

AN ORDINANCE GRANTING A FRANCHISE TO STAR CATV INVESTMENT CORPORATION, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF WALLIS, TEXAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE

BE IT ORDAINED BY THE CITY OF WALLIS, TEXAS:

SECTION 1 -- TITLE

This Ordinance shall be known and may be cited as CABLE TELEVISION ORDINANCE.

SECTION 2 -- PREAMBLE

This Ordinance was passed after a full, open, and public hearing upon prior notice and opportunity of all interested parties to be heard and upon careful consideration of Star Catv Investment Corporation's qualifications, including its legal, character, financial and technical qualifications, and the adequacy and feasibility of its construction arrangements.

SECTION 3 -- DEFINITIONS

For the purpose of this Ordinance, and when not inconsistent with the context, words used herein in the present tense include the future; words in plural include the singular, and vice versa. The word "shall" is always mandatory. The captions supplied herein for each section are for convenience only. Said captions have no force of law, are not part of the section, and are not to be used in construing the language of the section. The following terms and phrases, as used herein, shall be given the meaning set forth below:

(A) "City" is the City of Wallis, a municipal corporation under the laws of the State of Texas.

(B) "Grantee" is Star Catv Investment Corporation, a corporation, P. O. Box 532, Waxahachie, Texas, 75165, and is the grantee of rights under this franchise.

(C) "City Council" is the City Council of the City of Wallis or its designated representative.

(D) "Federal Communications Commission" or "FCC" is the present Federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

(E) "Person" is any individual, firm, partnership, association, company or organization of any kind.

(F) "Gross Subscriber Revenues" shall include any and all compensation from periodic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services, but shall not include any refunds or credits made to subscribers or any taxes imposed on the services furnished by Grantee. Nor shall it include revenue from "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels, and per program or per channel charges, home box office, or installation of equipment charges, if any.

(G) "Regular Subscriber Services" shall include the carriage of broadcast signals and FCC mandated non-broadcast services, but shall not include "ancillary" or "auxiliary" services, which include, but are not limited to, advertising, leased channels, and programming supplied on a per program or per channel basis.

SECTION 4 -- GRANT OF NON-EXCLUSIVE AUTHORITY

There is hereby granted by the City to Grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over or under the streets, alleys, easements, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the city of a cable television system for the transmission of television signals and other signals either separately or upon or in conjunction with any public utility maintaining the same in the City with all the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under and upon the streets, sidewalks, alleys, easements and public grounds and places in the City to install, erect, operate or in any way acquire a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. The rights herein granted for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, easements, public ways and places to any person at any time during the period of the franchise.

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City.

SECTION 5 -- FRANCHISE TERM AND RENEWAL

(A) This franchise shall take effect and be in full force from and after the final passage hereof, subject to acceptance by Grantee as herein provided and the same shall continue in full force and effect for a term of fifteen (15) years, beginning with the date of such acceptance.

(B) Grantee shall have the option of renewal of this franchise for an additional period not to exceed fifteen (15) years. Should Grantee exercise this option, it shall so notify the City, in writing not less than three (3) months prior to expiration of this franchise. Upon exercise of this option by Grantee, the City shall conduct a full renewal proceeding upon prior notice and opportunity of all interested parties to be heard.

The renewal proceedings shall be heard for the purpose of consideration of Grantee's performance under this franchise in order to determine whether to renew this franchise. Renewal shall not be unreasonably denied and shall be granted unless Grantee is found, after opportunity to be heard, to be in material and continuing default under the provisions of this franchise and to be unqualified to continue operation of this cable television system. If this franchise is renewed by the City, all of the terms and provisions contained herein shall be controlling during the renewal period, except to the extent that said terms and provisions are modified. Should the City, for any reason, be unable to complete the renewal proceeding prior to the expiration of this franchise, Grantee shall have the right to continue the operation of this cable television system pursuant to the terms of this franchise until such time as the renewal proceedings is finally concluded. Should the City deny renewal of this franchise, such denial shall be accompanied by a written statement setting forth the reasons for the denial. Furthermore, in the event that the City denies renewal, Grantee shall be afforded a period of six (6) months following denial within which to sell, transfer or convey this cable television system, including this franchise, to a qualified purchaser at fair market value and upon approval by the City. During the six-month period, which shall run from the effective date of the final order or decision denying renewal, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the terms of this franchise. Notwithstanding the foregoing and any other sections within this franchise, it is provided that upon the renewal the franchise fee, as is set out in this agreement, may be negotiated.

SECTION 6 -- FRANCHISE TERRITORY

The non-exclusive franchise is for the present territorial limits of the City of Wallis and for any area henceforth added thereto during the term of this franchise.

Cable service shall be made available to the entire franchise area in accordance with the construction timetable contained in Section 7 of this ordinance.

SECTION 7 -- COMMENCEMENT AND COMPLETION OF CONSTRUCTION

(A) Within thirty (30) days of the date of the award of this franchise, the Grantee must undertake the necessary steps to register its operation from the appropriate governmental agencies regulating cable services. If authorization to operate is not received within six (6) months of the date of this franchise, the franchise may be cancelled at the option of the City. The Grantee shall begin construction immediately upon receiving this franchise, and shall provide cable services to the franchise area within twelve (12) months after this franchise ordinance is approved.

(B) The Grantee shall furnish bond to the City in the sum of \$15,000.00, which shall guarantee cable communications system construction within the time set forth and in the manner herein provided. Such bond shall be guaranteed by a company approved by the City.

In lieu of the bond hereinabove provided for, Grantee may at its option on acceptance of this franchise deposit with the City a Certificate of Deposit issued by any bank or savings and loan association doing business in the State of Texas, or cash funds in the amount of \$100,000.00 which certificate or cash monies shall be pledged to guarantee the cable communications system construction within the time set forth and in the manner herein provided. Due to the uncertainty and speculative nature of any damages that the City might incur as a result of the Grantee's failure to construct the system within the time set forth in the manner herein provided, such pledge shall recite that the monies so pledged constitute agreed liquidated damages to the City in the event the Grantee fails to so construct such system.

(C) All structures, lines and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of streets, alleys, easements and other public ways and places 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 City now or hereafter in force. Existing poles, posts, conduits and other such structures of the electric power system of the City or of any telephone company or other public

utility shall be made available to Grantee for leasing or licensing upon reasonable terms and rates and shall be used to the extent practicable in order to minimize interference with travel and avoid unnecessary duplication of facilities. The City shall actively assist Grantee to the fullest extent necessary in obtaining reasonable joint pole or conduit use agreements from the owners of existing poles or conduits.

(D) In case of any disturbance by Grantee of pavement, sidewalk, driveway or other surfacing, Grantee shall, as its own cost and expense and in a manner approved by the City, replace and restore all paving, sidewalk, driveway or surface so disturbed in as good condition or better as before said work was commenced within five (5) working days. Main roads and thoroughfares will be avoided during peak traffic hours.

Further it is provided that all streets and roads within the City being disturbed will be kept passable at all times.

(E) In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change any street, alley, easement or other public way requiring the relocation of Grantee's facilities, then in such event, Grantee, upon reasonable notice by the City, shall remove, relay and relocate the same at its own expense.

(F) Grantee, under the city's supervision, shall have the authority to trim trees upon and overhanging all streets, alleys, easements, sidewalks and public places of the City so as to prevent the branches of such trees from coming in contact with Grantee's facilities.

(G) All poles, lines, structures and other facilities of Grantee in, on, over and under the streets, sidewalks, alleys, easements and public grounds or places of the City shall be kept, by Grantee, at all times in a safe and substantial condition.

(H) An Emergency Alert System will be provided with alerts being originated from the office of the Police Chief. Installation of said system being at the sole expense of the Grantee.

(I) Grantee shall provide plans and specifications for all proposed and existing installations and construction to the City or its designated representative for review and approval at least thirty (30) days prior to the start of construction. This provision shall apply to each construction sequence if the construction is accomplished in phases.

(J) Whenever by reason of the construction, repair, maintenance, relocation, widening, raising or lowering of the grade of any street by City or by the location or manner of construction, reconstruction, maintenance or repair of any public property, structure or facility by City, it shall be deemed necessary by City for Grantee to move, relocate, change, alter or modify any of its facilities or structures, such change, relocation, alteration or modification shall be promptly made by Grantee, at its cost and expense, when directed in writing to do so by City, without claim for or right of reimbursement of cost or damages against City. In the event Grantee, after such notice, fails or refuses to commence, pursue or complete such relocation work within a reasonable time, City shall have the authority, but not the obligation, to remove or abate such structures of facilities and to require Grantee to pay to City the reasonable cost of such removal or abatement, all without compensation or liability for damages to Grantee.

(K) Any poles or other fixtures placed in or adjacent to any street by the Grantee shall be placed in such manner as to comply with all requirements of the City.

(L) The Grantee shall, at the request of any person holding a moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such 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.

(M) In all section 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.

(N) At the expiration of the term for which the franchise is granted, or upon its termination and cancellation, as provided for herein, the City shall have the right to require the Grantee to remove at its own expense all portions of the cable television system from all streets within the City.

SECTION 8 -- RATES

The maximum rates which may be charged by the Grantee to subscribers shall be as follows:

See attached Schedule marked Schedule "A" Rates

All requests for increases in rates and/or charges shall be subject to the approval or disapproval of the City Council after an appropriate public hearing is held at which all interested parties are heard. Grantee shall reimburse City for reasonable expenses incurred in employing rate consultants to evaluate Grantee's rate modification requests, to present evidence and to advise City Commission on such rate modification requests under the terms of this Section.

SECTION 9 -- PAYMENT TO THE CITY

(A) Amount and Time. As compensation for the right, privilege and franchise herein conferred, Grantee shall pay to City each year during the term of this franchise a sum equal to three percent (3%) of Grantees Gross Subscribers Revenues for such year. Such payments shall be made quarterly. Grantee shall file with the City Secretary within sixty (60) days after the expiration of each quarter of each calendar year, a portion thereof, during which this franchise is in effect, a financial statement prepared according to accepted accounting practice showing in detail the Gross Revenues of Grantee during the preceding quarter of the calendar year. Such statement shall be accompanied by Grantee's payment to City of three percent (3%) of such Gross Revenues for such quarter.

(B) Right of Inspection of Records. City shall have the right to inspect Grantee's records showing the Gross Revenues from which payments to City are computed and to audit and recompute any and all amounts paid under this franchise. No acceptance of payment shall be construed as a release or as an accord and satisfaction of any claim City may have for further or additional sums payable under this franchise or for the performance of any other obligation hereunder.

SECTION 10 -- BROADBAND CABLE COMMUNICATIONS SERVICE

The communications system permitted to be installed and operated hereunder shall:

(A) Be subject to all applicable rules and regulations of the Federal Communications Commission, specifically including Part 76, and by the laws of the State of Texas. Should there be any modifications of the provisions of Section 76.31 of the Rules and Regulations of the Federal Communications Commission which must be incorporated

into this franchise, the City and Grantee agree that such incorporation shall be accomplished within one (1) year after the effective date of the FCC's adoption of the modification or upon renewal of this franchise, whichever occurs first.

(B) Be operated in conformance with the FCC's Technical Standards, 47 C.F.R. 76.601 et seq.

(C) Carry on the system all allowable broadcast signals pursuant to FCC's signal carriage rules.

(D) Provide optional premium channel at additional costs when enough subscribers request same to make it economically feasible - Home Security network for monitoring fire/smoke, intrusion, assault and medical emergency. Any party whose house or business is passed by the cable can subscribe to the security service, as long as he is a recipient of Basic Monthly Cable Television Service.

SECTION 11 -- INDEMNIFICATION

It shall be expressly understood and agreed by and between the City and any Grantee hereunder that the Grantee shall save the City and its agents and employees harmless from and against all claims, damages, losses, and expenses, including attorney's fees sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever arising out of but not limited to copyright infringements and all other damages arising out of the installation, operation or maintenance of the cable system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this ordinance and any franchise granted hereunder.

Within thirty (30) days after the effective date of this franchise, Grantee shall file with the City Secretary and shall maintain on file throughout the term of this franchise a liability insurance policy issued by a company duly authorized to do business in the State of Texas insuring City as an additional insured and Grantee with respect to the installation, maintenance and operation of Grantee's system in the following minimum amounts:

(1) One person. Five Hundred Thousand Dollars (\$500,000.00) for bodily injury or death to any one person.

(2) One Accident. One Million Dollars (\$1,000,000.00) per occurrence for bodily injury or death resulting from any one accident.

(3) Property Damage. Five Hundred Thousand Dollars (\$500,000.00) for property damage resulting from any one occurrence.

(4) All other types of Liability. One Hundred Thousand Dollars (\$100,000.00) for all other types of liability.

(5) Other Types of Insurance. Grantee shall maintain and require its contractor to maintain Workmans Compensation Insurance in compliance with the laws of the State of Texas and Automobile Liability Insurance for all company and contractors vehicles for a minimum of \$100,000.00 per person and \$300,000.00 per occurrence and \$100,000.00 property damage insurance.

City Commission reserves the right to require Grantee to increase the minimum amounts of liability insurance coverage to reasonable amounts generally required of such systems. Such requirements shall be expressed by resolution or ordinance.

Such policy of liability insurance shall contain the provision that written notice of expiration, cancellation or reduction in coverage of the policy shall be delivered to the City Secretary and to Grantee at least thirty (30) days in advance of the effective date thereof.

Such liability insurance shall be kept in full force and effect by Grantee during the existence of this franchise and thereafter until after the removal of all poles, wire, cables, underground conduits, manholes and other conductors and fixtures incident to the maintenance and operation of Grantee's system, should such removal be required by City Commission or undertaken by Grantee.

For all intents and purpose, Grantee is an Independent Contractor.

SECTION 12 -- SAFETY REQUIREMENTS

The Grantee shall install and maintain its cables and other equipment in accordance with standard utility practice, utility pole line agreements, State or City Ordinance and statutes and regulations of the National Electric Safety Code.

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.

SECTION 13 -- OTHER BUSINESS ACTIVITY

Grantee shall not engage in the business of selling, repairing or installing television receivers or radio receivers within City during the term of this franchise. Grantee shall not suggest, recommend or single out any television or radio sales or service firm or business establishment to be patronized by subscribers. Grantee shall exercise all reasonable influence on its officers, agents, employees, and representatives to insure compliance with this section. It is provided, that this section does not prohibit Grantee from servicing or

repairing converters and other technical equipment which it owns and which are leased or otherwise furnished to subscribers for use with Grantee's services.

SECTION 14 -- SERVICE STANDARDS

(A) The Grantee shall put, keep, and maintain all parts of the system in good condition throughout the entire franchise period.

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

(C) 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 system use.

(D) 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 City.

(E) Limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than forty-eight (48) hours after notice, unless such failures are caused by the acts of God or circumstances beyond the control of the franchise.

(F) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered and meets all relevant specifications of the Federal Communications Commission and other applicable federal, state and local regulations. The commission may require proof of calibration of such test instruments if deemed necessary in order to arbitrate a specific complaint.

SECTION 15 -- COMPLAINT PROCEDURE

City Official Responsible. The mayor is designated by the City as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

The Grantee shall maintain a publicly listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received on a twenty-four (24) hour basis.

The grantee shall maintain a repair and maintenance crew capable of responding to subscriber complaints or requests for service within 24 hours after receipt of the complaint or request. No charge shall be made to the subscriber for this service.

The Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City Manager. 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 or the Grantee, either the customer or the Grantee may request that the matter be presented to the City Manager for a hearing and resolution.

When there have been similar complaints made or when there exists other evidence, which, in the judgment of the City Council casts doubt on the reliability or quality of cable service, the City Council shall have the right and authority to compel that Grantee to test, analyze, and report on the performance of the system. Such report shall be delivered to the City Council no later than fourteen (14) days after the City Council formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing; the results of such test; and the method in which said complaints were resolved.

Said tests and analyses shall be supervised by a professional engineer not on the permanent staff of the company. The aforesaid engineer should sign all records of the special tests and forward to the City Council such records with a report interpreting the results of the tests and recommending actions to be taken by the City.

SECTION 16 -- RIGHT OF REVOCATION: MONETARY PENALTIES

The franchising authority shall have the right to rescind or revoke the rights herein granted upon any violation by the Grantee of any material obligation or requirement contained herein, or upon the refusal to comply with any reasonable request made by the City Council concerning compliance with this ordinance, after written notice by the franchising authority to the Grantee, and continuation of such violation or refusal to comply by the Grantee.

Such written notice to the Grantee shall specify precisely the manner in which the Grantee is in violation, with respect to the franchise. The notice shall specify a reasonable amount of time within which the Grantee must correct the violation, but in no event shall the time period be less than thirty (30) days from the date of receipt of the notice to the Grantee.

In the event the Grantee shall be adjudicated bankrupt or placed in receivership, the City may by resolution declare this franchise herein granted to be forfeited and terminated.

The City reserves the right to levy fines upon the Grantee in a reasonable amount, not to exceed \$200.00 per violation, for immaterial breaches of the franchise agreement. Failure to pay such fines shall be cause for revocation of the franchise.

SECTION 17 -- PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED

Grantee shall not, as to rates, charges, service, services 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.

SECTION 18 -- GRANTEE'S APPLICATION INCORPORATED

By its acceptance of the franchise, Grantee specifically grants and agrees that its application and proposal brochure is hereby incorporated by reference and made a part of this ordinance. Failure to provide services as promised in Grantee's application and proposal brochure as incorporated herein shall be deemed a breach of this ordinance.

SECTION 19 -- TRANSFER AND ASSIGNMENT

The franchise granted by this ordinance cannot in any event be sold, transferred, leased, assigned or disposed of as a whole or in part, or otherwise, without prior consent of the City expressed by Resolution, and then only under such conditions as may be prescribed in the consenting Resolution; provided, however, that no such consent shall be unreasonably withheld, and further provided that no such consent shall be required for any transfer in trust, mortgage or other hypothecation, as a whole or in part, to secure an indebtedness. There shall be no restrictions upon the transfer of this franchise to a controlled subsidiary or to a parent corporation.

SECTION 20

The Wallis-Orchard Independent School District will be furnished one (1) connection each to the designated school buildings and each school will be responsible for service beyond the said free connection, and by requesting said free connection, the school will hold said Company free of liability.

SECTION 21 -- EMERGENCY USE OF THE SYSTEM

In the event of an emergency or disaster, Grantee shall upon request of City Commission or its designated representative, make available its facilities to City for emergency use during the period of such emergency or disaster and shall provide such personnel as may be necessary to operate its facilities under the circumstances. Grantee shall incorporate into its facility the capability for an emergency interrupt whereby City, in time of crisis, may be able to introduce a bulletin on all channels simultaneously.

SECTION 22 -- SEVERABILITY

If any section, sentence, clause or phrase of the ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the ordinance, and any portions in conflict are hereby repealed. Provided, however, that in the event that the Federal Communications Commission declares any section invalid, then such section or sections shall be renegotiated by the City and the Grantee.

PASSED AND APPROVED on this 14th day of September, 1982.

ATTEST:

Frank B. Petter
FRANK B. PETTER, Mayor

BY:

Betty Marek
BETTY MAREK, City Secretary

APPROVED AS TO LEGAL FORM:

BY:

V. O. "BUPCH" CARDEN, JR.
Attorney for City