

ORDINANCE NO. 235

AN ORDINANCE granting a non-exclusive franchise to CUSTOM CABLE SYSTEMS, INC., a Colorado Corporation, its successor and assigns, to build, construct, operate and maintain a cable television system in, under and over public rights of way in the City of Creede, Colorado, a Town.

BE IT ORDAINED by the Board of Trustees of the City of Creede, Colorado, a Town:

SECTION 1.

This Ordinance shall be known and may be cited as the "Cable T.V. Ordinance, 1983". No person shall construct, operate or maintain any CATV system upon, over, under, along, across or above, any public way (road, street, alley, or sidewalk) or public property except under this or a subsequent ordinance of the City of Creede.

SECTION 1. - REPEAL

The following provisions of Ordinance No. 235 be and the same are hereby repealed, without re-enactment or amendment:

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- A. Sub-section (a), (b), (c) and (d) of Section 9; (Sub-section (e) of Section 9 is not hereby repealed).
- B. Section 10, in its entirety.
- C. Section 14, in its entirety.

SECTION 2.

The following terms and phrases, as used herein, shall have those meanings set forth below:

(a) "City" is the City of Creede, Colorado, a Town and municipal corporation.

(b) "City Council", "Council" or "Town Council", is the Board of Trustees of the City of Creede, Colorado, a Town.

(c) "Cable Television System", or "CATV System", shall mean the system of antennas, towers, satellite earth stations, microwave, coaxial cable, fiber optics, waveguides, or other conductors, converters, equipment and facilities, designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video, digital and other forms of electronic and electrical signals to persons who subscribe to programs and services delivered by such signals. Said definition shall not include any such facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, and does not use city rights of way.

(d) "Gross Revenue" shall mean any and all revenue derived directly or indirectly by the grantee, its affiliates, subsidiaries, parent and any person in which the grantee has a financial interest from or in connection with the operation of a cable television system pursuant to this Ordinance; provided, however, all revenues shall include, but not be limited to, basic subscriber service monthly fees, pay-cable fees, installation and reconnection fees, leased channel fees, converter rentals, and advertising revenues and that this shall not include any fees, payments or royalties paid to any program

supplier or distributor or any taxes on services furnished by the grantee herein imposed directly upon any subscriber or user by the state, city or other governmental unit and collected by the company on behalf of said governmental unit. This also does not include the converter deposit.

(e) "Person" is an individual, firm, partnership, association, corporation, company or organization of any kind.

(f) "Proposal" is the same as "Application".

(g) "Grantee" is Pagosa Vision, Inc., a corporation, organized under the laws of the State of Colorado, and it is the grantee of rights under this franchise. Grantee will, during the term hereof and any extension, retain its lawful status to do business under the laws of and in the State of Colorado, and remain solvent and not in receivership.

(h) "City Manager", is the Circuit Rider Administrator for Mineral County and the City of Creede, so long as such position exists. If such position ceases to exist or is not filled at any time, then the duties and powers of such office as created in the original Ordinance and this Amendment shall pass to the office or officer of the City as designated by the City Council. If no such designation should be made, the Mayor of Creede shall be the designated officer.

SECTION 3. PROVISIONS OF SERVICES - INCORPORATION BY REFERENCE - CONTINUING OBLIGATION.

(a) The Grantee shall provide services, technical standards and system design specifically set forth in its proposal to provide cable television service with the City of Creede and by its acceptance of this ordinance, the Grantee specifically grants and agrees that its proposal is hereby incorporated by reference and made a part of this Ordinance.

(b) In the event of conflict between the proposal and the provisions of this Ordinance, the provision which provides the greatest benefit to the City, in the opinion of the City Council, shall prevail.

(c) Any obligation of or requirement imposed upon the grantee in this franchise shall be deemed to be an obligation or requirement that shall be in full force and effect throughout the term of this franchise, unless specifically set-forth herein to the contrary.

SECTION 4. GRANT OF AUTHORITY.

There is granted hereby to the Grantee the non-exclusive right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public utility easements, public ways and public places not laid out or dedicated, and all extensions thereto in the City and according to the technical specifications of the Federal Communications Commission all poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the transmission of television signals and

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all other signals permitted by the Federal Communications Commission or its successor agency, either separately or upon or in conjunction with any public utility maintaining the same in the City, with all of the necessary and desirable appliances and appurtenances pertaining thereto. Without limiting the generality of the foregoing, this franchise and grant shall and does hereby include the right in, over, under, and upon the streets, sidewalks, alleys, public utility easements and public grounds and places in the City to install, erect, operate or in any way acquire the use of, as by leasing or licensing, all lines and equipment necessary to a cable television system and the right to make connections to subscribers and the right to repair, replace, enlarge and extend said lines, equipment and connections. Grantee shall have authority to trim trees that overhang the public right of way only when absolutely necessary and then in a good and workmanlike manner. This franchise and grant includes the right to use public property which shall have been acquired by the City in the future as well as public property currently owned by it, upon approval being granted by the City Council.

SECTION 5. POLICE POWER.

At all times during the terms of this franchise, Grantee shall be subject to all lawful exercise of the police power of the City. The right hereby is reserved to the City to adopt, in addition to the provisions herein contained and any other existing applicable ordinances, such additional applicable ordinances as it shall find necessary in the exercise of its police power; provided, however, that such additional ordinances shall be reasonable, shall not conflict with or substantially alter the rights granted herein, and shall not conflict with the laws of the State of Colorado, the laws of the United States of America, or the rules, regulations and policies of the Federal Communications Commission.

SECTION 6. LIABILITY - INDEMNIFICATION - INSURANCE.

(a) Damages. The Grantee shall pay, and by its acceptance of this authority, does specifically agree that it will pay, all damages and penalties which the City legally may be required to pay as a result of granting this franchise. These damages or penalties shall include, but shall not be limited to: damages arising out of copyright infringements, defamation, unauthorized taking, anti-trust and royalty payments; any and all damages, including personal injury, death and property damages, arising out of the installation, operation or maintenance of the CATV System authorized hereby. Provided, however, that this indemnification does not extend to causes of actions arising solely from the actions of the City, its officers and employees and for which Grantee has no responsibility. And further provided that the City shall be liable for damages to the equipment and facilities of the Grantee which are the result of negligent or deliberate acts of employees of the City.

(b) Expenses of Litigation. Grantee shall pay and by its acceptance hereof specifically agrees that it will pay all expenses incurred by the City in defending itself with regard to all damages and penalties mentioned in Sub-section 6(a) for which Grantee has any responsibility,

including expenses of investigation, except causes of action arising solely from the actions of the City, its officers and employees and for which Grantee has no responsibility. These expenses include all out-of-pocket expenses, such as attorney fees, providing Grantee shall have exclusive right to retain counsel of its choice, and shall include also the reasonable value of any services rendered by the City Attorney or his assistant(s) or any employees of the City.

(c) Insurance. Grantee shall maintain, and by acceptance hereof specifically agrees that it will maintain, throughout the term of this authority and grant, liability insurance insuring the Grantee and the City (the City to be a named insured) with respect to all damages mentioned in Sub-section 6(a), in the following minimum amounts:

1. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for bodily injury or death to any one person; One Million and no/100 Dollars (\$1,000,000.00) for bodily injury or death resulting from any one accident;
2. Five Hundred Thousand and no/100 Dollars (\$500,000.00) for property damages resulting from one accident;
3. One Million and no/100 Dollars (\$1,000,000.00) for umbrella;
4. Workmen's Compensation Insurance as required by all applicable Federal, State, Maritime or other laws, including Company's Liability, with a limit of at least One Hundred Thousand and no/100 Dollars (\$100,000.00).

(d) Casualty. Grantee shall keep the CATV system and system facilities continuously insured against such risks as customarily are insured against by businesses of like size and type, including, but not limited to, insurance upon repair or replacement, if available, and to the full insurable value of the system facilities (with reasonable deductible provisions) against loss or damage by fire or lightning, with uniform standard extended coverage endorsement as in use in the State of Colorado.

(e) Co-insurance. Grantee shall have the City and all of its officers and employees, acting in their official capacities, included as co-insureds on all insurance policies referred to in Section 6 (c) and (d). As evidence thereof, Grantee shall file with the City copies of all such policies, or in the alternative, certificates thereof issued by the carrier(s). All such policies shall provide that the issuing insurance company will not cancel them without at least ten days prior notice to the Grantee and the City.

(f) City Liabilities. Nothing contained herein shall be construed as extending or expanding the liability of the City, or any officers or agents or contractors thereof, beyond any liability enumerated or limited by the Colorado Governmental Immunities Act.

(g) Grant. By acceptance of the grant of this franchise, Grantee covenants and agrees that it will not at any time or in any manner or proceeding set up against the City any claim or proceeding challenging the validity of this Ordinance, or the power or authority of the City to enact this Ordinance and that it will defend with the counsel of

its choice and pay the costs of defense of any anti-trust suit or other actions arising as a result thereof, and any judgments rendered against the Grantee or the City shall be paid by the Grantee.

SECTION 7. GENERAL CONSTRUCTION AND PERFORMANCE STANDARDS OF THE SYSTEM.

(a) All system facilities shall be installed, repaired and replaced by Grantee, or by someone in its behalf, and Grantee shall be solely responsible for and shall pay the expenses thereof, including the cost of promptly restoring the surface of any street, alley, other public way, or any point of excavation whether on public or private property. All such facilities erected, constructed or replaced by the Grantee within the City, including extensions of streets, alleys, and other public ways and places, shall be erected so as to cause no interference with the rights or reasonable convenience of users or property owners whose property adjoins any of said streets, alleys, or public ways and places, and so as not to interfere with existing public utility installations or extensions thereof, or repair to either. All service lines shall be underground in those areas of the City where either public utilities providing telephone or electric utility facilities are underground at the time of installation; otherwise the Grantee may install its services above ground. If, subsequently, the electric utility facilities or other utilities go underground, then in that event the facilities of the Grantee also shall go underground simultaneously and Grantee shall pay for the costs of the same. The grant of authority hereunder includes the right of the Grantee to cut and trim trees to protect its facilities and Grantee shall pay for the costs of the same. Grantee accepts all legal and economic responsibility for actions taken to protect its system including the cutting and trimming of trees.

(b) The City shall be advised at least twenty-four (24) hours in advance of any excavation to be performed by Grantee. No poles shall be installed upon or adjacent to any public way or property without the consent of the City.

(c) During the term hereof, Grantee shall be responsible for all costs of moving any portions of the system in the event that the City finds that the public need requires changes in the location or use of any public property including street ways, grades and curbs and sewer and water mains.

(d) Grantee may be required by the City to permit joint use by utilities of Grantee's system facilities located in the streets, alleys, or other public rights of way in the city insofar as such joint use reasonably may be practicable, and upon payment of reasonable rental therefore.

(e) Grantee shall construct, install, operate and maintain its system in a manner consistent with all Federal, State, County and City laws, ordinances, construction standards, and governmental requirements, and with technical standards of the Federal Communications Commission. In addition, Grantee shall provide the City, upon request, with a written report of the results of Grantee's proof of performance tests conducted pursuant to the Federal Communications Commission standards

and requirements.

(f) Construction, installation and maintenance of the Grantee's system shall be accomplished in an orderly workmanlike manner. All cables and wires shall be installed parallel with electric and telephone lines, where practicable. Multiple cable configurations shall be arranged, in parallel and shall be bundled with due respect for engineering considerations. Grantee shall provide the City with reports, every three (3) months during construction, of the progress made in constructing and activating the system.

(g) The system shall not endanger or interfere with the safety of persons or property in the franchise area, or in other areas in which Grantee may have equipment activated or situated.

(h) Any antenna structure used in the CATV system shall comply with construction, marking and lighting of antenna structures, as may be required by the United States Department of Transportation.

(i) All working facilities and conditions existing during construction, installation and maintenance of the CATV system shall comply with the standards of the Federal and State Occupational Safety and Health Administration.

Grantee shall at all times comply with the following:

1. National Electric Safety Code (National Bureau of Standards), as existing and as subsequently amended.
2. National Electric Code (National Bureau of Fire Underwriters), as existing and as subsequently amended.
3. Bell System Code of Pole Line Construction, as existing and as subsequently amended.
4. Applicable FCC or other federal, state and local regulations and codes, as existing and as subsequently amended.

(j) RF leakage shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns. Federal rules and regulations shall govern. In order to insure compliance herewith, the City shall have the right to make inspections of Grantee's system and to test the same. The City shall pay the expense thereof if said inspection does establish compliance by Grantee; otherwise, Grantee shall pay the expense thereof, any such testing to be performed by qualified personnel.

(k) Tests and measurements to insure compliance with technical standards shall be performed by the Grantee, in a manner that is

consistent with the provisions and standards of the Federal Communications Commission, as amended from time to time. Results of all tests and measurements required to be taken by the Grantee shall be recorded, maintained and made available upon request to the City. Where there exists evidence which, in the judgment of the City Council, casts doubt on the reliability or quality of cable service, the City shall have the right to require Grantee to perform tests and analysis directed toward such suspected inadequacies. Grantee shall fully cooperate with the City in performing such testing, and shall prepare results and a report, if requested, within thirty days after notice. Such report shall include the following information: the nature of the complaint or problem which precipitated the special tests; what system components were tested; equipment used and procedure employed in testing; the method, if any, in which such complaint or problem was resolved; and any other information pertinent to said tests and analysis which may be required. The City may require that tests be supervised, at Grantee's expense, by a licensed professional engineer not on Grantee's permanent staff. The engineer shall certify all records of special tests and forward to the City such records with a report interpreting the results thereof and recommending actions to be taken, if any. The City's right pursuant hereto shall be limited to requiring tests, analysis, and reports pertaining to specific subjects and characteristics based on complaints or sufficient evidence which the City has grounds to believe will require testing to be performed to protect the public against substandard cable service. In the event that the supervising engineer reports that action is necessary on the part of the Grantee, the Grantee will take such action within two (2) days of notice thereof.

(l) Grantee shall put, keep and maintain all parts of the system in good condition throughout the entire period of the franchise. Grantee 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 from Grantee to City and shall occur during periods of minimum system use whenever possible.

(m) Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the City.

(n) Grantee shall maintain at a minimum, throughout the lifetime of this franchise, the technical standards and quality of said service set forth herein and Grantee will at its sole expense update and improve its system to maintain state of the art quality and equipment. The standard for determining "state of the art" quality and equipment will be based upon service and equipment which is technologically and economically reasonable and, to a lesser extent, based upon service and equipment provided to similar sized communities by unrelated cable companies in similar circumstances. Should the City Council find, by resolution, that Grantee has failed to maintain these technical standards or quality of service, or "state of the art" quality and equipment, and in such resolution specifically sets forth reasonable improvements to be made, Grantee shall make such improvements.

Failure to make such improvements within three (3) months of such resolution shall constitute breach of a condition for which the remedy of termination shall be applicable. Grantee shall, at least annually, advise the City Council of "state of the art" technology not currently a part of the Grantee's Creede system.

(o) Grantee shall produce a picture, whether in black and white or in color, accompanied with proper sound on typical standard production television sets in good repair, that is as good as the state of the art reasonably and practically allows. Grantee shall limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than three (3) days after written notice by the City to Grantee unless the failure is beyond the control of the Grantee.

SECTION 8. THE SYSTEM.

The Communications system permitted and required to be installed and operated hereunder shall:

(a) Be operated in conformance to the laws of the State of Colorado and with the FCC Technical Standards, 47 C.F.R., Section 76.601, et. seq. as from time to time amended. Should there be any modifications of the provisions of said Standards which are inconsistent with the franchise hereby granted, this ordinance shall be amended so as to conform to such modifications within one (1) year after the effective date of the FCC's adoption of the modification, or upon renewal of this franchise. Grantee will advise the City of any such modifications in its annual report.

(b) Carry on the system all required broadcast signals pursuant to the FCC signals carriage rules and such other broadcast signals as are set-forth in Grantee's application

(c) The total capacity of the system, as constructed, shall be fifty-four (54) channels. The total number of channels which shall be available and initially utilized shall be at least twelve (12). In addition, four (4) FM radio channels shall be available. The system shall be designed, established, constructed, operated and maintained so as to provide for twenty-four (24) hour per day continuous operation.

(d) Grantee shall include in the system, at no additional cost to the City or its subscribers, a fully operational audio emergency over-ride system. In addition, should the City request the same in the future, Grantee will provide at no additional cost to the City a color television camera and will assist in the establishment of a modest studio.

(e) The system shall be designed, established, constructed, operated, maintained, and fully capable of providing two-way video service when requested by the City and when financially and technologically feasible.

(f) Grantee shall conduct a complete survey of all subscribers once in the first year of operation and at least once every two years thereafter. The survey format and the results of the survey shall be provided to the City Council within thirty (30) days of the completion of the survey. Such survey shall not be limited to programming offered by a single satellite or to a single horizon or a satellite or satellites then being utilized by the Grantee. At the request of the City Council, the Grantee shall be bound to provide programming within six (6) months of and in accordance with the results of such survey. In this regard, two (2) dishes shall be installed in the initial installation.

(g) Additional requirements:

1. Throughout the term of this Ordinance, including during the construction phase and thereafter, Grantee shall maintain current, up to date maps and plans of the entire system and shall file the same with the City promptly. Where underground installations are involved, the City will not be responsible for damage to such underground facilities until the maps and plans of the system, in the hands of the City, have been updated to show such underground installations. Maps and plans provided to the City shall be at the expense of the Grantee.
2. Grantee shall provide a weekly program guide to every subscriber to Grantee's system. All costs of publication and delivery of such weekly program guide to all such subscribers shall be at Grantee's expense.

(h) Technical standards:

The cable communications system will be designed, installed, maintained, and tested to conform with the technical performance specifications contained herein. In addition, should the Federal Communications Commission (FCC) or other State or Federal authority issue standards either outside the scope of the technical performance standards contained herein, or requiring a higher level of cable system performance, those standards will be complied with. If for any reason the referenced FCC or other technical standards are reduced in their relative scope or service level, the more stringent standards will be the ones applied to the system. Where these City standards surpass those of the FCC Rules and Regulations Part 76, the City standards shall be adhered to. Demonstration of system performance to the technical standards herein shall be performed by measurement upon request by the City. These standards shall be measured on receivers and equipment owned by the Grantee and utilized by it for such purposes.

1. The system shall be rated for continuous twenty-four (24) hour per day operation with no perceptible change in signal level between -40°F and +120°F.

2. The system shall supply a visual signal level to the subscriber of +3 to +12 dBmV as measured across the subscriber's terminal.
3. The visual signal level on any channel shall be maintained within 2 dB of the visual signal level on adjacent channels as measured at the subscriber's terminal.
4. The visual signal level difference between any two (2) channels shall not exceed 9 dB as measured at the subscriber's terminal.
5. The frequency response across any entire, single television channel as measured at the subscriber's terminal shall not vary in excess of ± 1 dB.
6. The frequency response across the spectrum of 5 to 440 MHz as measured at the subscriber's terminal shall not vary in excess of $N/10 + 1.0$ dB where "N" equals the number of trunk amplifiers in cascade.
7. Hum modulation shall not cause more than a peak variation in visual signal level greater than 2.0% of the visual signal level.
8. The ratio of visual signal level to system noise shall be a minimum of 44 dB at 40°F as measured at the subscriber's terminal.
9. The system cross modulation characteristics as measured using NCTA standards shall be at least 57 dB down at 49°F on the trunk system and 51 dB down at 49°F on the distribution system (including the trunk contribution) with 54, 100% synchronously modulated carriers.
10. Second order distortion in any television channel shall be a minimum of 55 dB below the video carrier for 54 channels of operation as measured anywhere in the system.
11. The system shall not introduce a total group delay greater than 200 nano-seconds from headend to subscriber's terminal.
12. The ratio of visual signal level to any system-generated, coherent disturbances shall be no less than 56 dB on the trunk system and no less than 52 dB at the subscriber's terminal.
13. The maximum echo shall conform to the P. Mertz curve regardless of the point of origination of the echo.
14. The system shall operate over the temperature range with no irreversible system impairment and a maximum variation of -3 to +4 dBmV.

- 15. The distribution system shall not cause a change in chroma level greater than ± 1 dB, nor cause differential gain in excess of ± 1 dB.
- 16. The ratio of visual signal level to undesired co-channel visual signal level shall be no less than 50 dB on any applicable channel.
- 17. The isolation provided between any two subscribers' terminals shall be a minimum of 26 dB.
- 18. Electro magnetic susceptibility shielding efficiency will be greater than 85 dB.
- 19. Radiation from the cable system shall not exceed amplitudes as specified by the FCC Subpart K, Part 76.
- 20. A reserve of amplifier gain of at least 2 dB shall be retained at each amplifier station and a reserve of at least 25 dBmV shall be retained at the end of each feeder line unloaded where pressure taps are used.
- 21. Every amplifier in the trunk line shall be automatically controlled for gain as sensed by a constant level pilot carrier inserted at headend. Every amplifier shall be temperature compensated so as to provide no perceptible change in signal level between -40° and $+120^{\circ}$ F.
- 22. In no case shall more than two extender amplifiers be cascaded, and Grantee shall endeavor to use as few extender amplifiers as is practical. When used, the operating levels shall be derated by 3 dB.
- 23. Trunk amplifiers shall be spaced at 22 dB less a 2 dB reserve nominally. In the event that a cascade occurs which involves a larger number of amplifiers than indicated for this spacing, the spacing shall be reduced accordingly so as to meet specifications relative to noise and cross-modulation.

SECTION 9. CONSTRUCTION TIMETABLE.

(a) Actual construction of the system shall commence, without fail, within thirty (30) days of the publication of the franchise ordinance in the Mineral County Miner. Publication shall be delayed up to ten days (10), to permit written acceptance of this franchise by the Grantee. If not accepted within such ten (10) days, the City may declare this Ordinance void.

(b) The City acknowledges that commencement of construction depends in large part on Grantee's obtaining pole attachment agreements with public utilities. The Grantee shall seek to retain and contract with such utilities and complete pole agreements with all due diligence. Failure to proceed expeditiously shall be conclusively established in the event construction is not commenced within sixty (60) days of the publication of this Ordinance.

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~~(c) The Grantee will have completed in excess of ninety percent (90%) of the total projected construction (including that the system is operational and ninety percent (90%) of all subscribers are wired and operating) on or before one hundred twenty (120) days after the date of commencement of the construction, with all construction and wiring fully completed within one (1) year of construction commencement.~~

~~(d) Failure to proceed expeditiously or failure to provide the services described herein, within the timetable described in this Section 9 of this Ordinance may result in termination under Section 30, or forfeiture of or damages under the construction bond under Section 10, or all of the above, at the City's sole option.~~

(e) Any subdivision or property annexed to the City, where completed homes in the new subdivision number enough to make it economically feasible, shall be serviced with the same service as is provided the core City by the Grantee, upon request by the City Council. Subscriber services shall be provided within twelve (12) months of the request of the City Council. The burden shall be upon the Grantee to prove, by certified reports and analysis of its accounting firm, that expansion is not economically feasible.

SECTION 10. CONSTRUCTION BOND.

To insure that all requirements of the franchise are met, the operator shall:

(a) Within thirty (30) days after the acceptance of the franchise, Grantee shall obtain and maintain at its cost and expense, and file with the City Clerk, a corporate surety bond from a company authorized to do business in the State of Colorado and found acceptable by the City Attorney, in the amount of One Hundred Twenty-five Thousand Dollars (\$125,000.00) to guarantee the timely construction and full activation of the cable system.

(b) The bond shall provide, but not be limited to, the following condition: There shall be recoverable by the City, jointly and severally from the principal and surety, any and all damages, losses, or costs, suffered by the City resulting from the failure of the Grantee to satisfactorily complete and fully activate the cable system throughout the area where the CATV system will be initially available to subscribers pursuant to the terms and conditions of this ordinance within the time provided for in this ordinance. One Hundred Thousand and no/100 Dollars (\$100,000.00) of such bond is the maximum recoverable by the City for all construction and activation of the system by the City. In the event that the system has been partially completed by the Grantee, the actual cost of completion and activation shall be recoverable by the City. In addition, should the Grantee fail to complete and fully activate the system in accordance with the terms of this Ordinance, Twenty-five Thousand and no/100 Dollars (\$25,000.00) of such Bond shall be recoverable by the City as liquidated damages for such failure and the otherwise immeasurable damage to the residents thereof. Such sum of Twenty-five Thousand and no/100 Dollars (\$25,000.00) is not a penalty or forfeiture, but is the agreed, stipulated and actual damage to the community as a whole, over and above the cost of completion and activation of the system and such Twenty-five Thousand

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and no/100 Dollars (\$25,000.00) are liquidated damages. Such sum shall be recoverable by the City in the event that the Grantee fails to complete and fully activate the system as herein described.

(c) Any extension of the prescribed time limit must be authorized by the City Council. Such extension shall be authorized only when the Council finds that such extension is necessary and appropriate due to causes beyond the control of the Grantee.

(d) The construction bond shall be terminated only after the City Council finds that the Grantee satisfactorily has completed full construction and activation of the cable system pursuant to the terms and conditions of this ordinance.

(e) The rights reserved to the City with respect to the construction bond are in addition to all other rights of the City, whether reserved by this ordinance and authorized by law, and no action, proceeding, or exercise of a right with respect to such construction bond shall affect any other rights the City may have.

(f) The construction bond shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety, nor the intention not to renew be stated by the surety, until sixty (60) days after receipt by the City, by registered mail, of written notice of such intent to cancel or not to renew."

(g) For failure to complete system construction in accordance with the provisions of this franchise, unless City Council specifically approves the delay by motion or resolution, which approval shall not be unreasonably withheld if due to the occurrence of conditions beyond the Grantee's control, Grantee shall pay One Hundred and no/100 Dollars (\$100.00) per day for each day, or part thereof, the deficiency continues

(h) Force Majeure the Grantee shall not be responsible for delays in construction or extension of the system for any cause wholly beyond Grantee's control including acts of God, fire, flood, earthquakes, extraordinary delays in transportation, strikes, embargos, enemy action, energy shortages and similar events. In the event of such, the City will reasonably grant extensions so long as the event is beyond the control of the Grantee. Provided, however, that delays occasioned by contract disputes between the Grantee and some third party, such as a strike or other contractual dispute, shall be closely scrutinized by the City prior to the granting of any extension under this paragraph.

SECTION 11. FRANCHISE TERM - RENEWAL AND REVIEW.

This franchise shall take effect and be in full force from and after acceptance by Grantee, as provided elsewhere, herein, and the same shall continue in full force and effect for a basic initial term of fifteen (15) years. If the Grantee applies for extension or renewal of this grant at least six (6) months prior to the expiration of the term hereof, the Grantee may be considered by the City for renewal of the grant. In determining, at its sole option and discretion, whether

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to grant the Grantee's application for an extended term, due consideration shall be given to Grantee's performance during the initial basic term, with such consideration pertaining to, but not being limited to: the extent to which the state of the cable TV art shall have improved, progressed or otherwise changed, and whether and to what extent Grantee proposes to provide services to subscribers in conformity therewith; whether and to what extent Grantee shall have performed in accordance with the requirements recited herein pertaining to complaints, quality of service, and the like; monthly charges and services in comparable communities. A public hearing shall be conducted on any request for extension, renewal or any new franchise and the selection process shall be open and competitive.

SECTION 12. TRANSFER OF CONTROL.

(a) No transfer of control of the cable system shall take place, whether by forced or voluntary sale, lease, mortgage, assignment, encumbrance or any other form of disposition without prior notice to and approval by the City Council which approval shall not be unreasonably refused. This notice shall include full identifying particulars of the proposed transaction, and the City Council shall act by resolution. The City Council shall have ninety (90) days within which to approve or disapprove a transfer of control. If no action is taken within the ninety (90) days, approval shall be deemed to have been given.

(b) The consent or approval of the City Council to any assignment, lease, transfer, sub-lease or mortgage of the Grantee shall not constitute a waiver or release of the rights of City in and to the streets.

(c) For the purpose of this section the term "control" is not limited to majority ownership, but includes actual working control in whatever manner exercised.

(d) A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of fifty percent (50%) of the voting shares of the Grantee.

(e) A mortgage or pledge of the cable system equipment or any part thereof or a leasing by a Grantee from another person of said cable system equipment or part thereof for financing purposes or otherwise shall be subject to and subordinate to the rights of the City under this ordinance or applicable law. The City acknowledges that, in the normal course of the Grantee's business, the entire system, after construction is completed, may be pledged to a financial entity to secure debts of the Grantee and the City will not deny any bona fide pledge for such purpose to a financial entity.

(f) The Grantee shall reimburse the City for all costs associated with any transfer of control, including auditor's fees, attorney's fees and costs of publication of any new Ordinance or Amendments of this Ordinance.

(g) For purposes of the consideration of any request for an increase in rates or changes as provided for herein, the transferee of any interest will retain the same cost basis as the Grantee.

(h) All of the provisions of this ordinance shall be binding upon and inure to the benefit of the successors, assigns, heirs, (if the case may be) mortgagees, pledgees and transferees of the Grantee.

SECTION 13. FRANCHISE FEE.

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(a) For the reason that the streets of the City to be used by the Grantee for the operation of its system within the boundaries of the City of Creede are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and the grant to the Grantee of the limited use of said streets is a valuable property without which the Grantee would be required to invest substantial capital in rights-of-way costs and acquisitions, the Grantee shall pay to the City an amount equal to five percent (5%) of Grantee's gross annual revenue from all sources attributable to the operations of the Grantee within the confines of the City (hereinafter the "franchise fee"). Failure to pay this franchise fee is a material breach of this Ordinance.

(b) This payment shall be in addition to any other tax or payment owed to the City by Grantee, including real and personal property taxes.

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(c) The franchise fee and any other cost or penalties assessed shall be payable annually, to the City Clerk's office and the Grantee shall file a complete and accurate verified statement of the gross revenue derived from the system covered by this franchise, during the period for which said annual payment is made, and said payment shall be made to the City not later than one hundred twenty (120) days after close of the fiscal year of the Grantee, and at the same time as submission of the annual reports as provided in Section 20 hereof.

(d) The City shall have the right to inspect the Grantee's income records and the right to audit and to recompute any amounts determined to be payable under this ordinance; provided, however, that such audit shall take place within twenty-four (24) months following the close of each of the Grantee's fiscal years. Any additional amount due to the City as a result of the audit shall be paid within thirty (30) days following written notice to the Grantee by the City which notice shall include a copy of the audit report. The City Auditor is authorized to conduct said investigation or audit.

(e) In the event that any franchise payment or recomputed amount, cost or penalty, or any other monies owed to the City by the Grantee, is not made on or before the applicable date herein specified, interest shall be charged daily from such date at the annual rate of eighteen percent (18%).

SECTION 14. PAYMENT TO CREEDE T.V. ASSOCIATION.

(a) Grantee acknowledges that the grant of this franchise will, but for this section, reduce the revenues of the Creede T.V. Association and the ability of that Association to maintain adequate non-cable television services to the residents of the area who cannot or who choose not to receive cable television. In addition, the Grantee acknowledges that it will utilize the equipment and facilities of the Creede T.V. Association to provide New Mexico channels in its cable programming and as a result, ought to pay a fair and reasonable share of the cost of maintaining such equipment and facilities. Grantee further acknowledges that the following formula for payment, as described in paragraph (c) hereof, and the payment thereof represents a fair and reasonable requirement upon the Grantee.

(b) Grantee shall pay, to the Creede T.V. Association, annually, on or before the 30th day of January of each and every year of the term of the franchise, the amount of money determined from the formula described in paragraph (c) hereof. Such payment is wholly independent of the franchise fee herein described or any other payments called for by this franchise. Breach of this Section shall be deemed a material breach of this Ordinance.

(c) The formula for determining the payment called for by this Section is as follows:

Fifteen and no/100 Dollars (\$15.00) per subscriber to Grantee's service as existing on January 1 of each year, immediately preceding the payment date

PLUS (+)

Five percent (5%) of every rate increase granted by the City to the Grantee during the term hereof, per subscriber as of January 1 of each year.

July 7th, 1986
Section 14, in its entirety
was REPEALED Ordinance # 257

By way of example, for each subscriber to Grantee's service on January 1, Grantee shall pay Fifteen and no/100 Dollars (\$15.00) on or before January 30 of the same year to the Creede T.V. Association. In addition if the Grantee had received a Thirty-six and no/100 Dollar (\$36.00) rate increase per subscriber per year in the cable system, five percent (5%) of such increase (or One and 80/100 Dollars (\$1.80)) would also be paid to the Creede T.V. Association, per subscriber. The total payment would continue in years thereafter until any additional rate increase would be granted at which time the total payment per subscriber would increase in accordance with the above formula.

(d) Grantee shall, upon making such payment, provide evidence thereof to the City, together with its calculations of the amount of such payment.

SECTION 15. RATES

Grantee shall charge subscribers for the connection of system services, and for the providing of system services to subscribers in accordance with the following schedule:

(a) Connection charges:

Basic Cable if requested within the first two weeks following the general advertisement of the availability of connection and subscriptions	\$ 19.95
Basic Cable after such two week period as described above	37.50
Each additional outlet	12.00 each
FM Radio	5.00
Reconnection fees	13.00
Connection fee to motels as follows: Free on an all or none basis. If not all, \$32.00 per unit.	
* Handicapped, senior citizens, municipal outlets and school outlets	Free

The installation charge for any long digs, which are digs in excess of one hundred fifty (150) feet from Grantee's trunk lines, shall never exceed Grantee's actual costs.

The charge to any mover (i.e., for the temporary raising or removal of Grantee's lines to facilitate the movement of large objects in the public ways or elsewhere) shall never exceed Grantee's actual costs.

Section #14 REPEALED in its entirety Ordinance # 271 July 7th, 1986

(b) Monthly charges for system services:

Cable only (basic)	\$ 8.95
Each additional outlet (basic)	3.00
Each additional outlet (pay)	7.00 per channel subscribed to per month
FM Radio (all channels combined)	2.50 per outlet
Motel discount (basic)	6.00 per unit
Motel discount (pay)	7.00 per pay channel per unit
One (1) Premium Channel - pay service	9.95
Two (2) Premium Channels - pay service	17.90
Three (3) Premium Channels - pay service	25.85

(c) Unless authorized by the City, Grantee shall not increase any charge provided in this section. Any increase in a charge, or the establishment of a charge for a service other than a service provided in this section, shall be only as authorized by the City, unless the City's authority is pre-empted by any State or Federal authority. No increase in a charge or the establishment of a charge for a new service shall occur until approved by the City Council. The City Council may require a public hearing on the request for rate increase, at its sole discretion. Adequate public notice shall be given by the City of such hearing. At a minimum such notice shall reasonably summarize the purpose of the hearing, and such notice shall be by a one-time publication at least fifteen (15) days and not more than thirty (30) days before the date of the hearing, in a newspaper of general circulation published in the City. All persons appearing at the hearing shall have a reasonable opportunity to be heard. Publication costs shall be at Grantee's

(f) Charges shall abate pro rata in the event service to a subscriber is interrupted for more than twenty-four (24) hours provided that notice is given to Grantee by the subscriber by telephone and provided that the interruption is not due to negligent or intentional acts on the part of the subscriber.

(g) If no final decision on the Grantee's request for rate increase has been rendered by the City Council within ninety (90) days following submission of financial justification for the rate increase, the Grantee's rate request will be deemed denied.

(h) All rate increases not heretofore approved by Ordinance by the City Council, prior to the effective date of this Amendment, be and the same are hereby approved, including the rate increase requested by the Grantee at the regular meeting of the City Council of June 2, 1986.

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SECTION 16. PAYMENT BY SUBSCRIBERS.

Rate payment provisions are as follows:

(a) There shall be no requirements that payment be made more than one month in advance;

(b) Grantee may require the monthly subscriber fee to be paid one month in advance;

(c) Grantee in any event may offer discounts to persons who pre-pay their monthly subscriber fee(s).

SECTION 17. BUSINESS OFFICE - RESIDENT TECHNICIAN - SERVICE CALLS - LOCAL FACILITIES - RECORDS - RULES AND REGULATIONS.

(a) The Grantee shall maintain in the City, a business agent for the purpose of receiving inquiries, requests, and complaints concerning all aspects of the establishment, construction, maintenance and operation of the system. Payment of subscriber's service charges shall be through Grantee's designated office which shall also provide a toll free or collect number for billing inquiries and complaints. The agent shall have a listed telephone and answering service and shall be available during reasonable business hours. The Grantee shall make such designation, in

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Grantee's delivery of services.

(d) Grantee shall keep full records in connection with all inquiries, complaints and requests in connection with the system. At the least, such records shall identify the person contacting, the subject matter of the contact, and the resolution of the matter in question or the action taken by Grantee in connection with the contact.

(e) All records, reports, data, and the like herein required to be kept or made by Grantee shall be open to the public.

SECTION 18. GRANTEE WILL NOT PROTEST ESTABLISHMENT OF IMPROVEMENTS TO OR EXTENSION OF OTHER SYSTEMS.

The City reserves the right to entertain any future proposals for television cable service to it and its inhabitants; provided, however, the Grantee shall have the right to oppose such proposals if and whenever it deems the same reasonably likely to interfere with Grantee's obligation to the City and Grantee's subscribers pursuant thereto; and provided further that if as a result of the granting of an additional franchise or if Grantee, at its sole discretion, deems it economically unfeasible to continue to render service pursuant to this Ordinance during its term, then Grantee shall have the right to discontinue service and remove its facilities without further obligation.

SECTION 19. CITY'S OPTION TO BUY.

Upon termination of the franchise under the terms and conditions herein contained, whether by expiration of the term hereof or cancellation due to breach of a material provision, the City shall have a first and exclusive option to purchase the business operation and all assets pertaining thereto of the CATV system operated in the City under the following terms and conditions:

(a) The City shall send written notice of its election to exercise said option to the Grantee by certified mail not later than sixty (60) days following the date of termination or cancellation.

(b) The date of closing of the City's option to buy shall be not later than sixty (60) days after the determination of the "fair market value" of the CATV system and Grantee's compliance with the requirements herein contained.

(c) The purchase price shall be paid in cash or by certified funds on the date of closing.

(d) The selling price to the City for the CATV system shall be the "fair market value" of the CATV system owned and operated by the Grantee within the City and including all assets, property and property rights of the Grantee pertaining thereto. The "fair market value" shall be the fair and reasonable value of the CATV system in place and in operation at the time of such termination and cancellation, and shall include any value for the privilege of operating under this franchise, for the period remaining, if any.

(e) On the date of closing, the CATV system and all assets pertaining thereto shall be conveyed to the City by the Grantee free and clear of all liens and encumbrances. The Grantee shall convey all property whether real or personal, by good and sufficient warranty deed and bill of sale conveying good and marketable title to such property.

(f) The Grantee shall, upon receipt of such notice, advise the City of its determination of the "fair market value" of the CATV system and its property. The City shall not be bound by Grantee's determination, and the City may, at its option, require a determination under paragraph (g) of this Section.

(g) In the event that Grantee and the City do not agree upon the "fair market value" then and in that event the "fair market value" shall be determined by a board of appraisers consisting of three (3) persons, each with experience in appraising the current market value of cable television systems. One person shall be selected by the City Council of the City of Creede, one person shall be selected by the Grantee, and the two persons so selected shall mutually agree and select a third person. When so selected the three person board of appraisers shall immediately proceed to appraise and determine the "fair market value" of the CATV system and its property, and the decision of the board of appraisers shall be binding upon the City and the Grantee. The City may within ten (10) days of formal notice of the appraisers' determination refuse to purchase the system in which event, paragraph (j) of this Section shall apply. In the event that the two persons selected by the City and the Grantee do not agree on the selection of the third person, they may petition the District Court of Mineral County, Colorado, to select the third person.

(h) The cost to determine the "fair market value" and the cost of the board of appraisers shall be shared equally between the City and the Grantee.

(i) Any litigation regarding this Section or any other Section of this Ordinance shall be in the District Court of the County of Mineral, State of Colorado.

(j) Subsequent to the determination of the "fair market value" and in the event that the City refuses to pay the said "fair market value", the Grantee shall have the absolute right to sell the CATV system and its property to any third party. The City's consent must be obtained to the purchase by such third party, but such consent will not be unreasonably withheld. Provided that Grantee shall have the right to remove the system within ninety (90) days if consent is denied by the City.

SECTION 20. ANNUAL REPORTS.

(a) Within one hundred twenty (120) days of the end of each fiscal year of the Grantee, it shall file with the City an annual report prepared, certified and audited by an agent of the Grantee in accordance with generally accepted accounting principles consistently applied, showing the financial status of the Grantee, gross revenues

of the Grantee from the system for the report period, data on the number of subscribers, and such other reports as are required elsewhere in this Ordinance. Upon termination of the franchise at the expiration of a term or otherwise, Grantee shall continue to make the annual reports as provided in this Section until such time as all payments due the City pursuant to this Ordinance shall have been paid and accounted for to the reasonable satisfaction of the City Council. Grantee will also file information, at least annually regarding complaints of subscribers and the Grantee's response to such complaints, "state of the art" technology, and amendments to FCC or other applicable regulations or laws which are pertinent to the system and this ordinance. The City Council may make written request for the above information other than annually and require a response within fifteen (15) days. If the requested information is not provided within fifteen (15) days the Grantee will be subject to monetary penalty as provided in Section 31.

(b) All reports submitted by Grantee to the FCC and other pertinent agencies shall be furnished to the City within twenty (20) days of submission to such agencies.

SECTION 21. PERFORMANCE BOND.

(a) Within thirty (30) days after the award of the franchise, Grantee shall deposit with the City Clerk a Ten Thousand and no/100 Dollar (\$10,000.00) performance bond issued by an insurance company authorized to do business in the State of Colorado. The form and content of such bond shall be approved by the City Attorney. The purpose of such bond is to insure faithful performance by Grantee of all provisions of this ordinance and compliance with all orders, permits and directions of any agency, commission, board, department, division, or office of the City having jurisdiction over its acts or defaults under this Ordinance, and the payment by Grantee of any claims, liens and taxes due the City which arise by reason of the operation or maintenance of the system.

(b) Such bond shall remain in full force and effect throughout the term of this ordinance unless sooner terminated or cancelled pursuant to the terms hereof.

(c) In the event that the City shall make claim upon such bond at any time and recover any sums upon such bond, then the Grantee shall forthwith take such steps as are necessary to increase the amount recoverable on such bond to the Ten Thousand and no/100 Dollar (\$10,000.00) figure.

(d) If the Grantee fails to pay to the City any compensation within the time fixed herein, or fails after ten (10) days to pay any damages, costs or expenses which the City is compelled to pay by reason of any act or default of the Grantee in connection with this ordinance, or fails after three (3) days notice of such failure by the City to comply with any provisions hereof which the City reasonably determines can be remedied by demand on the surety, the City may immediately request payment of the amount thereof, with interest and penalties, upon the credit extended by such bond. Upon such request for payment, the City shall notify the Grantee of the amount and date thereof.

(e) Payment will be due from the surety upon request of the City except in the event that the principal and surety choose to litigate the issues raised by the City's demand for payment or in the event that the nature of the City's demand permits some other remedy than payment. In such latter event, such remedy or correction shall forthwith be implemented by the Grantee. Any litigation regarding such bond shall be in the District Court of Mineral County, Colorado.

(f) The cost and expense of such bond shall be paid by the Grantee and shall contain the following endorsement:

"It is hereby understood and agreed that this bond may not be cancelled by the surety nor the intention not to renew be stated by the surety until thirty (30) days after the receipt by the City, by registered mail, a written notice of such intent to cancel or not to renew."

(g) The performance bond is but one remedy of the City in the event of breach of any provision of this franchise by the Grantee, in addition to all other remedies and actions the City may have under this franchise and under state law. The performance bond is not an exclusive remedy. Provided however that, until the completion of the construction and activation of the entire system, it is contemplated that the construction bond required by Section 10 hereof will be the primary, but not the sole, remedy of the City.

(h) The City may also require and in such event, the Grantee shall furnish a Continuing Guaranty executed by such persons or entities as are acceptable to the City and in a form acceptable to the City.

SECTION 22. PUBLIC BUILDINGS.

Grantee agrees to and shall furnish without installation charge or monthly service fee, connections to City owned, designated sites, basic cable only; and unlimited connections to all public schools situated within the City, basic cable only. The buildings so served shall be responsible for internal wiring from such energized connection source. If any such connection is over one hundred fifty (150) feet from the Grantee's trunk line, Grantee may charge actual costs of installation arising from the additional distance.

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vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after his election or appointment, such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all defaults hereunder; and

(b) Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance granted to the Grantee.

SECTION 25. PREFERENTIAL OR DISCRIMINATORY PRACTICES.

Grantee shall not, as to rates, charges, services, service facilities, rules, regulations or in any other respect, make or grant any preference or advantage to any person, except with the consent of the City Council in respect to handicapped and senior citizens, and multi-unit rates, nor subject any person to prejudice or disadvantage.

SECTION 26. RECEIVER SALES PROHIBITED.

As a condition of this franchise, Grantee agrees that it shall not engage in the business of sales or repair of television receivers owned by its subscribers; nor shall it be responsible for the operating condition of said receivers; provided, however, that this section shall not apply to converters, decoders, home interactive terminals, and other such devices as may be used in furnishing any programming or service via Grantee's cable television system.

SECTION 27. ACCEPTANCE.

This ordinance shall become effective thirty (30) days following publication in the Mineral County Miner. Grantee shall have ten (10) days after adoption by the City Council to accept this franchise and, when accepted by Grantee, this ordinance shall be and become a valid and binding contract between the City and the Grantee; provided, however, that the ordinance shall be void unless Grantee shall, within ten (10) days after the final passage of this ordinance, file with the City Clerk a written acceptance of this ordinance, and the franchise herein granted, agreeing that it will comply with all of the provisions hereof and that it will refrain from doing any or all of the things prohibited by this ordinance.

SECTION 28. UNLAWFUL ACTS.

It shall be unlawful for any person to:

(a) Make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system without payment to Grantee or

its approved successors, assigns, or lessees.

(b) Without the consent of the Grantee, willfully to tamper with, remove, or injure any cable, wire, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds or any other information or intelligence transmitted over Grantee's cable system.

Any person who violates any provisions of this ordinance shall be guilty of a misdemeanor, and shall be punished by a fine of not more than Three Hundred and no/100 Dollars (\$300.00), or by imprisonment for a term not to exceed ninety (90) days, or by both such fine and imprisonment.

SECTION 29. GRANTEE'S REMEDIES FOR NON-PAYMENT OF SUBSCRIBER FEES - COMPLAINTS - REQUESTS FOR SERVICE.

(a) Grantee has the right to disconnect any past-due subscriber, at its sole discretion, for non-payment of subscriber fees and may bring action in any court to recover unpaid fees and any other damages caused by any subscriber.

(b) Grantee shall respond to and resolve subscriber's complaints or request for service in connection with repairs and maintenance and malfunctions of system facilities. Grantee shall respond to and correct such complaints or requests, as soon as possible, but in any event, not more than twenty-four (24) hours after receipt of the complaint or request for service. Grantee shall not charge a subscriber for this service. Grantee may, however, charge for a service call when such service call proves to be customer related as opposed to system related. Customer related problems are those arising from television equipment owned by the customer or from television equipment owned by the Grantee which has been damaged by the negligent or deliberate acts of the customer. System related refers to the deficiency in or failure of any equipment owned by the Grantee, whether or not leased to any customer.

(c) The City ~~Mayor~~ is designated by the City as having primary responsibility for the continuing administration of the franchise and implementation of complaint procedures.

(d) The Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City ~~Mayor~~. The Grantee shall furnish a notice of such procedure to each subscriber at the time of initial subscription to the system.

(e) In the event that a customer complaint is not resolved to the mutual satisfaction of the customer and the Grantee, either the customer or the Grantee may request that the matter be presented to the City ~~Mayor~~ for a hearing and resolution.

(f) When there have been similar complaints made or when there exists other evidence, which, in the judgment of the City ~~Mayor~~ casts doubt on the reliability or quality of cable service, the City ~~Mayor~~ shall have the right and authority to compel the Grantee to test, analyze and report on the performance of the system. Such

report shall be delivered to the City Mayor no later than fourteen (14) days after the City Mayor formally notifies the Grantee and shall include the following information: the nature of the complaints which precipitated the special tests; what system component was tested, the equipment used, and procedures employed in said testing, the results of such tests, and the method in which said complaints were resolved. All costs for such tests and reports shall be paid for by the Grantee.

(g) Said tests and analysis shall be supervised by a professional engineer not on the permanent staff of the company who specializes in such testing and analysis. The aforesaid engineer should sign all records of the special tests and forward to the City Mayor such records with a report interpreting the results of the tests and recommending actions to be taken by the City or the Grantee.

SECTION 30. TERMINATION.

(a) In addition to all other rights and powers of the City by virtue of this ordinance, or otherwise, the City reserves the right to terminate and cancel this franchise and all rights and privileges of the Grantee arising hereunder, in the event that the Grantee:

1. Violates any material provision of this authority or any rule, order, or determination of the City Council made pursuant to this authority, except where such violation (other than provisions concerning transfer without prior City Council approval) is without fault of the Grantee;
2. Becomes insolvent, or is unable or unwilling to pay its debts, or is adjudged bankrupt, or placed in receivership, or is no longer authorized to do business in the State of Colorado;
3. Attempts to dispose of any of the facilities or property of its CATV system in violation of the terms of this authority;
4. Attempts to evade any of the material provisions of this authority or practices any fraud or deceit upon the City;
5. Fails to provide services as required herein;
6. Fails to restore systemwide service following forty-eight (48) consecutive hours of interrupted service, except where prior approval of such interruption shall have been obtained from the City, or in the event that any such action is caused by acts of God, national emergency, war, strikes, or other actions beyond the control of the Grantee;
7. Is found to have misrepresented any material fact in its application;

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- 8. Fails to maintain the performance bond or any insurance coverage required herein or provide a Continuing Guaranty of Grantee's performance, throughout the term of this franchise.

(b) Any termination proceeding initiated by the City shall occur only after thirty (30) days written notice to Grantee. The Grantee shall have an opportunity to respond to such a claim at a public hearing held in this matter. Grantee shall be a necessary party to all public hearings regarding operations or terminations of said franchise.

(c) Upon termination, cancellation, or expiration of this authority, as provided for herein, the City shall have the right to require the Grantee to remove, at its own expense, all portions of the CATV system from all public ways within the City within three (3) months of said termination, cancellation or expiration. Any of Grantee's property not removed within said three (3) month period shall be deemed abandoned. By action of this ordinance, such abandoned property shall be the property of the City of Creede. Provided, however, that, should the City invoke this paragraph, Grantee may nonetheless negotiate a sale of the system subject to Section 12 hereof and consent to such sale shall not be unreasonably withheld.

SECTION 31. PENALTIES.

(a) For failure to provide data, documents, reports, or information as required herein in an annual report or within fifteen (15) days of a request by the City, Grantee shall pay to the City Fifty and no/100 Dollars (\$50.00) per day as each violation occurs or continues.

(b) For failure to test, analyze and report on the performance of the system following a request pursuant to this franchise, Grantee shall pay to the City Twenty-five and no/100 Dollars (\$25.00) per day for each day, or part thereof, that such noncompliance continues.

(c) Forty-five (45) days following adoption of a resolution of City Council determining a failure of grantee to comply with operational or maintenance standards, Grantee shall pay to the City One Hundred and no/100 Dollars (\$100.00) per day for each day, or part thereof, that such non-compliance continues.

(d) The Mayor of the Town of Creede may, in writing, grant reasonable extensions of the requirements of this section.

SECTION 32. REIMBURSEMENT IN LIEU OF FIXED ACCEPTANCE FEE.

The Grantee shall pay all advertising and publication charges and other expenses incurred by the City with respect to the renewal or transfer of this franchise. Said expenses shall include, but not be limited to, consultants' and attorneys' fees and expenses, reasonable value of service performed by the City's employees, agents or contractors, the cost of elections and the publication of any new Ordinance or subsequent Amendment of Ordinance 235, and any other costs associated with the renewing of this franchise or the transfer of control. Such expenses shall be paid to the City within thirty (30) days of the billing thereof. Grantee's obligation under this Section shall not exceed a reasonable sum and, in no event, more than Two Thousand Dollars (\$2,000.00).

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SECTION 33. SEVERABILITY.

If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Federal or State court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof, so long as the part held invalid or unconstitutional shall not go to the essence hereof, or increase the liability of the City in any manner or form whatsoever.

SECTION 34. EFFECTIVE DATE.

In the opinion of the Board of Trustees of the City of Creede, an emergency exists with respect to this ordinance for the following reasons: That this ordinance is of a contractual nature and imposes contractual liabilities both upon the Grantee and upon the City; that the contractual provisions of this ordinance are necessary in every regard; that the provisions of this ordinance are such that they are in direct conflict with any effective date other than the date commensurate with an emergency ordinance; that to declare otherwise would place the City in possible breach of the contractual provisions of this ordinance and jeopardize the entire purpose of this ordinance; that the declaration of emergency is necessary for the immediate preservation of the public peace, health and safety, by virtue of such contractual provisions. Accordingly, this ordinance shall be in full force and effect upon the expiration of five (5) days from and after its publication, said publication to be in accordance with law.

INTRODUCED, READ IN FULL, PASSED BY A MAJORITY VOTE OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, AND ORDERED PUBLISHED ON THIS 13th DAY OF June, 1983.

CITY OF CREEDE, COLORADO

By: James Beahan
Mayor

ATTEST:

Emma Louise Hart
City Clerk

ACCEPTANCE

COMES NOW, Custom Cable Systems, Inc., and states:

1. That each of the undersigned holds the office in Custom Cable Systems, Inc., a Colorado Corporation, as set opposite their names;
2. That they are authorized by the Board of Directors of such

Corporation to execute this acceptance;

3. That Custom Cable Systems, Inc. does hereby accept the ordinance of the City of Creede, above, granting a non-exclusive franchise to Custom Cable Systems, Inc., and all of the terms and provisions set forth therein and agrees to be fully bound thereby and as stated in Section 27.

IN WITNESS WHEREOF, the undersigned have executed this Acceptance for and on behalf of Custom Cable Systems, Inc., a Colorado Corporation.

CUSTOM CABLE SYSTEMS, INC.


Lynn A. Johnson - President

ATTEST:


Judy Pounds - Secretary

(CORPORATE SEAL)

CERTIFICATE OF PUBLICATION

I certify that the foregoing Ordinance was published in the Mineral County Miner in accordance with the Certificate of Publication attached hereto and made a part hereof by reference and that the same is effective upon the expiration of five (5) days from and after the date of such publication.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Town at my office in Creede, Colorado, this 28 day of June, 1983.


City Clerk, City of Creede, Colorado

(SEAL)

SECTION 3. - ACCEPTANCE

This Amendment shall become effective five (5) days following publication in the Mineral County Miner. Grantee shall have ten (10) days after adoption by the City Council to accept this franchise and deliver the Continuing Guaranty to be executed by Ropir Industries, Inc. and, when accepted by Grantee, the original Ordinance, as herein amended, shall be and become a valid and binding contract between the City and the Grantee; provided, however, that this Amendment shall be void unless Grantee shall, within ten (10) days after the final passage of this Amendment, file with the City Clerk a written Acceptance of the original Ordinance, as herein amended, and the franchise herein granted, agreeing that it will comply with all of the provisions hereof and that it will refrain from doing any or all of the things prohibited by the original Ordinance, as herein amended, together with the Continuing Guaranty of Ropir Industries, Inc.

SECTION 4. - SEVERABILITY

If any section, sub-section, sentence, clause, phrase or portion of Ordinance No. 235, as herein amended, is for any reason held.. invalid or unconstitutional by any Federal or State Court or administrative or governmental agency of competent jurisdiction, specifically including the Federal Communications Commission, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not effect the validity of the remaining portions of the original Ordinance as herein amended, so long as the part held invalid or unconstitutional shall not go to the essence hereof, or increase the liability of the City in any manner or form whatsoever.

SECTION 5. - EFFECTIVE DATE

In the opinion of the Board of Trustees of the City of Creede, an emergency exists with respect to this Amendment for the following reasons: that this Ordinance is of a contractual nature and imposes contractual liabilities both upon the Grantee and upon the City; that the contractual provisions of this Ordinance are necessary in every regard; that the provisions of this Ordinance are such that they are in direct conflict with any effective date other than the date commensurate with an emergency ordinance; that to declare otherwise would place the City in possible breach of the contractual provisions of this Ordinance and jeopardize the entire purpose of this Ordinance; that a contractual agreement exists between Custom Cable Systems, Inc. and the Grantee herein, for the Grantee's purchase of the Creede cable system and the City is obligated not to unreasonably interfere with either such party; that the declaration of emergency is necessary for the immediate preservation of the public peace, health and safety, by virtue of the foregoing. Accordingly, this Ordinance shall be in full force and effect upon the expiration of five (5) days from and after its publication, said publication to be in accordance with law.

INTRODUCED, READ IN FULL, PASSED BY A MAJORITY VOTE OF THE BOARD OF TRUSTEES OF THE CITY OF CREEDE, COLORADO, AND ORDERED PUBLISHED ON THIS 7th DAY OF July, 1986.

CITY OF CREEDE, COLORADO

By: James B. [Signature]
Mayor

ATTEST:

Deborah D. Broughton-Miles
City Clerk

ACCEPTANCE

COMES NOW, Pagosa Vision, Inc., and states:

1. That each of the undersigned holds the office in Pagosa Vision, Inc, a Colorado Corporation, as set opposite their names;
2. That they are authorized by the Board of Directors of such Corporation to execute this Acceptance;
3. That Pagosa Vision, Inc., does hereby accept Ordinance No. 235 of the City of Creede, as herein amended, granting a non-exclusive franchise to Pagosa Vision, Inc., and all of the terms and provisions set-forth therein and agrees to be fully bound thereby and as stated in Section 3 of this Ordinance.
4. That the Grantee delivers, with this Acceptance, the Continuing Guaranty of Ropir Industries, Inc. and states that the same has been executed by the lawful officers of Ropir Industries, Inc. and is the lawful act of such corporation.

IN WITNESS WHEREOF, the undersigned have executed this Acceptance for and on behalf of Pagosa Vision, Inc., A Colorado Corporation.

PAGOSA VISION, INC.

[Signature]
President

ATTEST:

Billie Jo Pirnie
Secretary

✓ (CORPORATE SEAL)

CERTIFICATE OF PUBLICATION

I certify that the foregoing Ordinance was published in the Mineral County Miner in accordance with the Certificate of Publication attached hereto and made a part hereof by reference and that the same is effective upon the expiration of five (5) days from and after the date of such publication.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Town at my office in Creede, Colorado, this 17 day of July, 1986.

Delores W. Roughton-Miles
City Clerk, City of Creede, Colorado

(SEAL)

CONTINUING GUARANTY

This Guaranty is given in consideration of the City of Creede, Colorado, granting a non-exclusive franchise to Pagosa Vision, Inc., a wholly owned subsidiary of the undersigned. The undersigned acknowledge that the City of Creede, Colorado would not have granted such franchise to Pagosa Vision, Inc., in the absence of this Continuing Guaranty.

For valuable consideration, the undersigned (hereinafter called Guarantor) unconditionally guarantees and promises to perform each and every obligation of Pagosa Vision, Inc. (hereinafter Grantee) as set forth in Ordinance No. 235 of the Ordinances of the City of Creede and Ordinance No. 257 which Ordinance amends Ordinance No. 235 and which Amending Ordinance specifically grants the franchise to Grantee. The word "obligations" is used herein in its most comprehensive sense and includes any and all financial obligations and performance obligations of the Grantee, heretofore, now, or hereafter made, incurred or created, whether now due or not now due, absolute or contingent, liquidated or unliquidated, determined or undetermined.

1. The liability of the Guarantor shall not exceed, at any time, the maximum liability of the Grantee. This Guaranty is not intended to increase the duties and obligations of the Grantee over and above those duties and obligations set forth in Ordinance No. 235 and Ordinance No. 257 nor is it intended to make the liability of the Guarantor greater than that of the Grantee. This is a Continuing Guaranty, relating to every paragraph of both of such Ordinances and any successive obligations or duties arising under subsequent Ordinances, so long as such Ordinances are approved by the Grantee and the Guarantor herein.

2. This Guaranty can not be revoked during the term of the franchise as described in the Ordinances. In the event that the Guarantor, by order of Court or otherwise, succeeds in revoking this Guaranty, then it is understood that Ordinances No. 235 and No. 257 shall thereafter be null and void with respect to the grant of the franchise to Pagosa Vision, Inc. and the City of Creede may thereafter invoke all protective remedies set forth in those Ordinances.

3. The obligations herein created are independent of the obligations of the Grantee as arise under the Ordinances and a separate action or actions may be brought and prosecuted against the Guarantor whether action is brought against the Grantee or whether or not the Grantee is joined in any such action or actions. Provided however that so long as the Grantee is authorized to do business in the State of Colorado as a corporation and is authorized by F.C.C. regulations or any other state or federal laws to operate the cable system, the City of Creede will not institute action against the Guarantor herein or make demand upon the Guarantor herein until first having made demand upon the Grantee to do those things required by the Ordinances or to refrain from doing those things prohibited by the Ordinances. In making demand upon the Guarantor herein, the City of Creede will furnish a copy of its written demand upon the Grantee to cure any default under the Ordinances. The City of Creede need not prove delivery of such demand upon the Grantee but need only certify that such demand was duly posted and mailed to the last known address of the Grantee. In addition, the City of Creede will not make demand upon the Guarantor herein or institute an action against the Guarantor, under this paragraph, until at least 20 days after the posting of the demand to the Grantee.

4. In the event that a receiver is appointed for the Grantee or the Grantee files for bankruptcy or in the event that the Grantee permits its corporate authority to lapse in Colorado or in the event that the Grantee fails to maintain any necessary licenses to operate the cable system, the City of Creede may make immediate demand upon the Guarantor herein without prior demand or notice to the Grantee. None of the foregoing events shall discharge the Guarantor from its obligations arising under this Guaranty and as set forth in Ordinances No. 235 and No. 257 of the City of Creede. No waiver, by the City of Creede, of any breach by the Grantee, of any provision of the Ordinances shall be deemed a waiver, by the City, of any subsequent breach by the Grantee, whether or not the Guarantor herein had any notice whatsoever of any prior waivers by the City of Creede.

5. As limited above, the Guarantor waives any right to require the City of Creede to proceed against the Grantee or pursue any other remedy in the City's power, whatsoever. Until the Grantee has discharged all obligations to the City under the Ordinances, the Guarantor's liability herein shall be continuing.

6. Any claims which the Guarantor may now or hereafter have against the Grantee are hereby subordinated to all of the obligations of the Grantee to the City of Creede under the Ordinances.

7. It shall not be necessary for the City of Creede to inquire into the powers of the Grantee or the Guarantor or the officers, directors or agents acting or purporting to act on the behalf of either, and the City's actions, in reliance upon this Guaranty, are hereby guaranteed.

8. Guarantor agrees to pay a reasonable attorney's fee and all other costs and expenses which may be incurred by the City of Creede in the enforcement of this Guaranty.

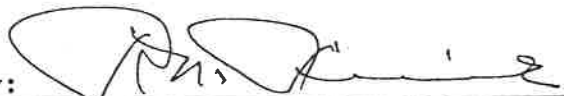
→ 9. This Guaranty is binding upon the successors and assigns of the Guarantor. Provided however that in the event that Pagosa Vision, Inc. sells the Creede Cable System to a third party and such transfer is approved by the City of Creede and all provisions of this Ordinance and Ordinance No. 235 are complied with in the course of such transfer and such transfer is completed, the Guarantor's obligations herein shall forever cease except as to the remaining obligations of Pagosa Vision, Inc. arising prior to the date of such transfer. The Guarantor shall not be in the position of Guarantor with respect to any such third party transferee.

10. The Guarantor hereby agrees that the District Court of Mineral County, Colorado is the proper venue for any action brought by the City of Creede, Colorado or Ropir Industries, Inc. to enforce this Guaranty or to place the validity of the Guaranty at issue and for any action brought by the Grantee in which the City of Creede, Colorado is named as a defendant. The Guarantor also agrees that this Guaranty and Ordinances No. 235 and No. 257 shall all be construed under the laws of the State of Colorado.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty
Is 14th day of JULY, 1986, by and through its duly authorized officers.
Such officers hereby personally warrant their authority to act on behalf of
the Guarantor.

✓ (CORPORATE SEAL)

GUARANTOR:
ROPIR INDUSTRIES, INC., A corporation
duly organized and existing under and
by virtue of the laws of the State of
✓ DELAWARE.

✓ 
By: _____
Its President

✓ ATTEST:


Secretary