

ORDINANCE NO. 225

AN ORDINANCE GRANTING TO McCAW MIDWEST COMMUNICATIONS, INC. THE RIGHT TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY OF TEXICO, NEW MEXICO.

BE IT ORDAINED by the governing body, that is, the City Commission of the City of Texico, in the County of Curry, State of New Mexico:

Section 1. Franchise Granted. The City hereby grants unto and vests in McCaw Midwest Communications, Inc. (hereinafter called "the Company"), its successors, lessees and assigns, a franchise with the right to construct, operate and maintain in, upon, along, across, above, over, and under the streets, alleys, and public ways of the City, whether now dedicated or dedicated in the future, a television cable system and/or a television rebroadcast system, provided, however, that no poles or other fixtures connected with the operation of said system shall be installed in such a manner as to interfere with any gas mains, gas lines, electric lines, water hydrants, water lines, or sewer lines, or as to interfere with any use or purpose commonly associated with public streets and alleys. That Company shall have the right to use the poles owned or controlled by any public utility company doing business within the City of Texico, New Mexico, with the permission of said utility, and to which poles are being used by said utility company in its business within said City, for the purpose of erecting its wires, cables, fixtures, amplifiers, or related electronic equipment along the alleys, streets, and public ways of the City.

Section 2. Term of Franchise. This agreement is for an initial term of twenty-five (25) years from the date hereof,

provided that Company shall have the right to extend its use under this Ordinance for a like term, as herein defined, upon giving ninety (90) days' notice to the City, provided Company is then in substantial compliance hereunder, the City shall have the right to reasonably condition renewal on Company taking steps to cure existing defaults and providing assurances necessary to assure future compliance by Company. Should this franchise not be utilized by the Company for a consecutive period of ninety (90) days, it shall be deemed to have lapsed and expired, and all rights and responsibilities hereunder shall cease.

Section 3. Hold Harmless. The Company, its successors and assigns, shall hold the City harmless from any expense, damage or claims of damage arising from the exercise of this Ordinance, and shall at Company's expense defend the City in any suit allegedly arising from the same. This provision does not prohibit the City from joining in such defense.

Section 4. Prior Street Agreements. The Company, its successors and assigns, shall be bound by any agreement now in force, or that shall hereafter be made, with the State of New Mexico, the New Mexico Highway Commission, the United States or any of its agencies, relative to the streets, alleys, intersections, and all public ways of said City.

Section 5. Franchise Fee. The Company, its successors and assigns, agree to pay to the City three percent (3%) of the gross receipts of all business conducted by it under the terms of this Ordinance (excluding, however, any receipts derived by the Company from the operation of a pay television service as distinguished from a cable television service). The Company shall, for the purposes of this paragraph, include within its gross receipts income from services rendered to

non-residents of the City but residing contiguous thereto in New Mexico and as served by Company on the date hereof. This amount shall be paid quarterly not later than 30 days following the end of each calendar quarter.

No other fee, rent, license, charge, tax or consideration whatsoever shall be imposed upon Company by City during the term of this Ordinance.

Section 6. CATV Regulations. The Company, its successors and assigns, shall in any event obey all laws and regulations of the United States and the State of New Mexico pertaining to the operation of a television cable system and/or a television rebroadcast system.

Section 7. Compulsory Signals. This Ordinance shall be deemed violated or broken and authorizes the City to declare same to be so on Company's failure to provide the three (3) broadcasting networks in a manner comparable to cities similarly situated as Texico, New Mexico.

Section 8. Repealer. All ordinances, resolutions, orders, agreements or parts thereof in conflict herewith are hereby repealed.

PASSED, APPROVED AND ADOPTED this 8 day of MAY, 1984.

(SEAL)

ATTEST:

Marie Christian
CITY CLERK

THE CITY OF TEXICO, NEW MEXICO,
a municipal corporation

By:

John R. Hadley
MAYOR

NOTICE OF INTRODUCTION OF ORDINANCE

Pursuant to the requirements of Section 3-17-3, NMSA 1978, public notice is hereby afforded that the following entitled ordinance was introduced and proposed for adoption at a regular meeting of the City Commission of the City of Texico, in the County of Curry, and the State of New Mexico, held in the City Hall of said City on Tuesday, May 8, 1984, at 6:30 P.M.

Said City Commission will consider final action upon the above ordinance at its regular meeting to be conducted on Tuesday, May 8, 1984, at 6:30 P.M. in the City Hall, Texico, New Mexico. This Notice constitutes notice of that meeting in compliance with the Public Meetings Law, Sections 10-15-1 through 10-15-4, NMSA 1978. Public business other than consideration of final action upon the above ordinance may be transacted or discussed by said City Commission, in the discretion of its presiding officer.

WITNESS MY HAND and the seal of the City of Texico, this 8 day of April, 1984.

(SEAL)

Marie Christian
CITY CLERK