

ORDINANCE NO. 1062

An Ordinance Setting Forth Regulations, Terms and Conditions Under Which Cable Communication Systems Shall be Constructed and Operated in the City of Horton, Kansas; Granting to Carson Communications, L.L.C. a Non-Exclusive Franchise to Construct, Operate and Maintain a Cable Communications System Within the City of Horton, Kansas; and Repealing City of Horton Ordinance No. 789

The City of Horton, Kansas, having determined that the financial, legal, and technical ability of Carson Communications, L.L.C. is reasonably sufficient to provide service, facilities, and equipment necessary to meet the future communication needs of the community, does hereby ordain as follows:

SECTION 1 Definition of Terms

1.1 Terms. For the purpose of this Ordinance, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below:

a. "Basic Cable Service" means any service tier that includes the retransmission of local television broadcast signals. This definition shall be consistent with and deemed to change pursuant to any changes in applicable federal law or the FCC rules.

b. "Cable Act" means the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (1984) (codified at 47 U.S.C. §§ 521-61 1) as amended by the Cable and Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, and the Telecommunications Act of 1996, Pub. L. No. 104-109, as may, from time to time, be amended.

c. "Cable Television System", "Cable System" or "System" means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service, Communications Services or any other lawful services, including Video Programming, and which is provided to multiple subscribers within the City.

d. "Basic Communications Service" means the basic or local transmission of video programming or any other lawful communications service to subscribers, including, but not limited to, Internet, telephone, interactive digital television and online banking services.

e. "Cable Service" or "Communication Service" means (a) the transmission to Subscribers of (i) Video Programming, (ii) Other Programming Service or (iii) other lawful communications service, and (b) Subscriber interaction, if any, which is required for the selection or use of such Video Programming, Other Programming Service or other lawful communication service.

f. "Channel" or "Cable Channel" means a six MHz portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television Channel as defined by the Federal Communications Commission.

g. "City" means the City of Horton, Kansas, and all territory within its existing and future territorial corporate limits, or jurisdiction for purposes of this Ordinance.

h. "City Commissioners" means the governing body of the City of Horton.

i. "Complaint" means any verbal or written inquiry, allegation or assertion made by a person requiring subsequent corrective action to the System or any portion thereof.

j. "FCC" means the Federal Communications Commission, its designee, or any successor thereof.

k. "Franchise" means an initial authorization, or renewal thereof, issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of the Cable System for the purpose of offering Cable Television Services, Communication Services, or other lawful services to Subscribers. Franchise shall include the Franchise granted pursuant to this Ordinance, any Franchise Agreement or granting Ordinance, and all rights, powers and privileges thereunder.

l. "Franchise Agreement" means any separate agreement or granting Ordinance by which the Franchise is granted to the Franchisee.

m. "Franchisee" or "Grantee" means and includes Carson Communications, L.L.C., and any and all other Persons having any rights, powers, privileges, duties, liabilities, or obligations under this Ordinance and the Franchise Agreement (herein collectively called the "Franchise") or any lawful successor, transferee, or assignee of the original Franchisee.

n. "Franchisor" or "Franchising Authority" means the City of Horton, as represented by the Commissioners of the City of Horton or any lawful successor, transferee, or assignee thereof, or delegate acting within the scope of his/her jurisdiction.

o. "Gross Subscriber Revenues" means the monthly Basic Cable Service revenues received by Grantee from Subscribers; provided, however, that such phrase shall not include a) any fees or assessments levied on Subscribers or users of the System which are collected by the Grantee for payment to a governmental entity; b) franchise fees paid by the Grantee to the City; c) state or local sales taxes imposed on the Grantee and paid to a governmental entity; d) revenues derived from installation charges; e) revenues derived from Pay TV; and f) cable modem service.

p. "Installation" means the act of connecting the System from the feeder cable to the Subscriber terminal so that Cable Service or Communication Service may be received by the Subscriber.

q. "Other Programming Service" means information that a Franchise makes available to all Subscribers generally.

r. "Pay TV" means those cable services that are provided to Subscribers as single/or multi-channel tiers by the cable operator and individual programs transmitted to Subscribers for a separate fee or charge from Basic Cable Service.

s. "Person" means any natural Person or any association, firm, individual, partnership, joint stock company, joint venture, corporation, or other legally recognized entity, public or private, whether for profit or not for profit.

t. "Public Way" or "Streets" means the surface of and the space above and below, each of the following which have been dedicated to the public and maintained under public authority or by others and located within the City limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the City shall permit to be included within the definition of Public Way or Streets from time to time.

u. "Service Area" means the entire geographic area within the City of Horton as it is now constituted or may in the future be constituted, unless otherwise specified in the Franchise Agreement.

v. "Service Interruption" means the loss of picture, sound or other communication service on one or more channels of the receiving unit of the Subscriber.

w. "Service Tier" means a category of Communications Service or other services provided by the Franchisee and for which a separate fee or charge is made by the Franchisee.

x. "Subscriber" means any Person or user of the Cable System who lawfully receives Communications Services or other service therefrom with Franchisee's express permission.

y. "Subscriber Service Drop" means the extension wiring from the Franchisee's distribution lines to a Subscriber's building.

z. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

aa. "Cable Modem Service" means access to the Internet and related interactive services, including communications, information, entertainment and other services, transmitted over the Cable System using a cable modem and Internet protocols.

SECTION 2
Franchises: Applications and Criteria for Grant

2.1 Franchise to Operate Required. It shall be unlawful to operate a cable television system within the City unless a valid franchise has first been obtained from the Franchising Authority pursuant to the terms of this Ordinance. A franchise granted pursuant to this Ordinance shall authorize the Grantee to provide cable television services within the City and to charge subscribers for such services. It shall also authorize and permit the Grantee to traverse any portion of the City in order to provide service outside the City. Unless otherwise specified, the Franchise Area shall be the legal boundaries of the City.

2.2 Competing or Overlapping Franchises. Any franchise granted by the Franchising Authority shall be non-exclusive. However, while the Franchising Authority may grant more than one franchise, nothing in this Ordinance shall be construed to require it to grant more than one franchise if the Franchising Authority determines pursuant to the procedures established in this Section that granting additional franchises would be detrimental to the public interest.

(a) If one or more competing or overlapping franchises are granted, the Franchising Authority shall not grant such a franchise on terms or conditions which are either more favorable or less burdensome than those granted under any existing franchise or ordinance. Any franchise which may be granted shall require the new Grantee to provide cable service to the entire franchise area then served by the existing Grantee. Moreover, an existing Grantee may, at its discretion, comply with the most favorable terms contained in any subsequent franchise granted by the Franchising Authority.

(b) Since competing or overlapping franchises may have an adverse impact on the public rights-of-way, on the quality and availability of communications services to the public and may adversely affect the existing operators ability to continue to provide the services and facilities it is presently providing under this Ordinance, the Franchising Authority may issue a franchise in an area where, another Grantee is operating only following a public hearing to consider the potential impact which the grant of an additional franchise may have on the community. In considering whether to grant one or more additional franchises, the Franchising Authority shall specifically consider, and address in a written report, the following issues:

(1) The positive and/or negative impact of an additional franchise on the community.

(2) The ability and willingness of the specific applicant in question to provide cable television service to the entire franchise area which is served by the existing cable operator. The purpose of this subsection is to ensure that any competition which may occur among

Grantees will be on equal terms and conditions so as not to give a competitive advantage to one Grantee over another.

(3) The amount of time it will take the applicant to complete construction of the proposed system and activate service in the entire franchise area; and, whether the applicant can complete construction and activation of its system in a timely manner.

(4) The financial capabilities of the applicant and its guaranteed commitment to make the necessary investment to erect, maintain and operate the proposed cable TV system for the duration of the franchise term. In order to ensure that any prospective Grantee does have the requisite current financial capabilities, the Franchising Authority may request equity and debt financing commitment letters, current financial statements, bonds, letters of credit or other documentation to demonstrate to the Franchising Authority's satisfaction that the requisite funds to construct and operate the proposed system are available.

(5) The quality and technical reliability of the proposed system, based upon the applicant's plan of construction and the method of distribution of signals, and the applicant's technical qualifications to construct and operate such system.

(6) The experience of the applicant in the erection, maintenance and operation of a cable television system.

(7) The capacity of the public rights-of-way to accommodate one or more additional cable systems and the potential disruption of those public rights-of-way and private property that may occur if one or more additional franchises are granted.

(8) The disruption of existing cable television service and the potential that the proposed franchise would adversely affect the residents of the City.

(9) The likelihood and ability of the applicant to continue to provide competing cable television service to subscribers within the entire franchise area for the duration of the franchise.

(10) Such other information as the Franchising Authority may deem appropriate to be considered prior to granting any competing or overlapping franchise.

2.3 Permits for Non-Franchised Entities. The Franchising Authority may issue a license, easement or other permit to a person other than the Grantee to permit that person to traverse any portion of the Grantee's franchise area within the City in order to provide service outside, but not within the City. Such license or easement, absent a grant of a franchise in accordance with this Ordinance, shall not authorize nor permit said person to provide cable television service of any type to any home or place of business within the City nor render any other service within the City.

2.4 Favored Nations. In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of providing Basic Cable Service or Basic Communications Service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

SECTION 3 **Grant of Franchise**

3.1 Franchise Granted Under this Ordinance. Pursuant to the terms of this Ordinance, a franchise is hereby granted to Grantee for a period of ten (10) years commencing on the Effective Date of this Ordinance. Grantee shall have the option to renew this franchise for an additional term of ten (10) years, provided that it is in substantial compliance with the material terms of this Ordinance at the time of its expiration.

SECTION 4 **Standards of Service**

4.1 Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of said Public Ways.

4.2 Restoration of Public Ways. If during the course of Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

4.3 Relocation at Request of Franchising Authority. Upon its receipt of reasonable advance notice, not to be less than thirty (30) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, 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 Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to the Grantee.

4.4 Relocation at Request of Third Party. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) 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 (b) the Grantee is given not less than ten (10) business days advance written notice to arrange for such temporary wire changes.

4.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment.

4.6 Safety Requirements. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.

4.7 Required Extensions of Service. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least ten (10) Subscribers within 1320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers.

4.8 Subscriber Charges for Extensions of Service. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers, or a density of less than ten (10) Subscribers per 1320 cable-bearing strand feet of trunk or distribution cable, Communications Service or other service may be made available on the basis of a capital contribution in aid of construction.

4.9 Service to Public Buildings. The Grantee shall provide without charge one (1) outlet of Basic Cable Service to each educational and local governmental building that are passed by its Cable System.

SECTION 5

Regulation by Franchising Authority

5.1 Franchise Fee. (A) The Grantee shall pay a franchise fee to compensate the City for all costs associated with administering and regulating the cable system. The amount of the franchise fee shall be one and one quarter percent (1.25%) of the Grantee's Gross Subscriber Revenues, as defined herein. Such fee shall be paid on a semi-annual basis on or before January 31, and July 31 of each succeeding 6 mo period. The City shall be furnished with a statement for

each payment, certified as correct by the franchisee, reflecting the total amount of gross revenues and the above charges and computations for the preceding 6 mo period. Grantee shall be entitled to list the franchise fee as a separate line item on monthly bills.

5.2 Rates and Charges. The Franchising Authority may not regulate the rates for the provision of Communications Service and other services, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as authorized pursuant to federal and state law including, but not limited to, the 1984 Cable Act, the 1992 Cable Act, the 1996 Telecommunications Act and FCC Rules and Regulations relating thereto. From time to time, and at any time, Grantee has the right to modify its rates and charges, at its discretion and without consent of the Franchising Authority, including, but not limited to, the implementation of additional charges and rates; provided, however, that Grantee shall give notice to the Franchising Authority of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

5.3 Customer Service. Grantee shall provide subscriber service on the following basis:

a. Provide a toll-free telephone service, on a seven-day-a-week, 24-hour-a-day basis, capable of forwarding subscriber complaints to Grantee.

b. Make available to the subscribers scheduled service and installation appointments Monday through Friday.

c. Establish response times to service or repair calls; the Grantee may differentiate between service problems unique to a single household as compared to problems caused by a service outage which affects a large number of subscribers ('area outage'), or by a cause beyond the Grantee's control, such as a loss of power from the local electric company.

d. All area outages shall be responded to as soon as possible after notification on a 24 hour, 7 day a week basis.

e. In cases where service is not restored on a timely basis, except for acts of God, Grantee shall upon customer request refund or credit an appropriate portion of the monthly charge for tier of service which is unavailable to the subscriber.

f. Protection of Privacy. The Grantee and the Franchising Authority will constantly guard against possible abuse of the right of privacy or other rights of any subscriber or person.

5.4 Transfer of Franchise. Grantee's right, title or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld.

Grantee shall give the Franchising Authority at least thirty (30) days notice of any such proposed assignment, sale or transfer. If Grantee does not receive written notice of the Franchising Authority's objection to such assignment within thirty (30) days of receipt of notice of said proposed assignment, sale or transfer, the Franchising Authority's consent shall be deemed to have been given. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

SECTION 6

Compliance and Monitoring

6.1 Books and Records. The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours and on a non-disruptive basis, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof.

SECTION 7

Insurance and Indemnification

7.1 Insurance Requirements. Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined single limit for bodily injury, and property damage. Said insurance shall designate the Franchising Authority as an additional insured.

7.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of the Cable System, including, but not limited to, reasonable attorneys' fees and costs.

7.3 Liability Insurance.

A. As of the effective date of this Franchise Agreement, the Franchisee shall, at its sole expense, maintain during the entire term of this Franchise public liability insurance with a Company licensed to do business in the State of Kansas that shall protect the Franchisee, the Franchisor, and the franchisor's officials, officers, employees and agents from claims which may arise from operations under this Agreement, whether such operations are by the Franchisee, its

officials, officers, directors, employees and agents, or any subcontractors of Franchisee. This liability insurance shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, and damage to property resulting from the Franchisee's automobiles, products, and completed operations. The amount of such insurance shall be not less than the following:

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| (a) | General liability insurance: | |
| | Bodily injury per Person | \$ 500,000 |
| | Bodily injury per occurrence | \$ 500,000 |
| | Property damage per occurrence | \$ 500,000 |
| | Property damage and bodily injury, aggregate | \$1,000,000 |
| (b) | Automobile insurance: | |
| | Bodily injury per Person | \$1,000,000 |
| | Bodily injury per occurrence | \$1,000,000 |
| | Property damage per occurrence | \$1,000,000 |

SECTION 8

Miscellaneous Provisions

8.1 Preemption. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

8.2 Actions of Franchising Authority. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

City Administrator
City of Horton
205 E 8th
P.O. Box 30
Horton, Kansas 66439

The notices or responses to the Grantee shall be addressed as follows:

Carson Communications, L.L.C.
P.O. Box 242
334 2nd Street
Wetmore, Kansas 66550
Attn: Robert C. Carson

Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other.

8.4 Effective Date. This Franchise Ordinance shall take effect from and after adoption and publication as required by law.

8.5 Descriptive Headings. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.6 Severability. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise, or any renewal or renewals thereof.

8.7 Unauthorized Reception. In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electronically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any matter of providing Communications Service or other service provided thereto. Subject to applicable federal and state law, the Franchising Authority shall incorporate into its criminal code, if not presently a part thereof criminal misdemeanor law which will enforce the intent of this Section 8.7.

8.8 Grantee May Issue Rules. The Grantee shall have the authority to issue such rules, regulations, terms and conditions of its business as shall be reasonably necessary to enable it to exercise its rights and perform its services under this Ordinance and the Rules of the FCC, and to assure the uninterrupted service to each and all of its subscribers. Such rules and regulations shall not be deemed to have the force of law.

8.9 Repeal. Ordinance No. 789 of the City of Horton, Kansas and all other ordinances and parts of ordinances in conflict herewith are hereby repealed.

Passed and adopted this 6th day of June, 2005, subject to applicable federal, state and local law.

City of Horton

By: /s/ Dale A. White
Mayor

ATTEST:

Clerk /s/ Candice Schmitt

Horton Ordinance 041405