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ORDINANCE NO. 89-9

TYL COMMUNICATIONS, INC. CABLE TV ORDINANCE
OF
WYTHE COUNTY, VIRGINIA

ARTICLE I - Title, Authority, and Jurisdiction

- 1.1 Title. This ordinance shall hereinafter be known and may be cited as the "TYL Communications, Inc. Cable TV Ordinance of Wythe County, Virginia, Ordinance Number 89-9.
- 1.2 Authority. It is adopted pursuant to the authority of Title 15.1 Chapter I, Article I, Section 15.1-23.1 of the Code of Virginia of 1950, and amendments thereto.
- 1.3 Jurisdiction. The provisions of this ordinance shall apply to all land within Wythe County, Virginia, which is not within the jurisdictions of incorporated municipalities.

ARTICLE II - Purpose

- 2.1 This ordinance is adopted for the purpose of granting a franchise to operate and maintain a community antenna system in the County of Wythe; setting forth conditions accompanying the franchise; providing for county regulations and use of the community antenna system; and prescribing penalties for violation of the franchise provisions.

ARTICLE III - Rules

- 3.1 In the construction of this ordinance, the rules contained in this section shall be observed and applied, except when the context clearly indicates otherwise:
- 3.1-1 Words in the present tense shall include the future, and words used in the singular number shall include the plural number, and the plural the singular;
- 3.1-2 The word "lot" includes the words "plat" and "parcel";
- 3.1-3 The word "shall" is mandatory and not discretionary;
- 3.1-4 The word "may" is permissive and not mandatory;

- 3.1-5 The word "approve" shall be considered to be followed by the words "or disapprove";
- 3.1-6 The masculine gender includes the feminine and neuter;
- 3.1-7 Any reference to this ordinance includes all ordinances amending or supplementing the same; and
- 3.1-8 All distances and areas refer to measurement in horizontal plane.

ARTICLE IV - Definitions

- 4.1 For the purpose of this ordinance certain terms or words used herein shall be defined as follows:
 - 4.1-1 Board - Wythe County Board of Supervisors
 - 4.1-2 Cable Television System - A system composed of, without limitations, antenna, cables, wires, lines, towers, wave guides, or any other conductors, or wired for the purpose of producing receiving, amplifying, and distributing by coaxial cable, audio and/or visual radio, television, electronic or electrical signals to and from persons, subscribers, and locations in the franchise area (hereinafter referred to as "CATV System" or "system").
 - 4.1-3 Company - TYL Communications, Inc., or any person who succeeds TYL Communications, Inc., in accordance with the provisions of this franchise.
 - 4.1-4 County - County of Wythe.
 - 4.1-5 Pay Television - Any individual TV program for which an additional charge is made to the subscriber over and above the regular service fee.
 - 4.1-6 Person - Any person, firm, partnership, association, corporation, company, or organization of any kind.

ARTICLE V - Grant of Authority

- 5.1 There is hereby granted by the county to the company the right and privilege to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets, alleys, public ways, and public places now or hereafter laid out or dedicated, and all extensions thereof and additions thereto, in the County, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the county of a CATV system for the origination, interception,

sale, and distribution of television and radio signals. The right hereby granted shall be nonexclusive.

ARTICLE VI - Compliance with Applicable Laws and Ordinances

- 6.1 The company shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the county and to such reasonable regulations as the county shall hereafter provide.

ARTICLE VII - Franchise Area and Extension Policy

- 7.1 This is a county wide franchise; however, the owners of TYL Communications, Inc., cannot extend the TV cable within two (2) miles of an existing TV cable system without prior approval by the Wythe County Board of Supervisors. If the cable company desires to extend their line within this two (2) mile area, the company must make application with the Board of Supervisors as follows:
- 7.1-1 Request must be made in writing.
- 7.1-2 Show on a USGS 7.5 minute topographic map the exact location which the company proposes to serve.
- 7.1-3 When the TV service will begin.
- 7.2 The Wythe County Board of Supervisors will then grant or deny the request.
- 7.3 The company is not required to extend cable television service in the franchise area to any potential subscriber unless there are at least fifteen (15) homes per mile, and it is technically feasible to do so without degradation of picture quality and reliability. The measurement of a mile to determine the density of homes passed per mile shall commence from that point on the existing distribution system from which the system shall be required unless all necessary easements, permits, and pole attachment rights can be obtained by the company without materially affecting the profitability of the company.
- 7.4 When there exists a requirement for underground cable or for a drop from distribution cable to the subscriber's television receiver of more than one hundred fifty (150) feet within the company's service area, in order that existing subscribers shall not be unfairly burdened, an installation charge limited

to the cost of materials, labor, easements, and permits for distances exceeding one hundred fifty (150) feet from the distribution system may be assessed the subscriber. Where unusual operating expenses are incurred in maintaining and operating such extensions, a monthly service rate in excess of the regular basic monthly service rate may be negotiated between the company and the individual subscriber.

ARTICLE VIII - Liability and Indemnification

8.1 The company agrees:

8.1-1 It will pay damages and penalties which the county may legally be required to pay as a result of granting this franchise to the extent of the insurance coverage required herein. Those damages or penalties shall include, but shall not be limited to, damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized allowed, or prohibited by this franchise.

8.1-2 It will pay all expenses incurred by the county in defending itself with regard to all damages and penalties mentioned in section 8.1-1 above. These expenses shall include all necessary and reasonable expenses such as attorney's fees, the fees of independent contractors or consultant's employed by the county, and the reasonable value of any services rendered by any employees of the county to the extent such expenses incurred in connection with such defense exceed the normal fixed costs to the county of having such employees regularly employed. Provided, however, that the obligation of the company is conditioned on the following:

8.1-2:a That the company shall be promptly notified in writing by the county of any notice of said claim; and

8.1-2:b That the company shall have control of any defense of the county by the company on any such claims, but shall not enter into any compromise or negotiated settlement which will result in any liability upon the county, without the consent of the county. The county may, without the consent of the company, enter into any separate compromise or negotiated settlement, provided, however, that no such compromise or negotiated settlement will result in any liability upon the company without the consent of the company.

- 8.1-2:c That should any actions or inactions of the company or county become, or in the company's opinion be likely to become, the subject of any such claim or action, the county shall permit the company at its option and expense, to take such reasonable action as may be necessary in order to avoid or mitigate any such claim; and, the county shall in good faith cooperate with the company.
- 8.1-2:d That the company shall have no liability to the county under any provision of this paragraph with respect to any claim or action brought against the county to the extent that such claim is based on the actions of the county.
- 8.1-2:e It will maintain throughout the terms of this franchise liability insurance insuring the county and company with regard to all damages mentioned in section 8.1-1 above in the minimum amounts of \$500,000 for injury to, or death of any one person, or damage to property, with a limit, however, of \$1,000,000 as to any one accident.
- 8.1-4 It will obtain and maintain a faithful performance bond running to the county with good and sufficient surety, approved by the County Administrator, in the penal sum of \$10,000 conditioned that they shall well and truly observe, fulfill, and perform each term and condition of this franchise and that in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and surety thereof by the county for all damages and losses resulting from the failure of the company to well and faithfully observe and perform the provisions of this franchise. The county waives the requirement of the performance bond, but reserves the right at any time to require that the bond be furnished.

ARTICLE IX - Signal Quality Requirements

- 9.1 The company shall -
 - 9.1-1 Be capable of distributing color TV signals, and when the signals the company distributes are received in color they shall be distributed in color.
 - 9.1-2 Carry the signals of all local television stations and distant signals, including stations affiliated with NBC, CBS, PBS, and ABC, as permitted from time to time by the Federal Communications Commission or other duly authorized governmental authority, and broadband FM reception, as technically and economically feasible to do so.

- 9.1-3 Produce a picture, whether in black and white or in color, that is free from noticeable distortion, free from ghost images provided a ghost-free signal is available at company's receiving facility, and accompanied with proper sound on typical standard production TV sets in good repair.
- 9.1-4 Transmit signals of adequate strength to produce good pictures with good sound to all subscribers without causing cross-modulation in the system or interfering with other electrical or electronic systems.
- 9.1-5 Limit failures to a minimum by locating and correcting malfunctions promptly, and exerting every effort for remedial steps.
- 9.1-6 Demonstrate by instruments and test television receivers to subscribers that a signal of adequate strength and quality is being delivered.
- 9.1-7 Carry all programs of broadcasting stations in their entirety as received, with announcements and advertisements and without additions, except as otherwise ordered by the FCC or other governmental agency properly authorized to act.
- 9.1-8 Provide service for educational purposes to public schools and colleges, which can be served in compliance with Article VII hereof, upon request by the county and at no cost to it or to the public school system or colleges. The company shall be under no duty beyond the installation of one cable to a convenient exterior location at each of said schools and colleges. The company may at its election provide similar services without cost to private schools, including parochial or other religious schools.
- 9.1-9 In the case of any emergency or disaster, upon request of the board, make available its facilities to the county for emergency use during the emergency or disaster period.

ARTICLE X - Operation and Maintenance of System

- 10.1 The company 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 use of the system.

- 10.2 The company shall maintain an office in Wythe County which shall be open during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time between the hours of 7:00 a.m. and midnight seven days a week.

ARTICLE XI - Other Business Activities

- 11.1 Neither the company hereunder nor any shareholder of the company shall engage in the business of selling, repairing, or installing television receivers or radio receivers within the county during the term of this franchise and the company shall not allow any of its shareholders to so engage in any such business. This restriction shall not apply to satellite signal receiving equipment.
- 11.2 This franchise authorizes only the operation of a CATV system as provided for herein, and does not take the place of any franchise, license, or permit which might be required by law of the company.

ARTICLE XII - Safety Requirements

- 12.1 The company shall -
- 12.1-1 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.
- 12.1-2 Install and maintain its wires, cables, fixtures, and other equipment in accordance with the requirements of the National Electrical Code of the National Board of Fire Underwriters, and in such a manner that they will not unreasonably interfere with any installations of the county or of a public utility serving the county.
- 12.1-3 Shall at all times keep and maintain in a safe, suitable, substantial condition, and in good order and repair, all structures and all lines, equipment, and connections in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the county where ever situated or located.

- 12.1-4 Shall have sufficient employees in residence in Wytheville or Wythe County to provide safe, adequate, and prompt service for its facilities.

ARTICLE XIII - New Developments

- 13.1 It shall be the policy of the county to amend this franchise, upon application of the company, when necessary to enable this company to take advantage of any developments in the field of transmission of television and radio signals which will afford it any opportunity more effectively, efficiently, or economically to serve its customers. This section shall not be construed to require the county to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

ARTICLE XIV - Conditions on Street Occupancy

- 14.1 The erection, construction, and installation of all facilities including poles and cables or wires by the company shall be according to the rules and regulations of the Virginia Department of Transportation, and the Subdivision Ordinance of Wythe County.
- 14.2 All transmissions and distribution structures, lines and equipment erected by the company within the county shall be so located as to cause minimum interference with the proper use of streets, other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, other public ways and places.
- 14.3 In all sections of the county where cables, wires, or other like facilities of all public utilities are placed underground, the company shall place its cables, wires, or other like facilities underground to the maximum extent existing technology reasonably permits the company to do so.

ARTICLE XV - Preferential or Discrimination Practices Prohibited

- 15.1 The company shall not, as to rates, charges, services, service facilities, rules, regulations; or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to any prejudice or disadvantage. However, nothing in this section shall be interpreted as restricting special rates during promotional or sales campaigns or free service to company employees for the purpose of monitoring company service.

ARTICLE XVI - Removal of Facilities Upon Request

- 16.1 Upon termination of service to any subscriber, the company shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

ARTICLE XVII - Transfer of Franchise

- 17.1 The company shall not transfer this franchise to another person without prior approval of the county by ordinance. Such approval will not be unreasonably withheld.

ARTICLE XVIII - Communications with Regulatory Agencies

- 18.1 Copies of communications with federal or state regulatory agencies respecting matters affecting CATV operations authorized pursuant to this franchise shall be retained in the company's office available for inspection by the County Administrator.

ARTICLE XIX - Rights In Franchise

- 19.1 The right is hereby reserved to the Board to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of the police power; provided that such regulations by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.
- 19.2 The county shall have the right, to inspect the books, records, maps, plans, and other like materials of the company at any time during normal business hours.
- 19.3 The county shall have the right, during the life of this franchise, to install and maintain free of charge upon the poles, if any, of the company, any wire and pole fixtures necessary for a police and fire alarm system, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the company.
- 19.4 The county shall have the right to monitor all construction or installation work performed subject to the provisions of this franchise and make such inspections as it shall find necessary to insure compliance with the terms of this franchise and other pertinent provisions of the law.

- 19.5 At the expiration of the term for which this franchise is granted, provided it is not renewed, or upon its forfeiture, the company shall remove at its own expense within six (6) months thereafter all portions of the CATV system from all public ways and places within the county and upon its failure to do so, all portions of the said system shall thereupon be and become the property of the county without compensation to the company.

ARTICLE XX - Maps and Plates

- 20.1 The company shall upon written request at any time from the County Administrator make available or furnish to him plat and plates showing the location of its wires, cables, and other equipment located in, under, and along the street, alley, and public places in the county.

ARTICLE XXI - Forfeiture of Franchise

- 21.1 In addition to all other rights and powers pertaining to the county be virtue of this franchise or otherwise, the county reserves the right to terminate and cancel this franchise and all rights and privileges of the company hereunder in the event the company:

21.1-1:a Violates any provision of this franchise or any rule, or determination of the board made pursuant to this franchise, except where such violation is without fault or through excusable neglect.

21.1-1:b Becomes insolvent, unable or unwilling to pay its debts; or is adjudged a bankrupt;

21.1-1:c Attempts to evade any of the provisions of this franchise or knowingly practices any fraud or deceit upon county.

21.2 Such termination and cancellation shall be by ordinance duly adopted after 60 days' notice to the company and shall in no way affect any of the county's rights under this franchise or any provision of law. Provided, however, that before this franchise may be terminated and cancelled under this section, the company must be provided with an opportunity to be heard before the board and to exercise any right of appeal available to it.

ARTICLE XXII - Duration and Acceptance of Franchise

- 22.1 This franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect until midnight December 11, 2004, provided that within ninety (90) days after the date of the passage of this ordinance the company shall file with the County Administrator its unconditional acceptance of this franchise and promise to comply with and abide by all its provisions, terms, and conditions.
- 22.2 Should the company fail to comply with section 22.1 above, it shall acquire no rights, privileges, or authority under this franchise whatever.
- 22.3 This franchise may be renewed for an additional fifteen (15) years if (1) Company has substantially complied with the material terms of the franchise and with applicable law; (2) the quality of the Company's service has been reasonable in light of community needs; (3) the Company remains financially, legally and technically qualified; (4) the Company's renewal would reasonably meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests. The procedures of federal law shall govern such renewal, provided that Company and County may, after affording the public adequate notice and opportunity for comment, renew the franchise after informal proceedings.

ARTICLE XXIII - Number of Channels

- 23.1 The grantee's cable distribution system shall be capable of carrying at least twelve (12) television channels. Within two (2) years of this ordinance, construction shall begin and be completed prior to December 31, 1991 which will permit the cable system to carry thirty-six (36) television channels.

ARTICLE XXIV - Rates

- 24.1 The Company will keep on file with the County Administrator a current schedule of monthly service charges and installation fees for all subscribers.

ARTICLE XXV - Failure of FCC Approval

- 25.1 In the event approval of the Federal Communications Commission or other governmental agency having proper authority and jurisdiction is required for company to operate the community antenna system provided for herein, but such approval, for whatever reason, is not issued to company as organized, constituted and owned, is, for whatever reason rescinded, the company shall be relieved from all obligations thereunder and

shall have the right to transfer this franchise in accordance with the provisions of Article XVII above.

ARTICLE XXVI - Payment of Franchise Fees

- 26.1 On the thirty-first day of January of each year after the effective date of this ordinance, the company will pay to the county a franchise fee equal to three percent (3%) of the gross revenues from all cable services in the franchise area for the preceding calendar year.
- 26.2 "Gross revenue from all cable service" shall mean any and all compensation derived directly by the company from subscribers for CATV service but shall not include any taxes imposed directly or indirectly upon any subscriber or user by and county, city, town, state, or other governmental unit and collected by the company for such governmental unit, nor shall it include any revenue from services rendered within the Town of Wytheville, Virginia.

ARTICLE XXVII - Payment of Cost of Advertising of Franchise

- 27.1 The cost of advertising this franchise shall be reimbursed to the county by the company as required by Section 15.1-309 of the Code of Virginia.

ARTICLE XXVIII - Legal Status Provisions

- 28.1 Certified Copies of Ordinances. Certified copies of this ordinance and all amendments thereto shall be filed in the offices of the Planning Commission, the County Administrator, and the Clerk of the Circuit Court of Wythe County, Virginia.
- 28.2 Validity. Should any article, section, subsection, or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of this ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.
- 28.3 Conflicting Ordinances. All ordinances or portions of ordinances in conflict with this ordinance are hereby repealed to the extent of their conflict.

28.4

Effective Date. This Ordinance was duly considered following a required public hearing held on December 12, 1989, and was adopted by the Board of Supervisors of Wythe County, Virginia, at its regular meeting held on December 12, 1989, the members voting:

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
Blair	X		
Heldreth	X		
Johnstone	X		
James	X		
Crockett	X		
Williams	X		
Naber	X		

I certify that this is a true and correct copy taken from the December 12, 1989, minutes of the Wythe County Board of Supervisors.

Billy R. Branson, Clerk

**AMENDMENT TO ORDINANCE NO. 89-9
TYL COMMUNICATIONS, INC. CABLE TV ORDINANCE
WYTHE COUNTY, VIRGINIA**

A public hearing was held on Tuesday, March 8, 1994, at 7:00 p.m. in the Speedwell Elementary School, Speedwell, Virginia, to consider adding an amendment to Ordinance No. 89-9, "TYL COMMUNICATIONS, INC. CABLE TV ORDINANCE", as follows:

Delete: Section 7.3

Add:

7.3 The company is not required to extend cable television service in the franchise area to any potential subscriber unless there are at least eighteen (18) homes per mile, and it is technically feasible to do so without degradation of picture quality and reliability. The measurement of a mile to determine the density of homes passed per mile shall commence from that point on the existing distribution system from which the system shall be required unless all necessary easements, permits, and pole attachment rights can be obtained by the company without materially affecting the profitability of the company.

Delete: Section 10.2

Add:

10.2 The company shall employ a technician who can be available during usual business hours, have a listed telephone number and be so operated that complaints and requests for repairs or adjustments may be received at anytime between the hours of 7:00 a.m. through 12:00 a.m. (midnight), seven days a week.

On motion duly made and seconded, the foregoing amendment was approved and the roll call vote is as follows:

<u>NAME</u>	<u>FOR</u>	<u>AGAINST</u>	<u>ABSENT</u>
R. T. DuPuis	X		
Mark C. Munsey	X		
Charles S. Dix	X		
Olin F. Armentrout	X		
Giles C. Rose	X		
James J. Crosswell	X		
John E. Davis, Jr.	X		

This amendment shall be effective on and after 12:01 a.m. on March 9, 1994.

I certify that this is a true and correct copy taken from the March 8, 1994 minutes of the Wythe County Board of Supervisors meeting.

Billy R. Branson, Clerk