and will further assure the town that any independent contractor who is engaged by the grantee to assist in during the construction phase has purchased adequate workmen's compensation coverage in compliance with the laws of the State of Colorado.

SECTION 13 - UNLAWFUL ACTS:

(A) It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of grantee's cable television system for the purpose of enabling himself or others to receive any televisions signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over grantee's cable system without payment to grantee or its lessee.

(B) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or enter any cable, wires, or other equipment used for the distribution of television signals, radio signals, picture, programs, sounds, or any other information or intelligence transmitted over grantee's cable system.

(C) It shall be a misdemeanor punishable by a fine of not more than THREE HUNDRED DOLLARS (\$300) or by imprisonment for a term not to exceed ninety (90) days or both for any person to violate any of the provisions of this section.

SECTION 14 - GRANTEE'S CABLE TV PROPOSAL INCORPORATED: By its acceptance of the franchise, grantee specifically grants and agrees that its cable television proposal and statements made by its representatives during the submission of said proposal are hereby incorporated by reference and made a part of this Ordinance. Included in the foregoing is the assurance given by the representatives of the Grantee to the representatives of that non-profit corporation known as San Luis Valley T.V., Inc. to the effect that the grantee will cooperate with and collect for the said San Luis Valley T.V., Inc. from each of Grantee's subscribers an amount equal to the annual donation solicited by the said San Luis Valley T.V., Inc. from each individual family of the general viewing public to enable it to continue operation of the San Antonio Mountain Translator facility and any other ancillary equipment. For purposes of this Section, each of Grantee's subscribers will be deemed to be one family. For purposes of the foregoing, the collection for and in behalf of said San Luis Valley T.V., Inc. shall be made in the following manner:

A. Within 30 days after Grantee files its written acceptance of this franchise and its agreement to be bound by and to comply with all the terms and conditions set forth herein, and thereafter at the beginning of each fiscal year of said San Luis Valley T.V., Inc., it shall furnish to Grantee a list of every household within that area of service of Grantee from whom an annual donation is either expected or solicited. San Luis Valley T.V., Inc. shall further furnish to Grantee the amount, if any, paid to it by said household or family toward its annual donation, and if prepaid, it shall make known to Grantee to what period or month such prepayment shall extend, such amount to be presently shown as a credit.

B. At the expiration or exhaustion of the credit, or if no prepayment has been made, the Grantee shall, as part of its regular monthly billing procedures, add on to its service fees a surcharge in an amount equal to 1/12 (one-twelfth) of the annual donation solicited by said San Luis Valley T.V., Inc. If Grantee's regular billing cycle is at regular intervals less frequent than monthly, then and in that event the Grantee shall add on to its fee as a surcharge an amount equal to 1/12 (one-twelfth) of the annual donation solicited for every month covered by Grantee's billing period.

C. Such surcharge amount thus collected by Grantee shall be accumulated by it to be held by it in trust for the benefit of said San Luis Valley T.V., Inc., and shall be remitted directly to San Luis Valley T.V., Inc. at regular intervals of not more than six months duration, together with a complete accounting of all such funds thus collected and from whom such funds were received so as to enable San Luis Valley T.V., Inc. to keep and update its records with respect thereto.

In this regard, said San Luis Valley T.V., Inc. shall be deemed to have the status of a third-party beneficiary to this franchise agreement. The extent of the grantee's obligation pursuant to this section shall be the actual funds collected pursuant to the surcharge from its subscribers. For purposes of clarification, when the grantee does not collect its own charges from a subscriber, it will have no obligation to remit to the town clerk the funds the delinquent subscriber should have paid pursuant to the surcharge. In the event of a conflict between proposed services listed in said cable television proposal and the provisions of this Ordinance, that provision which would provide the greatest benefit to the town, in the opinion of the Town Council, shall prevail. Failure to provide services as promised in grantee's cable television proposal as incorporated herein shall be deemed a breach of this Ordinance to which the forfeiture provisions of the previous sections of this Ordinance shall apply.

SECTION 15 - RATE: The maximum rate which may be charged by grantee to subscribers shall be as set forth in its rate schedule which is attached hereto as Attachment "B" and incorporated herein by reference. All requests for increases in rates and/or charges shall be subject to the approval or disapproval of the Town Council after an appropriate public hearing is held at which all interested parties are heard. The Town Council may, by resolution, adopt such rules and regulations governing the review of such requests as it may deem necessary for a fair and total discussion and to promote the purposes of this Ordinance. The foregoing provisions shall not apply to increases of the surcharge authorized by the preceding section. The grantee, may, without prior approval from the town council increase said surcharge as may be necessary to generate sufficient funds to enable the annual contribution to said San Luis Valley T.V., Inc. as provided in the preceding section.

SECTION 16 - SERVICE AND PERFORMANCE STANDARDS: The grantee shall install such equipment and have the necessary equipment and personnel to maintain facilities so as to assure provide efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, in so far as possible, shall be preceded by notice and shall occur during periods of minimum system use.

The grantee shall maintain all parts of this TV cable system in good condition throughout the entire franchise period.

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

Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by grantee, nor shall the system interfere with, obstruct, or hinder in any manner, the operation of the various utilities serving the residents of the town and county.

Copies of all petitions, applications, reports, and communications submitted by grantee to the Federal Communications Commission or State Regulatory Commission, or other agency having jurisdiction in respect to any matter or affecting the cable television operations authorized by this franchise shall be submitted simultaneously to the town's clerk.

Grantee shall file with the town copies of all rules, regulations, terms and conditions which it has adopted for the conduct of its business and which affect its subscribers.

SECTION 17 - COMPLAINT PROCEDURES: The grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the Town Council. The grantee shall furnish a notice of such

procedures to each subscriber at the time of initial subscription to the system.

In the event that a customer complaint is not resolved to the mutual satisfaction of the customer and the grantee, either the customer or the grantee may request that the matter be presented to the Town Council for a hearing and resolution.

When there have been similar complaints made or when there exists other evidence, which in the judgment of the members of the Town Council, casts doubts on the reliability or quality of cable service, the Town Council shall have the right and authority to compel the grantee to test, analyze, and report on the performance of the system. The Town Council shall cause the grantee to be served notice of a determination to require testing and the grantee shall have a reasonable period thereafter, in no event to exceed thirty (30) days, within which to conduct said tests and to submit a report in writing to the Town Council after completion of the same.

SECTION 18 - PREFERENTIAL OR DISCRIMINATORY PRACTICES: Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, employment or in any other respect, make or grant any undue preference or advantage to any party, nor subject any party to any prejudice or disadvantage. This Section shall not be construed to prohibit the establishment of negotiated commercial and/or bulk user rates.

SECTION 19 - PRIVACY: (A) Subscriber data, including names, addresses, and phone numbers, shall not be distributed and used by the grantee for other than the normal conduct of business activities. Reasonable protection shall be provided by the grantee to avoid access thereto by outside parties and to protect the rights of privacy of subscribers.

SECTION 20 - ACCEPTANCE OF FRANCHISE: Within thirty (30) days after adoption of this ordinance awarding a franchise, the grantee shall file with the Town Clerk its written acceptance of the franchise and its agreement to be bound by and to comply with all the terms and conditions set forth in the provisions of this ordinance. In the event such acceptance and agreement are not filed within thirty (30) days after the adoption of this ordinance, the Town Council may declare the franchise null and void. In accepting this franchise, the grantee agrees to reimburse the town for all actual expense incurred by the town including, but not limited to the cost of preparation, drafting, and publication of this ordinance up to the sum of THREE THOUSAND DOLLARS (\$3,000). Said actual expenses will be paid to the town within thirty (30) days after the award of the franchise. It will be incumbent upon agent of the town to submit to the grantee evidence of actual expenses incurred.

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 federal or state jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holdings shall not affect the validity of the remaining portions hereof.

PASSED, APPROVED AND ADOPTED this 14th day of September, 1983.

THE BOARD OF TRUSTEES OF
THE TOWN OF LA JARA

BY: Wendell Gonzales
Mayor

ATTEST:

Ann V. White
Town Clerk

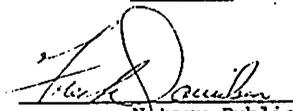
ACCEPTED: LA JARA CABLE T.V., a ~~Partnership~~ Sole Proprietorship

BY: Rich Sumpter
Rich Sumpter, Agent

Kent Rimmel
Kent Rimmel, Owner

STATE OF TEXAS)
COUNTY OF Hansford) ss.

SWORN TO AND SUBSCRIBED before me this 10th day of October,
1983.


Fred Davidson Fred Davidson
Notary Public
Box 653 Groves Texas 79040
Address of Notary

(S E A L)

My commission expires: 3-20-85