

ORDINANCE NO. 154

AN ORDINANCE OF THE CITY OF LOOKOUT MOUNTAIN, GEORGIA, GRANTING TO TELEScripps CABLE COMPANY, ITS SUCCESSORS, LESSEES AND ASSIGNS, A FRANCHISE FOR THE TERM OF SIXTEEN (16) YEARS, THE RIGHT, AUTHORITY, POWER, PRIVILEGE AND PERMISSION TO OPERATE A CABLE TELEVISION SYSTEM WITHIN THE CITY OF LOOKOUT MOUNTAIN, GEORGIA.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEN OF THE CITY OF LOOKOUT MOUNTAIN, GEORGIA, in meeting assembled, as follows:

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Cable Television Company Franchise Ordinance."

SECTION 2. Definitions. For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

(a) "City" is the City of Lookout Mountain, Georgia.

(b) "Governing body" is the Mayor and Councilmen or other governing body of the City of Lookout Mountain, Georgia.

(c) "Cable television system" or "system" means a cable television system as defined in the Federal Communications Commission rules and regulations.

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

(e) "Grantee" is the TeleScripps Cable Company doing business as Chattanooga Cable TV Company, or anyone who succeeds it in accordance with the provisions of this Franchise. TeleScripps Cable Company is a Colorado partnership owned by L-R Cable, Inc., and EWS Cable, Inc. Both L-R Cable and EWS Cable are 100% owned by Scripps Howard, Inc.

(f) "Television" shall mean a system for transmission of audio signals and visual images by means of electrical impulses.

SECTION 3. Grant of Authority.

(a) There is hereby granted by the City to the Grantee the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys and public ways now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of a cable television system for the interception, sale and/or distribution of television and radio signals, except that the City reserves the right to exclude those streets which should not be used for this purpose.

(b) The right to use and occupy said streets, alleys, and public ways for the purposes herein set forth shall not be exclusive.

SECTION 4. Compliance with Applicable Laws and Ordinances. The Grantee shall, like all other commercial entities doing business within the City at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the City.

SECTION 5. Territorial Area Involved. This Franchise relates to the present territorial limits of the City and to any area henceforth added thereto during the term of this Franchise or any renewal or extension thereof.

SECTION 6. Liability and Indemnification.

(a) The Grantee shall pay and by its acceptance of this Franchise the Grantee specifically agrees that it will pay all damages and penalties which the City may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation, or maintenance of the cable television system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Franchise.

(b) The Grantee shall indemnify and hold harmless the City at all times during the term of this Franchise from and against all claims for injury or damages to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.

(c) 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 City and the Grantee with regard to all damages mentioned in sub-paragraph (a) above in the minimum amounts of:

\$500,000 for bodily injury or death to any one person, within the limit, however, of \$1,000,000 to all persons for bodily injury or death resulting from any one accident; and

\$500,000 for property damages resulting from any one accident; and

\$500,000 for the infringement of copyrights; and

\$250,000 for all other types of liability.

(d) The insurance policy obtained by the Grantee in compliance with this section must be approved by the City Attorney and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Clerk during the term of this Franchise. Such approval shall not be delayed unduly.

SECTION 7. Signal Quality Requirements. The Grantee will undertake to:

(a) Produce a picture, whether black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair, and as good as required by the Federal Communication Commission;

(b) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(c) Limit failures to a minimum by locating and correcting malfunctions promptly;

(d) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.

In no event, however, shall the signal quality requirements imposed upon the Grantee hereunder exceed or vary in any material respect from the signal quality requirements imposed by applicable rules and regulations of the Federal Communications Commission.

SECTION 8. Operation and Maintenance of System.

(a) The Grantee shall render efficient service, make repairs promptly, and 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.

(b) The Grantee shall maintain an office or agent in the Metropolitan Chattanooga area for purposes of resolving all complaints regarding cable television operations and handling requests for repairs or adjustments.

(c) The City and the Grantee shall adopt reasonable procedures for the investigation and resolution of all complaints regarding cable television operations and for the handling of requests for repairs or adjustments.

(d) Notice of the procedures for reporting and resolving complaints and handling requests for repairs or adjustments shall be given to each subscriber at the time of initial subscription to the cable television system.

SECTION 9. Channel Capacity and Carriage of Signals.

The Grantee is in the process of designing and engineering the rebuild and/or upgrade of the existing cable television system so as to provide its subscribers with a system of seventy-eight (78) channels of capacity for video or other services. Grantee agrees that actual construction shall begin no later than November 15, 1991 in the system and is to be completed in the City no later than December 31, 1994. During this period the Grantee shall make reports to the City on a quarterly basis starting with the end of the first quarter of 1992 on the progress of the construction, which reports shall continue to be given until the system has been rebuilt in the City.

SECTION 10. Basic Twelve Channel Service. On or before July 1, 1991, Grantee shall offer to its subscribers within the City a basic twelve channel service, and such service shall continue to be available within the City so long as such service is provided to subscribers in the City of Chattanooga, Tennessee.

SECTION 11. Program Alteration. All programs of broadcasting stations carried by the Grantee shall be carried in their entirety as received, with announcements and advertisements and without additions.

SECTION 12. Service to Schools and Municipal Buildings. The Grantee shall provide installation and basic service to all public schools and municipal buildings upon request by the City and at no cost to it or to the public school

system; provided, however, that the cable shall pass such schools or buildings and provided further that the Grantee's obligation to provide free service shall be limited to one television receiver at each such location. The Grantee is authorized to charge for additional receivers in accordance with its regular schedule of charges and for any unusual or extraordinary costs or expenses incurred by Grantee in providing installation or services under this Section 12.

SECTION 13. Emergency Use of Facilities. In the case of any emergency or disaster, the Grantee shall, upon request of the governing body of the City, make available its facilities to the City for emergency use during the emergency or disaster period.

SECTION 14. 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) The Grantee shall install and maintain its wires, cable, fixtures and other equipment in accordance with the requirements of the National Electrical Safety Code and the National Electrical Code in such manner that they will not interfere with any installations of the City or of a public utility serving the City.

(c) All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of the City, wherever situated or located, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair.

(d) The Grantee shall have sufficient employees to provide safe, adequate, and prompt service for its facilities.

SECTION 15. New Developments. It shall be the policy of the City 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 television and radio signals which will afford it an opportunity more effectively, efficiently or economically to serve its customers.

SECTION 16. Conditions on Street Occupancy.

(a) All transmissions and distribution structures, lines, and equipment erected by the Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(b) In case of disturbance of any street, sidewalk, alley, public way, or paved area, the Grantee shall, at its own cost and expense and in a manner approved by the City Engineer, replace and restore such street, sidewalk, alley, public way, or paved area to as good a condition as before the work involving such disturbance was done.

(c) If at any time during the term of this Franchise the City shall lawfully elect to alter or change the grade of any street, sidewalk, alley, or other public way, the Grantee, upon notice by the City, shall within fifteen (15) working days remove, adjust or relocate its poles, wires, cables, underground conduits, manholes, and other fixtures, as may be necessary, at its own expense.

(d) Any poles or other fixture placed in any public way by the licensee shall be placed in such manner as not to interfere with the usual travel on such public way or with other utilities.

(e) 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. The expense of temporary removal or 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 forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(f) The Grantee shall have the authority to trim trees upon and overhanging streets, alleys and sidewalks of the City in such manner so as not to impair the natural beauty of said City and so as to prevent the branches of such tree from coming in contact with the wires and cables of the Grantee.

(g) In all sections of the City where the cables, wires or other like facilities of public utilities are placed underground, the Grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits the Grantee to do so without undue or prohibitive cost.

SECTION 17. Preferential or Discriminatory Practices Prohibited. The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage, except that Grantee may conduct sales promotion campaigns, may grant reduced installation charges during such campaigns and may act as necessary to address competition and to promote good will and promote sales the Grantee may grant concessions on service charges to persons engaged in television sales or repair business.

SECTION 18. Removal of Facilities Upon Request. Upon termination of service to any subscriber, the Grantee shall promptly remove its dropline from the premises of such subscriber upon the subscriber's request and at the subscriber's expense.

SECTION 19. Transfer of Franchise. The Grantee shall not transfer this Franchise to another person without prior approval of the City by ordinance.

A mortgage, lien, deed to secure debt, deed of trust, security interest, or other encumbrances of said Franchise as a part of acquiring, constructing, equipping or maintaining the cable television system shall not be considered a violation of this Section; and any such creditor shall be entitled to all the rights and remedies granted to the Grantee under this Franchise, including without limitation, upon a bona fide default of the Grantee, a foreclosure or voluntary conveyance of such secured creditor or secured creditor's assignees and any subsequent sale or other disposition of the security referred to in any such document without the consent or approval of the City.

SECTION 20. Transactions Affecting Ownership of Facilities.

(a) In order that the City may be aware of financial transactions affecting the ownership of the system, the Grantee shall notify the City of the execution of it of any security agreement concerning any of the facilities and property, real or personal, of the Grantee located in the City.

(b) Except as provided for in Section 19 and in subsection (a) of this Section 20, the Grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the cable television system.

SECTION 21. Change of Control of Grantee. Prior approval of the governing body of the City shall be required where ownership or control of more than 50% of the right to control of Grantee is proposed to be acquired by a person or group of persons acting in concert, none of whom already owns or controls 50% or more of such right of control, singularly or collectively, directly or indirectly. By its acceptance of this Franchise the Grantee specifically grants and agrees that any such acquisition occurring without prior approval of the governing body of the City shall constitute a violation of this Franchise by the Grantee.

SECTION 22. Filings and Communications with Regulatory Agencies. Upon the specific written request of the City, copies of any petition, application and communication submitted by the Grantee to the Federal Communications Commission or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting the operations of the cable television system authorized pursuant to this Franchise shall be furnished to the official designated by the City.

SECTION 23. City Rights in Franchise.

(a) The City shall have the right to inspect such documents and records of the Grantee specifically relating to the City which federal law permits during normal business hours; provided, however, that the City shall give the Grantee at least forty-eight (48) hours notice of its intention to exercise such right of inspection, and provided that under no circumstances shall the City have the right to remove any of the Grantee's documents and records from the Grantee's premises without the prior consent of the Grantee, but shall have the right to copy such documents and records.

(b) The City shall have the right to reasonably make such inspections as it shall find necessary to insure compliance with the terms of this Franchise and other pertinent provisions of law.

(c) Upon the cancellation of the Franchise under Section 26 hereof, the City shall have the right to require the Grantee to sell or to remove at its own expense all portions of the cable television system from all public ways within the City.

SECTION 24. Maps and Plats. Upon the specific written request of the Mayor, the Grantee shall make available for review true and accurate maps or plats of the cable television system within the City.

SECTION 25. Payment to City. In accordance with the rules and regulations of the Federal Communications Commission, the Grantee shall pay to the City as a franchise fee during the existence of the Franchise or any renewal or extension thereof the following:

During the calendar year ending December 31, 1991, the Grantee shall pay a franchise fee to the City of three percent (3%) of the gross monthly subscriber fees for the year.

During the calendar year ending December 31, 1992, the Grantee shall pay a franchise fee to the City of four percent (4%) of the gross monthly subscriber fees for the year.

During the calendar year ending December 31, 1993, and during each succeeding year, the Grantee shall pay a franchise fee to the City of five percent (5%) of the gross monthly subscriber fees for the year.

Beginning with the franchise fee payment due for calendar year 1992, the Grantee will no longer be entitled to deduct property taxes, license fees and other charges or impositions paid by Grantee from the amount of the franchise fee payable to the City.

The aforesaid payments shall be made annually within ninety (90) days of the end of each calendar year and shall be accompanied by a certified statement of gross basic or gross subscriber revenues derived by the Grantee from the operation of the system during such calendar year. Said statement shall be audited by a certified public accountant and the report shall be certified by same.

SECTION 26. Revocation of Franchise.

(a) In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights and privileges of the Grantee hereunder in the event that the Grantee:

(1) Violates any material provisions of this Franchise and fails to correct such violation within a period of ninety (90) days after written notice from the City to correct such default or non-compliance;

(2) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt;

(3) Attempts to dispose of any of the facilities or properties of its cable television business in violation of this Franchise; or

(4) Attempts to evade any of the material provisions of this Franchise or practices any material fraud or deceit upon the City.

(b) Such termination and cancellation shall be by ordinance duly adopted after thirty (30) days notice to the Grantee and shall in no way affect any of the City's rights under this Franchise or any provision of the law. Before this Franchise may be terminated and canceled under this Section, the Grantee must be provided with an opportunity to be heard before the governing body of the City and to cure or correct any default, violation, non-compliance or other event causing revocation hereunder.

SECTION 27. City's Right to Intervention. The Grantee agrees not to oppose intervention by the City at the City's expense in any suit or proceeding to which the Grantee is a party.

SECTION 28. Further Agreement by Grantee. The Grantee agrees to abide by all provisions of this Franchise.

SECTION 29. Duration and Acceptance of Franchise.

(a) This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a period of sixteen (16) years from the effective date of this Franchise Ordinance, with the option on the part of the Grantee of a renewal period of reasonable duration, provided that within thirty (30) days after the date of the passage of this ordinance the Grantee shall file with the Council its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms and conditions. Such acceptance and promise shall be in writing duly executed and sworn to, by or on behalf of the Grantee before a notary public or other officer authorized by law to administer oaths.

(b) Should the Grantee fail to comply with subsection (a) above, it shall acquire no rights, privileges, or authority under this Franchise whatever.

SECTION 30. Erection, Removal and Common User of Poles. No poles or other wire-holding structures shall be erected by the Grantee without prior approval of the Council with regard to location, height, type and any other pertinent aspect, which approval shall not be unreasonably withheld. However, no location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the governing body reasonably determines that the public convenience would be enhanced thereby.

SECTION 31. Rates. If the City should be permitted to exercise any rate-making authority by federal statute during the term of this franchise, the City agrees that the Grantee shall have the authority at all times to conform the rates which shall be charged to its subscribers in the City to those being charged to subscribers in the City of Chattanooga, Tennessee; provided, the City is given written notice of the filing of any request by Grantee for a rate adjustment with the City of Chattanooga, Tennessee.

SECTION 32. Subscriber Refunds on Termination of Service. If any subscriber of the Grantee terminates service because of the Grantee's failure to render service to such subscriber of a type and quality provided for herein within thirty (30) days from tap-in, the Grantee shall refund to such subscriber the tap-in charge paid by him.

SECTION 33. Separability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 34. Force Majeure. Any and all obligations of Grantee hereunder shall be waived or delayed to the extent that Grantee is unable to carry out the same due to labor troubles, fires, ice, floods, explosion or other casualties or accidents, or to inability to obtain necessary supplies or materials or satisfactory substitutes by principal manufacturer of quality equipment used in installation and/or construction of the system, or to Acts of God or National Defense of this Country, or to the delay by the utility companies of clearance of space for the Grantee's cable, or to any other cause, happening, event or

occurrence (whether or not of the same general character as those specifically enumerated) beyond Grantee's reasonable control.

SECTION 35. Amendment. The provisions of this Franchise Ordinance shall be amended only by ordinance passed by the governing body of the City.

SECTION 36. More Favorable Terms Prohibited. The City shall not grant any overlapping franchises for cable service within its jurisdiction on terms or conditions more favorable or less burdensome than those in this Franchise.

SECTION 37. Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 38. Part of Code of Ordinances. It is the intention of the Council of the City that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City and the Sections of this Ordinance may be renumbered to accomplish such intention.

SECTION 39. Effective Date. The Ordinance shall be effective ten (10) days after its adoption and approval by at least three (3) members of the Council of the City after two (2) readings at least one (1) week apart.

Approved on first reading on November 21, 1991.

James D. Rawfuge
Member of City Council

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James L. Ensign Jr.
Member of City Council

Susan W. Pittway
Member of City Council

Daniel S. Chandler
Member of City Council

John W. Kettering
Member of City Council

D. N. Hain
MAYOR OF LOOKOUT MOUNTAIN, GEORGIA

ATTEST:

Donna W. West
CITY CLERK

Approved and adopted on second reading on December 19, 1991.

[Signature]
Member of City Council

[Signature]
Member of City Council

[Signature]
Member of City Council

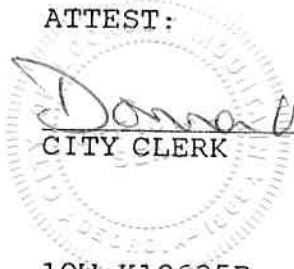
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Member of City Council

Member of City Council

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MAYOR OF LOOKOUT MOUNTAIN, GEORGIA

ATTEST:

[Signature]
CITY CLERK



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