

ORDINANCE NO. 145

AN ORDINANCE GRANTING TO AIRWAVE COMMUNICATIONS, INC., A CORPORATION, A FRANCHISE TO OPERATE A COMMUNITY CABLE ANTENNA TELEVISION SYSTEM FOR A PERIOD OF TWENTY YEARS FROM THE ACCEPTANCE OF THIS ORDINANCE; A NON-EXCLUSIVE RIGHT TO ERECT, INSTALL, EXTEND AND MAINTAIN A SYSTEM OF POLES, TOWERS AND LINES IN THE STREETS, AVENUES, ALLEYS AND OTHER PUBLIC WAYS AND PLACES OF THE CITY OF STILWELL, OKLAHOMA, TO EFFECT THE REASONABLE OPERATION OF THE COMMUNITY CABLE ANTENNA TELEVISION SYSTEM, AND FIXING THE COMPENSATION TO BE PAID THEREFORE AND THE TIME AND MANNER OF DETERMINING THE AMOUNT TO BE PAID FROM YEAR TO YEAR BY THE GRANTEE, AND PROVIDING RULES AND REGULATIONS GOVERNING THE GRANTEE IN ITS BUSINESS IN RELATION TO THE CITY OF STILWELL, OKLAHOMA; AND PROVIDING FOR INDEMNIFYING THE CITY AGAINST LOSS AND DAMAGES; AND PROVIDING FOR THE SUBMISSION OF SAID ORDINANCE TO AN ELECTION OF THE QUALIFIED VOTERS OF THE CITY OF STILWELL, OKLAHOMA, FOR APPROVAL; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF STILWELL, OKLAHOMA:

SECTION 1. That there is hereby granted to Airwave Communications, Inc., a Corporation, hereinafter called the Grantee, the right and privilege, for a period of twenty years from the effective date of this Ordinance, to construct and maintain and operate in the City of Stilwell, Oklahoma, a Community Cable Antenna Television System and to use the present and future streets, alleys and public places of said City of Stilwell, Oklahoma, for the purpose of erecting poles, lines, cables, wiring and other apparatus for the operation of the Community Cable Antenna Television System as aforesaid; provided, however, that the use of any of the public ways or facilities of the City of Stilwell, Oklahoma, shall not interfere with or impede the operation of the utilities, streets, alleys or services of the City of Stilwell, Oklahoma, in any way whatsoever.

SECTION 2. Poles and towers shall be so erected as not to interfere with the traffic over the streets and alleys of the said City, and the location of all poles, towers and other obstructions shall be fixed with the prior written approval and under the supervision of the Utility Department of the City of Stilwell, Oklahoma, as to such location, giving consideration to the reasonable operation of the same; and provided further, that such location shall not be a vested interest and the same shall be removed by Grantee whenever the same restrict or obstruct the operation of location of future streets, alleys and public places.

SECTION 3. No connection shall be made by Grantee to the existing electric system of the City of Stilwell, Oklahoma, without having first obtained written permission from the Utility Department of said City, agreeing to pay a minimum fee of Two Dollars per pole per year or such other compensation in a greater amount as the Utility Department of the City of Stilwell, Oklahoma, shall require.

SECTION 4. All streets, sidewalks or other public ways or structures disturbed or damaged in the construction or maintenance of said Community Cable Antenna Television System shall be promptly repaired by the Grantee at its own expense and to the satisfaction of the City of Stilwell, Oklahoma.

SECTION 5. Grantee shall be subject to all ordinances now in force and that may be hereinafter enacted relative to the use of the streets, alleys and public ways of the City of Stilwell, Oklahoma.

SECTION 6. The services furnished by the Grantee shall be at maximum efficiency at all times in all respects and subject to such reasonable rules and regulations as Grantee may make from time to time; Grantee shall make available maintenance crews for the System on a 24-hour basis and provide

service personnel to make calls to individual subscribers' homes between the hours of 9:00 a.m. and 5:00 p.m., Monday through Saturday; emergency calls will be made between 5:00 pm and midnight, Monday through Saturday, and between 9:00 a.m. and midnight on Sunday. No charge will be made for service calls which involve a correction of Company equipment. Grantee will not service or sell television sets.

SECTION 7. All rates to be charged for service or installation by Grantee shall be first approved by the City Council of the City of Stilwell, Oklahoma.

SECTION 8. Grantee shall install equipment and cable to handle 12 television and/or radio signals and shall install, maintain and operate the System so as to cause no interference to television receivers in said City not connected to the facilities of Grantee. Service on the cable shall be offered on voluntary basis, and subscribers may disconnect at the end of any month. Billing may be monthly or bi-monthly, in advance.

SECTION 9. Grantee shall procure, furnish and file with the City of Stilwell, Oklahoma, a policy of insurance covering liability and property damage, with the minimum amounts of liability thereunder as follows: One Hundred Thousand Dollars for any one single personal injury in any one single accident and Three Hundred Thousand Dollars for personal injury in any one single accident and Fifty Thousand Dollars property damage for any single accident.

SECTION 10. Grantee shall pay the City of Stilwell, Oklahoma, annually for the first two years of the life of this franchise, a sum equal to two percent (2%) of the gross amount received by Grantee from its operation under this franchise, including monthly charges but excluding installation charges. After the first two years, the payment shall be at the rate of three percent (3%) of the gross income under the franchise herein granted, including monthly charges but excluding installation charges. The payment herein required shall be in addition to ad valorem taxes that may be assessed or any other taxes charged to other residents and businesses within the confines of the City of Stilwell, Oklahoma.

SECTION 11. Grantee shall file its written acceptance of this franchise within thirty days after final passage and approval; otherwise, this franchise shall be void. The Grantee shall begin constructing within 120 days of the effective date of this franchise and shall complete construction within one year from the end of the 120 day period. The Grantee shall furnish service to any part of the City of Stilwell; provided, however, that Grantee may apply to the City Council of the City of Stilwell, Oklahoma, for a waiver of this requirement if the location requesting service is at such a distance from any main transmission line as to render such service uneconomical; and if, in the discretion of the Council of the City of Stilwell, Oklahoma, it would be unjust to compel Grantee to provide service to any part of the City of Stilwell, Oklahoma, pursuant to this franchise, then a waiver may be granted by said Council. The Council of the City of Stilwell, Oklahoma, also may, for just cause, give construction time extension, such as for abnormal inclement weather, restrictive litigation not the result of acts of the grantee, and/or lack of availability of equipment or materials.

SECTION 12. Grantee shall hold the City of Stilwell, Oklahoma, harmless from all claims for damages arising out of the construction, maintenance or operation of said Community Cable Antenna Television System.

SECTION 13. This Ordinance shall not become effective until it shall be approved by a majority of the qualified electors residing within the corporate limits of the City of Stilwell, Oklahoma, at an election called for that purpose, and a special election is hereby called for the purpose of submitting

to the qualified electors residing in said City of Stilwell, Oklahoma, the question of approval or disapproval of this Ordinance, which election shall be held on the 21st day of April, 1981, between the hours prescribed by law. The Mayor of the City of Stilwell, Oklahoma, is hereby authorized and directed to issue a proper and lawful call and proclamation of such special election to be held on such date as aforesaid for said purpose, and the executive officers of said City are hereby directed to give due and lawful notice of such election and submission of said question to the electors of said City, prescribing in said proclamation and notice the proposition to be voted upon, the time of opening and closing of polls, the number and location of polling places and the names of the precinct election officers who shall conduct said election, and all other things prescribed by law. In the event this Ordinance is approved by a majority vote of said electors voting thereon in said election, the Grantee shall file with the City Clerk of the said City of Stilwell, Oklahoma, within ten days after official canvass of the vote and declaration by the Mayor and Council of the result thereof, a written acceptance of same.

SECTION 14. By reason of the fact of the public health, safety and welfare of said City and its inhabitants, and for the purpose of protecting and promoting same, it is hereby declared that an emergency exists by reason whereof this Ordinance shall become effective immediately upon its passage, approval and publication.

PASSED and APPROVED and the EMERGENCY VOTED ON SEPARATELY and passed this 19th day of March, 1981.

HAROLD MOTEN
Mayor

ATTEST: NANCY JOHNSON
City Clerk

(Published in the Stilwell Democrat-Journal, March 26 and April 2 and 9, 1981)

[Amended by Ordinance No. 203, dated December 19, 1988]