

## CHAPTER 5

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## **ARTICLE I**

### **Cable Television System**

#### **Sec. 5-1. Grant of franchise.**

Pursuant to law, a nonexclusive franchise is granted to J.T. Cable, a Cable Corporation, to construct, own and operate a cable television system in the Town. Said nonexclusive franchise is granted for a period of fifteen (15) years, and shall vest all the rights, privileges and immunities of a cable system with the Town; however, said nonexclusive franchise shall be subject to and conditional upon all the terms, duties and obligations found in the laws of the State and the rules and regulations of the Federal Communications Commission and of this Article. (Ord. 209 §2, 1988)

#### **Sec. 5-2. Rights conferred by franchise.**

(a) This Article confers upon the Grantee the nonexclusive right, authority, power and franchise to establish, construct, acquire, own, operate and maintain a cable television system within the Town; to render, furnish and sell such service to the inhabitants of the Town and its environs; and to use and occupy the streets and other public places within the corporate limits of the Town subject to the approval designation and conditions of the Board of Trustees to use and occupy the streets and other public places within the corporate limits of the Town as the same now exist or may hereafter exist for its cable television system, including the right to enter and construct, erect, locate, relocate, repair and rebuild in, on, under, along, over and across the streets, alleys, avenues, parkways, lanes and bridges, to make use of all land dedicated or acquired for public use and locations approved by the Town Engineer, and other public places in the Town for all towers, poles, cables, amplifiers, conduits and other facilities owned, leased or otherwise used by the Grantee for the furnishing of cable television service within the Town during continuance of the franchise hereby granted, in accordance with the laws and regulations of the State and ordinances and regulations of the Town.

(b) The poles used for the Grantee's distribution system shall be those erected and maintained by anyone authorized to maintain poles in the streets or public ways when and where practicable. It is contemplated that reasonable standard pole attachment agreements will be entered into. The Grantee is specifically granted the right to set its own poles in the event reasonable joint use is not possible or feasible. In any areas where electric and telephone utilities are now underground and in any new subdivision or new additions where said utilities are underground, the Grantee will lay its cable underground.

(c) The Town reserves the right of reasonable regulation of the erection, construction or installation of any facilities by the Grantee and to reasonably designate where such facilities are to be placed within the public ways and places. (Ord. 209 §3, 1988)

#### **Sec. 5-3. Installation of cable system.**

(a) The Grantee shall have commenced and accomplished a significant construction of the cable system facilities authorized in this Article within eighteen (18) months after the effective date of this Article, and shall thereafter equitably and reasonably extend energized trunk cable to such percentage of its franchised area as will accomplish completion of the cable system within six (6) months after the beginning of construction.

(b) The installation of the cable system shall be in accordance with the requirements of the National Safety Code of the American Insurance Association's latest edition, all applicable laws, ordinances, rules and regulations of the FCC, the State and the Town affecting electrical installations and buildings, now or hereafter in effect.

(c) The Grantee, subject to the rights of adjoining property owners, at its expense, shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks and other public places of the Town so as to prevent the branches of such trees from coming into contact with the wires and cables of the Grantee, all trimming to be done under the supervision and direction of the Town.

(d) The Grantee shall at its expense protect, support, temporarily disconnect, relocate or remove any property of the Grantee located upon streets, rights of way and easements of the Town, when required by the Town because of traffic conditions, public safety, street vacation, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines and tracks or any other type of structure or improvement by the Town; if the Grantee fails to do so, the Town may cause the necessary work to be completed and the Grantee shall pay the Town the construction thereof within ten (10) days after the receipt of an itemized account of such cost. (Ord. 209 §4, 1988)

#### **Sec. 5-4. Relocation of property.**

The Grantee, at the request of any person holding a permit issued by the Town, shall temporarily remove, raise or lower its wires or cables to permit the moving of buildings or equipment. The expense of such temporary removal, raising or lowering shall be paid by the person requesting the same, and the Grantee may require payment in advance. The Grantee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire or cable change. (Ord. 209 §5, 1988)

#### **Sec. 5-5. Rates and charges.**

(a) All rates and charges made by the Grantee for its services shall be fair, reasonable, just and uniform.

(b) The Grantee shall have the authority to promulgate such rules, regulations, terms and conditions of its business as shall reasonably be necessary to enable the Grantee to exercise its rights and perform its services under this franchise and to assure an uninterrupted service to each and all of its customers. (Ord. 209 §6, 1988)

#### **Sec. 5-6. Indemnification.**

The Grantee agrees to hold and save the Town harmless from any and all liability that may arise out of the construction, maintenance, operation or use of the Grantee's system and works and the providing of such services, and to provide and keep in force adequate liability insurance therefor, to the extent of bodily injury limits of \$500,000/\$500,000 and a property damage limit of \$100,000/\$300,000, naming the Town as an additional insured, as its interest may appear. The Grantee shall also provide and maintain insurance under a broad form automobile policy with \$100,000/\$300,000, \$100,000 coverage limits and Workmen's Compensation Insurance with state statutory limits. All insurance shall be issued by a company authorized to do business in the State

and shall be provided before the Grantee, its successors or assigns thereof, shall commence the construction or other operation mentioned in this Section. The Town shall notify the Grantee, its representatives or employees in the Town, if any, within ten (10) days after presentation of any demand or claim that may arise, whether by suit or otherwise, against the Town. The Grantee shall maintain on file with the Town Clerk at all times a current certificate of insurance. All insurance policies shall, if possible, provide for not less than thirty (30) days' notice of cancellation. (Ord. 209 §7, 1988)

**Sec. 5-7. Payment to Town.**

In consideration of the rights, privileges and franchise hereby granted, as compensation to the Town for the use of its public ways and places by the Grantee, and to properly regulate the activities of the Grantee, the Grantee shall, on or before the last day of January of each year for which this franchise is effective, pay to the Town a sum equal to three percent (3%) of the gross subscriber revenues for basic cable television service within the then existing corporate limits of the Town for the preceding one (1) year period ending on the last day of December. The books of the Grantee shall be open to inspection by the Town at all reasonable times to verify the accuracy of the computation and correctness of the report which shall accompany payment. The Grantee shall keep books and records pursuant to established practices using generally accepted auditing procedures. (Ord. 209 §8, 1988)

**Sec. 5-8. Franchise termination.**

The Town may terminate the franchise and all rights therein granted in the event the Grantee or the successors or assigns thereof shall fail to comply with any of the terms and conditions of this Article. The Town may exercise such right of termination by mailing notice thereof by certified mail to the Grantee, unless within thirty (30) days after such mailing, full compliance with the terms and provisions of this Article has been effected. (Ord. 209 §9, 1988)

**Sec. 5-9. Publication costs.**

The Grantee shall pay to the Town a sum to cover the ordinance publication cost when presented with the bill by the Town. (Ord. 209 §10, 1988)

**Sec. 5-10. Location map.**

The ordinance codified in this Article is passed and adopted in conformity with the laws of the State, and in addition to other provisions herein set out, the Grantee shall file with the Town, and obtain approval of, a proper map showing and describing the exact location or proposed location of all its facilities within the Town's streets, alleys and public ways and secure from the proper Town official approval for the location of and erection of either above or below ground facilities so as not to interfere with existing public utility franchises, excluding herefrom the necessity of securing prior approval of the Town if and when the Grantee obtains pole attachment agreements with existing public utilities for the joint use of poles that may be now existing or may hereafter be erected by such public utility franchise other than by this Article. (Ord. 209 §12, 1988)

**Sec. 5-11. Effective date.**

The ordinance codified in this Article shall take effect from and after its passage, adoption and publication in the official Town newspaper. (Ord. 209 §14, 1988)

**Secs. 5-12—5-30. Reserved.**

**ARTICLE II**

**Electric Franchise**

**Sec. 5-31. Grant of franchise.**

The franchise and right is hereby granted by the Town to San Isabel Electric Association, Inc. (hereinafter called Association), its successors and assigns, to locate, build, construct, acquire, extend, maintain and operate into, within and through the Town a plant or plants, and works, as the same is now or may hereafter be constructed in the Town, for the manufacture, generation, transmission and distribution of electricity for illuminating, heating and power, or other purposes, with the right and privilege, for the period and upon the terms and conditions hereinafter specified, to furnish, sell and distribute electricity to the Town and the inhabitants thereof by means of substations, conduits, cables and lines of poles with wires strung thereon, or otherwise, as the same are now or may hereafter be constructed in the Town, on, over, under, along, across and through any and all streets, alleys and public ways and places in the Town; and on, over, under, along, across and through any extension, connection with or continuation of the same, and/or on, over, under, along, across and through any and all such new streets, alleys and public ways and places as may be hereafter laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the Town. (Ord. 214 §1, 1993)

**Sec. 5-32. Location of equipment.**

All transmission and distribution structures and equipment erected by the Association within the Town shall be located so as to cause minimum interference with proper use of streets, alleys and other public ways and places. (Ord. 214 §2, 1993)

**Sec. 5-33. Maintenance of equipment.**

The Association shall so maintain its structures, apparatus and equipment as to afford all reasonable protection against injury or damage to persons or property therefrom; and the Town shall be saved harmless from any damage arising out of the exercise by the Association of the rights and privileges hereby granted. (Ord. 214 §3, 1993)

**Sec. 5-34. Rates.**

In consideration of and as compensation for the granting of this franchise, the Association will supply and distribute electricity for lighting, heating, power and other lawful purposes to the Town and its inhabitants at fair and reasonable rates, which rates shall be subject to regulation as provided by law. (Ord. 214 §4, 1993)

**Sec. 5-35. Term of franchise.**

The franchise herein granted shall take effect and be in force from and after the final passage and publication hereof, as required by law, upon filing of acceptance by the Association as provided in Section 5-37 below, and shall continue in force and effect for a term of fifteen (15) years from and after such passage. (Ord. 214 §5, 1993)

**Sec. 5-36. Supply of electricity.**

The Association, its successors or assigns, shall furnish electrical current during the period of this franchise twenty-four (24) hours a day each and every day except when said service may be interrupted by acts of providence, unavoidable accidents, strikes, lockouts or other causes beyond the control of the Association, its successors or assigns. (Ord. 214 §6, 1993)

**Sec. 5-37. Acceptance of franchise.**

Within ten (10) days after the final passage and publication of the ordinance codified in this Article, the Association shall file in the office of the Town Clerk an acceptance in writing of the terms and conditions hereof. (Ord. 214 §7, 1993)

**Sec. 5-38. Rules and regulations on file.**

The Association shall keep on file in its office, available to the public, copies of reasonable rules and regulations from time to time adopted by it for the conduct of its business, and copies thereof shall also be filed with the Town Clerk. (Ord. 214 §8, 1993)

**Sec. 5-39. Payment to Town.**

As a further consideration for this franchise, including all occupancy rights, and in lieu of all occupancy and license taxes or other levies that might be imposed, the Association shall, annually, pay to the Town a sum equal to three percent (3%) of its gross income derived from its operations within the corporate limits of the Town, excluding the amount received from the Town itself for electricity furnished for street lighting or other purposes. Such payments shall be made on or before the first day of April for the calendar year next previous, including the portions of the years at the beginning and expiration of this franchise. (Ord. 214 §9, 1993)

**Sec. 5-40. Purchase by Town.**

The Town may in form and manner as provided by law, upon payment therefor at its cash value, purchase and take over the property and plant of the Association situated in and devoted exclusively to the service of the Town. (Ord. 214 §10, 1993)

**Sec. 5-41. Amendment by Town.**

The right is hereby reserved to the Town to adopt, from time to time, in addition to the provisions herein contained, such ordinances as may be deemed necessary in the exercise of its police power, provided that such regulations shall be reasonable and not destructive of the rights herein granted, and not in conflict with the laws of the State. (Ord. 214 §11, 1993)

**Secs. 5-42—5-60. Reserved.**

### **ARTICLE III**

#### **Telephone Utility Tax**

**Sec. 5-61. Levy of tax.**

There is hereby levied on and against each telephone utility company operating within the Town a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town and of supplying local exchange telephone service to the inhabitants of the Town. The annual amount of tax levied hereby shall be equal to five hundred dollars (\$500.00) per telephone account for which local exchange telephone service is provided within the corporate limits of the Town on the effective date as provided in Section 5-62 below and upon each anniversary of the effective date. (Ord. 201 §1, 1979)

**Sec. 5-62. Effective date.**

The tax levied by this Article shall commence on March 1, 1979, and shall be due and payable in twelve (12) equal monthly installments with the first such installment due thirty (30) days after the effective date. (Ord. 201 §2, 1979)

**Sec. 5-63. Filing statement.**

Within thirty (30) days after the effective date as provided in Section 5-62, each telephone utility company subject to this Article shall file with the Town Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on the effective date. Such statement shall be filed within thirty (30) days after each anniversary of the effective date showing such accounts on the anniversary date. (Ord. 201 §3, 1979)

**Sec. 5-64. Failure to pay.**

If any telephone utility company subject to the provisions of this Article shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney, upon direction of the Board of Trustees, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt in the name of the people of the State. (Ord. 201 §4, 1979)

**Sec. 5-65. Penalty.**

If any officer, agent or manager of a telephone utility company which is subject to the provisions of this Article shall fail, neglect or refuse to make or file the annual statement of accounts provided in Section 5-63, said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00); provided that each day after said statement shall become delinquent during which said officers, agent,

manager or person shall so fail, neglect or refuse to make and file such statement shall be considered a separate and distinct offense. (Ord. 201 §5, 1979)

**Sec. 5-66. Inspection of records.**

The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which are subject to the provisions of this Article and to make copies of the entries or contents thereof. (Ord. 201 §6, 1979)

**Sec. 5-67. Local purpose.**

The tax herein provided is upon occupations and business in the performance of local functions relating to interstate commerce. It is expressly understood that none of the terms of this Article be construed to mean that any telephone utility company is issued a franchise by the Town. (Ord. 201 §7, 1979)

**Sec. 5-68. Tax in lieu of other taxes, etc.**

The tax herein provided shall be in lieu of all other payments by or fees and taxes on any telephone utility subject to the provisions of this Article, other than ad valorem taxes, and in addition shall be in lieu of any service furnished the Town by any said telephone utility. (Ord. 201 §8, 1979)

**Secs. 5-69—5-80. Reserved.**

**ARTICLE IV**

**Emergency Telephone Service Charge**

**Sec. 5-81. Intent and applicability.**

The Board of Trustees finds, determines and declares that it is necessary to protect and preserve the health, safety and welfare of the citizens of the Town and that a continued and adequate emergency telephone service be made available to the citizens of the Town through the construction, installation and use of a 911 enhanced emergency telephone service. (Ord. 213 §1, 1992)

**Sec. 5-82. Assessments.**

The Board of Trustees is hereby authorized to impose a charge as set forth and designated in Section 29-11-104(2), C.R.S. Such charge shall be imposed on each telephone user within the corporate limits of the Town; however, said charge shall not be imposed upon any state or local government entity. (Ord. 213 §2, 1992)

**Sec. 5-83. Imposition of charge.**

The Board of Trustees is hereby authorized to impose said charge by resolution as amended from time to time; however, said charge shall not exceed the limits imposed by statute or law of the State. (Ord. 213 §3, 1992)



**Secs. 5-84—5-100. Reserved.**