

ORDINANCE NO. 63

AN ORDINANCE GRANTING A FRANCHISE TO EAST ARKANSAS CABLEVISION, INC., AN ARKANSAS CORPORATION, ITS SUCCESSORS AND ASSIGNS, TO BUILD, CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF CHERRY VALLEY, ARKANSAS, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THIS FRANCHISE:

BE IT ORDAINED BY THE PEOPLE OF THE CITY OF CHERRY VALLEY, ARKANSAS

SECTION 1 -- TITLE

This Ordinance shall be known and may be cited as The Cherry Valley Cable TV Ordinance.

SECTION 2 -- ORDINANCES AND RESOLUTIONS REPEALED

All Ordinances, Resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 3 -- 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 Grantee's qualifications, including its legal, character, financial and technical qualifications and the adequacy and feasibility of its construction arrangements.

SECTION 4 -- 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 Cherry Valley, Arkansas, a municipal corporation under the laws of the State of Arkansas.

(B) "Grantee" is East Arkansas Cablevision, Inc., a

corporation organized and existing under the laws of the State of Arkansas, and it is the grantee of rights under this franchise.

(C) "City Council" is the City Council of the City of Cherry Valley, Arkansas 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, corporation, company or organization of any kind.

(F) "Gross Subscriber Revenues" shall include any and all compensation or receipts derived by Grantee from installation, disconnection and re-installation charges and periodic service charges in connection with the carriage of broadcast signals and Federal Communications Commission mandated non-broadcast services within the City, but shall not include any refunds or credits made to subscribers or any taxes imposed upon 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 programming supplied on a per program or per channel charge basis, 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 charge basis, if any.

#### SECTION 5 -- GRANT OF 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 and under the streets, alleys, public utility 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 permitted by the FCC, either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of 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, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to 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, public utility easements, public ways and places to any person at any time during the period of this franchise; provided, however, that nothing contained herein shall be deemed to require the granting of additional CATV franchises if, in the opinion of the City Council, it is in the public interest to restrict such franchises to one or more.

#### SECTION 6 -- POLICE POWER

Grantee shall at all times during the term of this franchise be subject to all lawful exercise of the police power of the City. The right is hereby reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or alter in any manner the rights granted herein, and shall not conflict with

the laws of the State of Arkansas, the laws of the United States of America, or the rules, regulations, and policies of the FCC.

SECTION 7 -- INDEMNIFICATION

Grantee shall save the City harmless from all loss sustained by the City on account of any suit, judgement, execution, claim or demand whatsoever against the City resulting from negligence on the part of Grantee in the construction, operation or maintenance of its cable television system in the City; and for this purpose Grantee shall carry property damage and personal injury insurance with some responsible insurance company or companies qualified to do business in the State of Arkansas. The amounts of such insurance to be carried for liability due to property damage shall be \$100,000.00 as to any one occurrence; and against liability due to injury to or death of person, \$300,000.00 as to any one person and \$300,000.00 as to any one occurrence. The City shall notify Grantee, in writing, within thirty (30) days after the presentation of any claim or demand, either by suit or otherwise, made against the City on account of any negligence as aforesaid on the part of Grantee. Where any such claim or demand against the City is made by suit or other legal action, written notice thereof shall be given by the City to Grantee not less than five (5) days prior to the date upon which an answer to such legal action is due or within thirty (30) days after the claim or demand is made upon the City, whichever notice period yields Grantee the larger amount of time within which to prepare an answer. Failure by the City to notify Grantee properly in accordance with the foregoing of any such claim, suit, or demand against the City shall release Grantee from its obligation to indemnify the City as provided herein.

SECTION 8 -- CONSTRUCTION AND MAINTENANCE

(A) 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, public utility

easements and other public ways and places and to cause minimum interference with the rights or reasonable convenience of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of the City now and hereafter in force. To the extent that existing poles, posts, conduits, and other such structures are not available, or are not available under reasonable terms and conditions, including excessive cost or unreasonable limitation upon the use of Grantee's cable television system, Grantee shall have the right to purchase, lease, or in any other manner acquire land, rights-of-way, or public utility easements upon or under which to erect and maintain its own poles, conduits, and other such structures as may be necessary for the construction and maintenance of its cable television system.

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

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

(D) Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its lines to permit the moving of the building. The expense of such temporary removal shall be paid by the person requesting the same, and Grantee shall have the authority

to require such payment in advance.

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

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

#### SECTION 9 -- FRANCHISE TERM

This franchise shall take effect and be in full force from and after acceptance by Grantee as provided in Section 16, and the same shall continue in full force and effect for a term of Fifteen (15) Years; provided, however, that should FCC authorization be necessary in connection with implementation or continuation of the cable television service contemplated by this franchise, then the term shall begin upon the effective date of such FCC authorization.

#### SECTION 10 -- RENEWAL PROCEDURE

Grantee shall have the unlimited option to renew this franchise for an additional period not to exceed fifteen (15) years. Should Grantee desire to exercise this option, it shall so notify the City, in writing, not less than three (3) months prior to expiration of this franchise.

#### SECTION 11 -- FORFEITURE

If Grantee should violate any of the terms, conditions, or provisions of this franchise or if Grantee should fail to comply with any reasonable provisions of any ordinance of the City regulating the use by Grantee of the streets, alleys, public utility easements or public ways of the City, and should Grantee further continue to violate or fail to comply with the same for

a period of thirty (30) days after Grantee shall have been notified in writing by the City to cease and desist from any such violation or failure to comply so specified, then Grantee may be deemed to have forfeited and annulled and shall thereby forfeit and annul all the rights and privileges granted by this franchise; provided, however, that such forfeiture shall be declared only by written decision of the City Council after an appropriate public proceeding before the City Council affording Grantee due process and full opportunity to be heard and to respond to any such notice of violation or failure to comply; and provided further that the City Council may, in its discretion and upon a finding of violation or failure to comply, impose a lesser penalty than forfeiture of this franchise or excuse the violation or failure to comply upon a showing by Grantee of mitigating circumstances. Grantee shall have the right to appeal any finding of violation or failure to comply and any resultant penalty to any court of competent jurisdiction. In the event that forfeiture is imposed upon Grantee, it shall be afforded a period of six (6) months within which to sell, transfer, or convey this cable television system to a qualified purchaser at fair market value. During this six month period, which shall run from the effective date of the final order or decision imposing forfeiture, including any appeal, Grantee shall have the right to operate this cable television system pursuant to the provisions of this franchise.

#### SECTION 12 -- SURRENDER RIGHT

Grantee may surrender this franchise at any time upon filing with the City Clerk of the City a written notice of its intention to do so at least three (3) months before the surrender date. On the surrender date specified in the notice, all of the rights and privileges and all of the obligations, duties and liabilities of Grantee in connection with this franchise shall terminate.

SECTION 13 -- TRANSFERS

All of the rights and privileges and all of the obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the franchise by Grantee as security for debt without such approval.

SECTION 14 -- FRANCHISE FEE

In consideration of the terms of this franchise, Grantee agrees to pay the City a sum of money equal to three percent (3%) of Grantee's gross subscriber revenue per year derived from installation of equipment and regular subscriber services in the City. The annual anniversary shall be the last day of December of each year, and each annual payment shall be paid within sixty (60) days thereafter. All other license fees or taxes levied upon Grantee by the City shall be credited against the payment required herein. City shall have the right to inspect the records of Grantee at any reasonable time for the purpose of ascertaining gross receipts, both past and present.

SECTION 15 -- RECEIVER SALES PROHIBITED

As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this paragraph shall not apply to converters, decoders, home



interactive terminals and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 16 -- ACCEPTANCE

This Ordinance shall become effective when accepted by Grantee and shall then be and become a valid and binding contract between the City and Grantee; provided, however, that this Ordinance shall be void unless Grantee shall, within sixty (60) days after the final passage of this Ordinance, file with the City Clerk of the City a written acceptance of this Ordinance and the franchise herein granted, agreeing that it will comply with all of the provisions and conditions hereof and that it will refrain from doing all of the things prohibited by this Ordinance.

SECTION 17 -- UNLAWFUL ACTS

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

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

(C) It shall be a misdemeanor punishable by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for a term not to exceed six (6) months, or both, for any person to violate any of the provisions of this Section.

SECTION 18 -- SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, 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 19 -- CONTROL OF RATES

Rates as outlined in the Appendix I shall not be changed within eighteen (18) months after acceptance. Annual raises of rates shall not exceed five percent (5%) without the approval of the City Council.

SECTION 20 -- PERFORMANCE GUARANTEE

After acceptance by Grantee, cable service shall commence within fourteen (14) months and if said schedule is not met, this franchise may be deemed forfeited by the discretion of the City Council.

SECTION 21 -- PUBLICATION COSTS

Grantee shall assume the cost of publication of this Ordinance, as such publication is required by law. A bill for publication costs shall be presented by the City to Grantee upon Grantee's filing of the acceptance of this franchise and is to be paid at this time.

SECTION 22 -- EMERGENCY CLAUSE

It is hereby found and determined by the City Council that the granting of a non-exclusive franchise to East Arkansas Cablevision, Inc. of Jonesboro, Arkansas, to own, operate and maintain a television system in the City of Cherry Valley, Arkansas is necessary

to immediately allow certain construction necessary for future development of such system within the City thereof. Therefore, an emergency is hereby declared to exist and this Ordinance being necessary for the immediate preservation of the public peace, health, safety, shall be in force and effective from and after its passage and approval.

SECTION 23 -- EFFECTIVE DATE

This Ordinance shall become effective upon acceptance by Grantee as provided in Section 16. The effective date shall be the date upon which the written acceptance provided for in Section 16 is received by the City Clerk.

Passed and approved this 14<sup>th</sup> day of JULY, 1981

Howard H. Beachley

MAYOR

Attest:

Thomas J. Rowland

City Clerk

Residential Tariff:

	Proposed Rate
First Outlet (Basic Service)	\$25.00
Premium Channel (Home Box Office)	12.50
Each Additional Outlet (Basic Service)	12.50
Reconnect	12.50
Relocate outlet to another room	12.50
Additional Charges for Underground Drops	25.00

Additional Services Installed at Time of Installation or Reconnection will be Installed at 1/2 Price.

All residential cable services requested within thirty days after the system is energized will be installed at a special rate of 1/2 the regular installation rate.

Commercial Tariff:

Underground and Aerial  
 Installation of All Outlets \$10.00 Per Hour plus Material

APPENDIX I  
SUBSCRIBER MONTHLY CHARGES

Residential Tariff:	Rate Per Month
First Outlet (Basic Service)	\$8.50
Home Box Office (Optional)	9.00
Each Additional Outlet (Basic Service)	2.50
Commercial Tariff:	
Apartments (Basic Service, Minimum 10 Apts. Single Billing)	\$4.50
Motels & Hospitals (Basic Service, Minimum 20 Units, Single Billing)	\$3.00
Optional Services available at the same rate as residential rates.	

ANNUAL RATES

(Basic Residential Service Only)

Pay for 11 months - 12th month free.

HBO - No Discount

All equipment installed remains the property of East Arkansas  
Cablevision.

No Charge for Service Calls.

APPENDIX I

PROPOSED CHANNEL LINEUP

CHERRY VALLEY

Channel	Station	City	Network
2	KTEJ-19	Jonesboro	ETV
3	WREG	Memphis	CBS
4	KARK	Little Rock	NBC
5	WMC	Memphis	NBC
6	WPTY-24	Memphis	Ind.
7	KATV	Little Rock	ABC
8	KAIT	Jonesboro	ABC
9	CNN	Atlanta	News
10	WKNO	Memphis	ETV
11	USA	New York	Sports
12	WTBS	Atlanta	Ind.
13	WBQ	Memphis	ABC
		Optional	
HBO		New York	Pay TV