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AN ORDINANCE GRANTING TO UPPER VALLEY TELECABLE COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO CONSTRUCT, ERECT, OPERATE AND MAINTAIN OVER AND UNDER THE STREETS, ALLEYS AND PUBLIC WAYS OF THE COUNTY, WIRES, CABLES AND UNDERGROUND CONDUITS, AND TO CONDUCT AND OPERATE A COMMUNITY ANTENNA TELEVISION SYSTEM IN THE COUNTY, AND PROVIDING THE TERMS, CONDITIONS AND REGULATIONS THERETO, AND PROVIDING THE EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREMONT COUNTY, IDAHO:

Section 1. Definitions.

For the purpose of this ordinance, the following terms, phrases and words shall have the following meaning given herein whenever it is used in this franchise:

- (a) "County" is Fremont County, Idaho.
- (b) "Community antenna television system."

hereinafter referred to as "CATV System" or "System" means a system of Coaxial cables or other electrical conductors and equipment used or to be used primarily to receive television, radio, and other signals directly or indirectly and transmit them to subscribers for a fee.

(c) "Grantee" is UPPER VALLEY TELECABLE COMPANY, INC., an Idaho corporation, or its successors or assigns, in accordance

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with the provisions of this franchise.

(d) "Basic Service" shall mean that service provided to all subscribers of the CATV System without additional cost.

Section 2. Grant of Authority.

There is hereby granted to Grantee, from the date of passage of this ordinance until May 31, 1991, the nonexclusive right and privilege to construct, erect, operate and maintain in, upon, along, across, above, under and over the streets, alleys public ways and public places now or hereafter laid out or dedicated, and all extensions thereof and additions thereto, the unincorporated areas of Fremont County, Idaho, poles, wires, Coaxial and other cables, underground conduits, manholes and such other conductors and fixtures as are necessary or proper for the maintenance and operation in the County of a CATV system; to provide, use and operate similar properties rented or leased from other persons, firms or corporations for such purpose; and to engage in the business of the distribution and sale of television, radio, and other signal reception within Fremont County, Idaho. The right herein granted shall not be exclusive.

Section 3. Franchise Construction.

The Grantee, prior to any act of construction or work, shall obtain and file with the County Clerk all licenses, permits and other authorities, County, Federal or State as may be applicable for the operation of a community or a CATV system and a microwave facility, pole line agreements and all other legal requirements for the installation, erection and construction of the system. It is understood that this is a nonexclusive franchise and that the Grantee intends only to extend services to County residents adjacent to metropolitan areas or in other areas where population density is sufficient to economically warrant extension of service. The Grantee

shall be under no obligation to extend service to any area or residents of the County, except at the Grantee's option. The Grantee shall have full discretion as to when and where to extend its CATV system within the County.

Section 4. Construction and Maintenance Requirements.

Grantee shall construct and maintain its CATV system at all times in compliance with all rules, regulations, codes and ordinances and any way applicable to its construction and maintenance program. Grantee shall construct, maintain and operate its CATV system so as to cause the least possible inconvenience to the general public. All excavation shall be properly guarded and protected and shall be replaced and the surface restored in good condition promptly after the completion of the work. Grantee shall comply with all excavation ordinance requirements of the County. The Grantee shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries or nuisances to the public.

No poles or other fixtures shall be placed where the same will interfere with any gas lamp, telephone poles, electric light poles, water hydrants, water mains or sewer mains; provided, however, that the County shall furnish Grantee with information showing the location of underground utilities; and provided further, that underground conduits, cables and other facilities shall be located and constructed in such a manner as to not interfere with the facilities of the County or any public utility operating by virtue of any prior ordinance adopted by the County or otherwise. The County shall be furnished with complete drawings of any construction pursuant to the provisions of this ordinance. The Grantee, in the construction and operation of the System, shall perform its work in such a manner as to give the least inconvenience to the inhabitants of the County and the public generally, and shall repair at Grantee's expense all pavement, sidewalks and curbing disturbed or damaged by Grantee in its construction or maintenance operations.

The County shall have the right to inspect all construction or installation work performed subject to the provision of this ordinance as it shall find necessary to insure compliance with the terms of this franchise.

Any franchise granted under this ordinance shall not relieve the Grantee of the obligation of placing under ground those facilities placed within the confines of newly developed subdivisions or in those areas presently served by underground facilities. Grantee shall abide by subdivision requirements as well as County requirements in regard to the installation of such service facilities.

Section 5. Liability and Insurance.

It is expressly understood and agreed by and between the Grantee and the County, that the Grantee shall fully indemnify and hold the County, its agents and employees, harmless from all loss sustained by the County on account of negligence on the part of the Grantee in the construction, operation or maintenance of its system in the County or which the County might legally be required to pay as the result of any action on the part of the Grantee arising out of the installation, operation or maintenance of the CATV System authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited. The County shall notify the Grantee's representatives in the County within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise made against the County on account of any negligence or conduct as aforesaid on the part of the Grantee. Said hold harmless agreement shall extend to and include all out-of-pocket expenses and attorney's fees and costs incurred by the County in defending or resisting any such action.

The Grantee shall maintain, and by its acceptance of this franchise, specifically agrees that it will maintain throughout the term of this franchise, liability insurance insuring the County and the Grantee with regard to all damages mentioned in the paragraph above in the minimum amount of:

- (a) \$500,000.00 for property damage to one person;
- (b) \$500,000.00 for property damage in any one occurrence;
- (c) \$500,000.00 for personal injury to any one person;
- (d) \$750,000.00 for personal injury to any one occurrence;
- (e) or any such other amount as is specified by the IDTC Act, existing at the date of this instrument or as modified.

All such policies shall be kept in full force at all times during the term of this franchise; provided, however, that no insurer shall cancel such policies without giving notice thereof to the Grantee and the County, in accordance with the laws of the State of Idaho and the terms of said policy, and provided further that the Grantee may at any time substitute the policies of another qualified insurance company of equal coverage for the policy then on file with said County.

Written evidence of payment of required premiums, shall be filed and maintained with the Clerk of the Board of County Commissioners.

Section 6. Maintenance Requirements.

(a) To the extent the County has such authority, the Grantee shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the County so as to prevent the branches of such trees from coming into contact with the wires and cables of the Grantee; provided, however, upon failure of Grantee to trim the trees such trimming may be done by the County, or under its supervision and direction, at the expense of the Grantee.

(b) The Grantee shall, upon request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings covered by such a permit. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than 48 hours advance notice to arrange for such temporary wire changes.

(c) In the event that any time during the period of the operation of the system the County shall lawfully elect to alter or change the grade of any street, alley or other public way, the Grantee, upon reasonable notice by the County, shall remove, re-lay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

(d) The County shall have the right to require the Grantee, at Grantee's expense, to protect, support, temporarily disconnect, relocate or remove from the public way any property of the Grantee by reason of traffic conditions, public safety, street or freeway construction or vacation, installation of sewers, drains, water pipes, power or communication lines, tracks or other kinds of structures, or improvements by governmental agencies or any other structures of public improvement.

(e) The County shall have the right to require removal at Grantee's expense of any part of the Grantee's system that has been placed in the public's way for any of the following causes:

- i That such property has been installed without complying with the conditions of the franchise or this ordinance.;
- ii That such property has not been used for service for a continuous period of twelve (12) months;
- iii That the franchise has been terminated, cancelled or has expired.

(f) In the event of removal of any plant structure, works, pipes, mains, conduits, cables, poles, or wires for any reason, the County requires that the Grantee, at its own expense, shall refill any excavation that may be made and shall leave the public way in as good condition as that prevailing prior to said removal or appurtenances. The County may permit certain properties of the Grantee otherwise requires to be removed to be abandoned in place. In such case, abandonment shall be accomplished in such manner as the Council may prescribe and the Grantee shall submit to the County an instrument, satisfactory to the County Attorney, transferring the ownership of such property to the County.

(g) In the event of any emergency or disaster, the Grantee shall, upon the request of the County Commissioners, make available its facilities to the County for emergency use during such emergency or disaster.

(h) The Grantee shall render efficient service, make repairs promptly, interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.

(i) Grantee shall maintain an office in the City of Rexburg, Idaho, which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

(j) Upon failure of the Grantee to complete any work required by this section, or any other work required by law or county ordinances within the time established and to the satisfaction of the County, the County may cause such work to be done and the Grantee shall pay to the County the reasonable cost thereof within thirty (30) days after receipt of an itemized list of the cost.

Section 7. Records and Reports.

The County shall have access at all reasonable hours to all of the Grantee's plans, engineering, statistical, customer and service records relating to the Grantee's operations in Fremont County, Idaho, and to all other records required to be kept under the terms of this franchise. Upon request of the County a report showing gross basic service revenues received by the Grantee from its operation in the County during the preceding fiscal year, and such other information as the County shall request with respect to properties and expenses related to the Grantee's services within the County shall be submitted to the County Clerk on or before the 1st day of the month following the calendar year for which such report is prepared.

Section 8. 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 of the County. The Grantee shall, at all times during the term of this franchise, be subject to all laws, ordinances and regulations duly adopted by any federal, state or municipal agency having lawful jurisdiction over the business conducted by the Grantee. Nothing in this ordinance shall be construed, however, as granting or giving to the County any power to regulate the business or affairs of the Grantee, except as expressly otherwise stated herein, as a common carrier, public utility or otherwise; it being the intention of the County Commissioners of Fremont County and of the Grantee, that the County does not purpose to exercise any regulatory functions upon the business or activities of the Grantee other than such powers and authorities as have heretofore been conferred upon the County by law.

Section 9. Compensation to the County.

As a consideration for this franchise, the Grantee agrees to pay to the Fremont County Treasurer a sum equal to three percent (3%) of the

annual gross basic service receipts received by Grantee from customers situate in Fremont County, Idaho.

Said percentages of gross basic service receipts shall apply only to receipts and payments originating from customers situate in the unincorporated areas of Fremont County, Idaho.

Checks for all such payments shall be made payable to the County Treasurer, and shall be submitted to the County Treasurer on or before March 1 of each year for the previous calendar year or portion thereof. Each payment shall be accompanied by a statement, in duplicate, verified by the Grantee or by a general officer or other fully authorized representative of the Grantee, showing in such form and detail as the County Auditor may require from time to time the facts material to a determination of the amounts due. The Auditor of the County shall determine the accuracy of the payment computation and if he finds any errors shall report the same to the Grantee for correction. The records of the Grantee reflecting the information relevant in determining revenues described in this section shall be conclusive in the determination of compensation paid to the County. The compensation paid hereunder shall be in lieu of any and all other franchise, occupation, privilege, license, wire, instrument, excise, revenue or any other tax, except ad valorem property taxes and special improvement assessments lawfully levied by the County or other subdivision of the State of Idaho, pursuant to law.

The compensation rates prescribed in this section shall be subject to review and renegotiation by the Grantee and the County at intervals of five years, commencing on the effective date of this franchise. At the expiration of each five-year period the County and the Grantee shall meet and in good faith negotiate the compensation payable to the County on the basis of the customary rates then in effect in the industry and the economic conditions then prevailing in Fremont County, Idaho.

Section 10. Rates.

The rates and charges for signals distributed by the Grantee shall be fair and reasonable. Grantee shall file a schedule of its rates with the County Clerk. All customer service contracts and subscriptions for services shall be in writing, which contract shall clearly express the term of the contract, the rates to be charged, the installation fees and all other terms and provisions relevant to such contract.

Section 11. Forfeiture of Franchise.

This franchise may be terminated and cancelled at any time for failure of the Grantee to comply with the terms and conditions hereof. Such termination and cancellation shall be by ordinance duly adopted after sixty (60) days notice to the Grantee by certified mail of such intent to terminate and cancel and after public hearing at which the Grantee has been given an opportunity to be heard before the County Commissioners. In the event of cancellation or termination, the Grantee shall, at its own expense, forthwith remove all of its construction and equipment from, in, upon, along, across, above, over and under the streets, alleys, highways, public ways and public places at and within the County, and restore the said streets, alleys, highways, public ways and public places in a good condition acceptable to the County, reasonable wear and tear excepted.

Section 12. New Developments.

It shall be the policy of the County liberally to amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of signals which afford it an opportunity for effectively, efficiently or economically to serve its customers.

Section 13. Miscellaneous.

Any franchise granted hereunder shall be a privilege to be held in trust by the original Grantee. Said franchise cannot in any event be sold, transferred, leased, assigned or disposed of in whole or in part, either by force or voluntary sale, merger, consolidation or any other means without the prior consent of the County expressed by

resolution of the Board of County Commissioners, and then only upon such conditions as the County Commissioners may establish; provided, however, that the Board of County Commissioners shall not unreasonably withhold its consent or impose any unreasonable conditions.

Time shall be of the essence of any franchise granted hereunder. The Grantee shall not be relieved of its obligations to comply with the provisions of this ordinance, or by any failure of the County to enforce prompt compliance.

Any privilege in the public way granted by a franchise issued under this ordinance shall be subordinate to any prior lawful occupancy of said public way.

No privilege or exemption except those specifically conferred by any franchise granted under this ordinance shall be given or implied.

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

The franchise granted hereunder shall permit Grantee to keep up with the state of art and to permit Grantee to do whatever other community antenna television systems similarly situated are permitted to do by the Federal Communications Commission or other duly authorized federal, state and municipal authority.

The Grantee shall prohibit its officers, agents and employees from attempting to direct the subscribers to deal with any particular firm or person in regard to sale, service, rental, or leasing of television receivers, radio receivers or television or radio receiver parts or accessories.

Section 14. Severability.

If any section, subsection, sentence, clause or any portion of this ordinance is found to be invalid and unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, on which action shall not affect the validity of the remaining portions of this ordinance.

Section 15. Repealer.

All ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 16. Grantee Without Recourse.

Grantee shall have no recourse whatsoever against the County for any loss, cost, or expense or damage arising out of any of the provisions or requirements of this franchise or because of the enforcement thereof by County, nor for the failure of County to have the authority to grant all or any part of this franchise.

Grantee expressly acknowledges that on accepting this franchise it did so relying on its own investigation and understanding of the power and authority of the County to grant this franchise.

By acceptance of this franchise, Grantee acknowledges that it has not been induced to enter into this franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the County or by any other third person concerning any term or condition of this franchise not expressed herein.

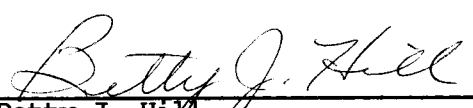
Grantee further acknowledges by the acceptance of this franchise that it has carefully read the terms and conditions hereof, and is willing to and does except all of the risks of the meaning of such terms and conditions and agrees that in the event of any ambiguity therein or in the event of any dispute over the meaning thereof the same shall be construed strictly against Grantee and in favor of the County.

Section 17. Effective Date.

This ordinance shall take effect and be in force from and after its passage, approval and publication as provided by law.


Chairman
Board of Fremont County, Commissioners

ATTEST:


Betty J. Hill
County Clerk