

**CITY OF
BROECK POINTE,
KENTUCKY**

ORDINANCE NO. 7

SERIES _____

An Ordinance Relating To:

A FRANCHISE ORDINANCE APPROVING THE RENEWAL AND AMENDMENT OF THE FRANCHISE AGREEMENT FOR COMMUNITY ANTENNA TELEVISION (CATV) SERVICES OF TCI TKR OF JEFFERSON COUNTY, INC., D/B/A TKR CABLE OF GREATER LOUISVILLE, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, CONSUMER PRACTICES, CONSUMER PROTECTION MEASURES, CONSTRUCTION, AND CONSTRUCTION-RELATED PRACTICES, FRANCHISE FEES, AND OPERATION PROCEDURES, AND HEALTH, SAFETY, AND WELFARE MEASURES, PROVIDING AN EFFECTIVE DATE.

INTRODUCED January 2, 1996
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ORDINANCE NO.

A FRANCHISE ORDINANCE APPROVING THE RENEWAL AND AMENDMENT OF THE FRANCHISE AGREEMENT FOR COMMUNITY ANTENNA TELEVISION (CATV) SERVICES OF TCI TKR OF JEFFERSON COUNTY, INC., d/b/a TKR CABLE OF GREATER LOUISVILLE, AND INCLUDING PROVISIONS FOR INSURANCE, REPORTS AND RECORDS, CONSUMER PRACTICES, CONSUMER PROTECTION MEASURES, CONSTRUCTION, AND CONSTRUCTION-RELATED PRACTICES, FRANCHISE FEES, AND OPERATION PROCEDURES, AND HEALTH, SAFETY, AND WELFARE MEASURES; PROVIDING AN EFFECTIVE DATE.

WHEREAS, TCI TKR of Jefferson County, Inc., d/b/a TKR CABLE OF GREATER LOUISVILLE, ("TKR") the present holder of the Community Antenna Television (hereinafter "CATV" or "Cable Television") franchise rights throughout the City of Broeck Pointe has notified the City of Broeck Pointe (hereinafter "City") of its desire to renew its franchise;

WHEREAS, TKR performance under its franchise has been satisfactory, has substantially complied with the material terms of the existing franchise and with applicable law;

WHEREAS, the City has determined that TKR's service has been reasonable in light of community needs;

WHEREAS, the City has determined that TKR has the ability to effectuate its franchise renewal proposal;

WHEREAS, the City has determined that TKR's cable television franchise renewal proposal meets the cable television related community needs and interest of the City;

WHEREAS, the public has had adequate notice and opportunity for comment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BROECK POINTE, KENTUCKY.

Section 1. Construction.

This ordinance shall be construed in light of applicable Federal and State laws and regulations governing cable television.

Section 2. Scope.

This ordinance shall be effective within the geographical limits of the City, including any areas subsequently annexed by the City.

Section 3. Severability.

If any word phrase, sentence, part, section, subsection, or other portion of this ordinance, or any application thereof to any person or circumstance is declared void, unconstitutional, or

invalid for any reason, such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The City declares that no invalid or proscribed provision or application was an inducement to this ordinance, and that it would have enacted this ordinance regardless of the invalid or proscribed provision or application.

Section 4. Definitions.

- (1) "Access channel" or "non-broadcast channel" means a government, education, or public channel which is carried on the cable system, but which is not part of any institutional network.
- (2) "Annual gross revenues" means Franchisee's Gross Revenues.
- (3) "Basic cable television service" means any service tier which includes the retransmission of local television broadcast signals.
- (4) "City" means the City of Broeck Pointe, Kentucky or its lawful successor.
- (5) "FCC" or "Federal Communications Commission" means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel regulation on a national level.
- (6) "Franchise fee" means a fee or charge that the City requires as payment for the privilege of using the streets, rights-of-way, public ways, and easements of the City in order to construct, maintain, and operate a cable television system.
- (7) "Operator" means TKR, its assignee or transferee.
- (8) "Pay Per View Event or Pay Per Movie(s)" means the delivery over the cable system of audio and video signals in an unintelligible form for a set fee or charge cover and above the charge for standard or basic service and in addition to any premium channel on a per event or per movie basis where said unintelligible or unusable form is made intelligible for viewing only to subscribers paying a separate fee or charge for the viewing of the event or events.
- (9) "Premium channel" means the delivery over the cable system of audio and video signals in an unintelligible form to subscribers for a monthly fee or charge (over and above the

charge for standard or basic service) on a per channel basis where said unintelligible or unusable form for viewing is made intelligible only to subscribers paying a separate fee or charge for the viewing or use of the signals.

- (10) "Educational or governmental access facilities" means:
- (a) Channel capacity designated exclusively for public, educational or governmental use; and
 - (b) facilities and equipment for the use of such channel capacity.
- (11) "Rate" means the monthly price paid by a subscriber in order to receive cable service.
- (12) "Service day" means those days the United States Post Office delivers regular mail (typically, Monday through Saturday, excluding federal holidays).
- (13) "Service outage" means the loss of picture or sound on all basic subscriber channels, or one (1) or more auxiliary programming channels (including tiers and pay programming), and which is not caused by the failure or malfunction of a subscriber's television receiver or by the error of the subscriber.

Section 5. Failure of the City to Enforce this Ordinance.

- (1) Operator shall not be excused from complying with any of the requirements of this ordinance, or any subsequently adopted amendments to this ordinance, by any failure of the City on any one (1) or more occasions to seek, or insist upon, compliance with such requirements or provisions.
- (2) This Ordinance and the rights and responsibilities it imposes on Operator may not be unilaterally amended without the prior written consent of Operator.
- (3) This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Cable Act and any other applicable provision of federal, state, and local law.
- (4) All rights and privileges granted herein are subject to the police powers of the City and its rights under applicable laws and regulations to regulate the Franchisee and the construction, operation and maintenance of the Franchisee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the

City shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing right-of-way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

Section 6. Repeal of Inconsistent Resolutions and Ordinances.

To the extent that there is any resolution or ordinance which in part, or in whole, is directly inconsistent with this ordinance, such part, or such whole, of the prior resolution or ordinance shall be repealed to the extent of the inconsistency.

Section 7. Resolution of Inconsistencies with Federal or State Rules, Regulations or Laws.

In any case of an actual inconsistency between any provision or section of this ordinance, and any provision or section of a Federal or Kentucky rule, regulation, or law, then the Federal or Kentucky rule, regulation, or law shall not only supersede the effect of the ordinance, but also control in any local application.

Section 8. Notices.

Both the City and Operator shall provide the other party with the name and address of the contact person designated to receive notices, filings, reports, records, documents, and other correspondence. All notices shall be delivered to each party's contact person by certified mail, return receipt requested, personal service with a signed receipt of delivery, or overnight with receipt verification. All other filings, reports, records, documents, and other correspondence may be delivered by any permissible means including, but not limited to: facsimile transmission ("faxing"); personal service; overnight mail or package delivery; or delivery via cable. The delivery of all notices, reports, records, and other correspondence shall be deemed to have occurred at the time of receipt (unless otherwise designated by State law).

Section 9. Indemnity.

- (1) To the extent permitted by law, Operator shall at all times defend, indemnify, protect, save harmless, and exempt the City, the Mayor, the City Council, their officers, and

employees from any, and all, penalty, damage, or charges arising out of claims, suits, demands, causes of action, or award of damages whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might be claimed now or in the future, which may arise out of, or be caused by, the construction, erection, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of the system within the City by a negligent act or omission of Operator, its agents or employees, contractors, subcontractors, independent contractors, or implied or authorized representatives. With respect to the penalties, damages or charges referenced herein, attorneys' fees, consultants' fees, and expert witness fees are included as those costs which may be recovered by the Commission.

- (2) The Mayor and the City Council specifically reserve the right to retain counsel of their own choice, at their own expense.
- (3) If Operator obtains counsel for the City, the Mayor or the City Council then any one of them shall have the right to approve counsel, provided, however, that neither the City, the Mayor, nor the City Councilmen shall unreasonably withhold approval of counsel.
- (4) With respect to Operator's own defense of such actions, noted in this Section, it is understood, that such Operator reserves the right to select and retain, without the City's approval, counsel of the Operator's choice, at Operator's own expense.

Section 10. Liability Insurance.

- (1) Operator shall secure and maintain, for as long as it provides service to subscribers, public liability, property damage insurance, and umbrella coverage in at least the following amounts:
 - (a) Public liability: \$1,000,000.00 per person/per occurrence;
 - (b) Property damage: \$1,000,000.00 per any one (1) claim;
 - (c) Umbrella liability: \$4,000,000.00 with up to a \$50,000.00 deductible and/or base insurance.
- (2) Operator's public and personal liability and property damage insurance policy shall specifically include the City as additional insured.
- (3) The public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State,

and which has a rating of A- or greater from the Alfred M. Best Company.

- (4) The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the City with at least thirty (30) days written notice in advance of the cancellation of the insurance.
- (5) If the State permits Operator to self-insure, then Operator may exercise its right to self-insure, so as long as the minimal amounts of insurance coverage outlined in this Section are met and maintained for the entire period that the Operator is self-insured.

Section 11. Furnishing of Reports.

- (1) Operator shall timely submit those reports, statements, and logs required by this franchise.
- (2) Copies of renewal or replacement insurance policies or certificates shall be delivered to the franchising authority at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.

Section 12. Books and Records.

- (1) Operator shall keep complete and accurate books of accounts, and records of the business and operations under, and in connection with the system.
- (2) The City shall have the right to review at Operator's local office within Jefferson County all records, pertaining to the City's regulation of Operator's cable operations in the City, on seven (7) days written notice. Such review, unless mutually agreed upon, or judicially ordered, should occur within Operator's regular office hours.
- (3) The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of Operator. If, after a financial audit, it is determined that Operator has under paid amounts owed to the City (in excess of five percent (5%), then the City may require Operator to reimburse the City for the actual cost of the audit. Provided, however, absent fraud, all audits shall be binding on the City.
- (4) An intentional falsification of an entry into the books and/or records of Operator, made by Operator, of a material and substantial fact shall constitute a material violation of this

ordinance. However, an erroneous entry, made in good faith, shall not constitute a violation of this ordinance.

- (5) Operator, at its local office within Jefferson County shall keep complete and accurate books and records of the key aspects of the system's operation in the City for at least the preceding three (3) years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, Operator shall make available, on seven (7) days advance written notice, those records that pertain to its operation of the system that may be required by any other Federal or State agency having jurisdiction over cable operators. Provided, however, that with respect to the obligation to maintain financial records, Operator shall only be required to maintain the financial records required by Federal and State Law.

Section 13. Notification of Customers' and Operator's Rights and Responsibilities; General Policy.

- (1) In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their, and the Operator's rights and responsibilities with respect to the system, Operator shall provide customers with a written "Notice of a Customer's and Operator's Rights and Responsibilities."
- (2) Unless expressly prohibited by the State, Operator may comply with the "Notice" requirements by providing said "Notice" through newspaper publication or over the cable system, on a channel clearly designated for the dissemination of such information -- (such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose).

Section 14. Notification of Customers' and Operator's Rights and Responsibilities; Minimum Contents.

- (1) At the time Operator is required to furnish a "Notice", such "Notice" should contain the following:
 - a) an up-to-date listing of services provided;
 - b) notification of a subscriber's ability to purchase or lease, from the Operator, parental control mechanism, or other device which will prohibit the viewing of a particular program service during a period selected by the subscriber;

- c) a listing and explanation of rates and charges, credit refund policy, connection and involuntary disconnection policies;
 - d) the complaint resolution procedures;
 - e) a listing and explanation of billing options available (such as monthly or yearly, and/or discounts for pre-payments);
 - f) the customer service office hours and telephone number(s);
 - g) the method of securing a voluntary disconnection; and
 - h) the equipment use and return policy together with any required security deposits.
- (2) The "Notice" shall be written in plain, simple understandable English.
- (3) The "Notice" may be delivered to a subscriber via an insert in the subscriber's periodic invoice, through a special mailing, by newspaper or publication or over a channel clearly designated for the dissemination of such information.

Section 15. Billing Practices.

- (1) Whenever there is a change in Operator's billing practices or payment requirements, Operator shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.
- (2) In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

Section 16. Billing Credit or Refunds for Service Outages, Interruptions; Substandard Signal or Picture Quality or Unsolicited Service.

Operator shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding two service days in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Operator.

Section 17. Customer Service Performance.

(1) **Definitions:**

(a) **Normal Business Hours**

This means those hours during which most similar businesses in the community are open to serve customers. This will include some evening hours (at least one night per week) and/or some weekend hours.

(b) **Normal Operating Conditions**

This means conditions that are within the control of the operator. Those conditions which are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions which are ordinarily within the control of the operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

(c) **Service Interruption**

This means the loss of picture or sound on one or more channels. This term affects the timing of when the operator must respond to a service problem.

(2) **Customer Service Standards**

Office hours and telephone availability:

(a) The operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(1) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(2) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained company representatives on the next business day.

(b) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time

shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

- (c) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.
- (d) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

(3) Installations, outages, and service calls

Under normal operating conditions, each of the following five (5) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

- (a) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
- (b) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known.
- (c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (d) The operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (e) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

(4) Communications between cable operator and cable subscribers

(a) Notifications to subscribers:

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) products and services offered;
- (ii) prices and options for programming services and conditions of subscription to programming and other services;
- (iii) installation and service maintenance policies;
- (iv) instructions on how to use the cable service;
- (v) channel positions of programming carried on the system; and
- (vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming service or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) day in advance of any significant changes in the other information required by the preceding paragraph.

(b) Billing:

(1) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(2) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(c) Refunds:

Refund checks will be issued promptly, but no later than either -

- (1) in the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (2) within thirty (30) days after return of equipment supplied by the cable operator.

(d) Credits:

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Section 18. Preferential or Discriminatory Practices Prohibited.

- (1) Operator shall not, as to rules, regulations, rates, charges, provision of service, or use of facilities and equipment, make, allow, or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage on the basis of age, race, creed, color, sex, national origin, handicap, religious affiliation, or location of residence.
- (2) Operators shall not deny cable service, or the extension of cable service, to any group of potential residential cable subscribers because of the income of the residents or the local area in which such group resides.
- (3) This Section, however, does not prohibit Operator from offering a promotional or incentive discount rate or charge.
- (4) This Section does not prohibit Operator from denying service based on location of residence, if that residence is outside the parameters for line extension as detailed herein.
- (5) This Section does not prohibit Operator from denying service to a subscriber who is delinquent in the payment of any service bill for service over and above their current service level (i.e. ordering additional pay per view when the customer is delinquent).
- (6) This Section does not prohibit Operator from implementing a no-frills service tier for "lower income", and/or fixed income individuals.