

**Franchise Ordinance**

NO. 90-01

Re: A Franchise Ordinance granting a franchise to Chaparral Cable Company , its successors and assigns, to operate and maintain one or more cable television systems in Otero County, New Mexico, setting forth conditions accompanying the grant of franchise, providing for the County regulation and use of the System(s), and prescribing penalties for the violation of its provisions.

BE IT HEREBY ORDAINED by the Board of County Commissioners in and for Otero County, State of New Mexico:

1. Short Title:

This Franchise Ordinance shall be known and may be cited as the "Chaparral Cable Franchise."

2. Definitions:

For purposes of this Franchise Ordinance, the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (a) "Company" is Chaparral Cable Company , a New Mexico corporation, and is the grantee of rights under this Franchise Ordinance.
- (b) "Commission" is the Board of County Commissioners of Otero County, State of New Mexico.
- (c) "County" is the Board of County Commissioners of Otero County, New Mexico, including all future extensions thereof and additions thereto.
- (d) "Person" is any person, firm, partnership, association, corporation, company, organization, or entity of any kind.
- (e) "System" shall mean a cable television system, including all lines, wires, cables, fixtures, equipment, attachments and appurtenances used in the construction, operation or maintenance thereof.
- (f) "Grantor" is the County.

(g) "Grantee" is the Company, its successors and assigns.

The captions for each paragraph herein are for convenience of reference only, and shall not be considered in construing the language of any paragraph.

3. Grant of Authority:

(a) Grantor hereby grants to the Company, and to its successors and assigns, the non-exclusive right to install, construct, erect, extend, operate, service, maintain and repair in, upon, along, across, above, over and under, and to in any way acquire the use of all streets, sidewalks, alleyways, public easements, public grounds, public ways and public places, and all extensions and additions thereto, in the County, any and all posts, poles, pipes, conduits, lines, wires, cables, facilities, structures, and equipment, and all other useful fixtures and appurtenances, required or convenient for the purpose of installing, constructing, erecting, extending, operating, servicing, maintaining and repairing one or more Systems in the County for the interception, reception, processing, transmission, distribution and sale of television, radio and other signals and data, including closed circuit, over-the-air and satellite-distributed signals and data, to the inhabitants of the County not residing within the service area of a System franchise granted by a city or village within the County; the right to replace, enlarge, extend and repair the said posts, poles, pipes, conduits, lines, wires, cables, facilities, structures, equipment, fixtures and appurtenances; and the right to make connections to all subscribers and users of the Grantee's System(s).

The rights herein granted shall be subject to the requirement that the Grantee shall so set and erect its said fixtures and appurtenances along said public ways so as not to interfere with the ordinary travel and desired use of said ways, and shall in a like manner maintain said equipment during the term of this Franchise Ordinance.

4. Compliance with Applicable Laws and Ordinances:

Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power of Grantor and to such reasonable regulations as Grantor shall hereafter provide. Additionally, Grantee shall, at all times during the life of this franchise, comply with and abide by all of the laws of the State of New Mexico, the Federal Communications Commission, and the United States of America, which laws and regulations are applicable to Grantee's operations.

5. Liability, Indemnification and Insurance:

(a) Grantee shall maintain, and by its acceptance of this Franchise Ordinance specifically agrees that it will maintain, throughout the term of this Franchise Ordinance, liability insurance insuring Grantor and Grantee as follows:

- (i) \$500,000.00 for bodily injury or death to any one person, subject to a limit of \$500,000.00 for bodily injury or death resulting from any one occurrence; and
- (ii) \$100,000.00 for property damage resulting from any one occurrence.

(b) The insurance policy obtained by Grantee in compliance with the foregoing paragraphs shall be approved by Grantor, and such insurance policy, along with written evidence of the payment of the premiums thereon, shall be filed and maintained with Grantor during the term of this Franchise Ordinance.

(c) Grantor shall notify Grantee within thirty (30) days after the presentation of any claim or demand, whether made by suit or otherwise against Grantor, on account of any alleged act or conduct on the part of Grantee hereunder.

6. Use of System by County.

Grantor shall have the right to use, without cost, all poles within the County erected by Grantee for the purpose of stringing wires for the Grantor's electrical distribution, fire alarm and police signal system; provided that Grantee shall neither assume nor incur any obligation or liability or be put to any additional expense in connection therewith, except maintenance of poles, and that the use of such poles by Grantor shall be in such a manner as not unnecessarily to interfere with Grantee's use of same.

7. Present Boundaries of Franchise Ordinance Operations:

Grantee agrees to operate its franchise within, and the grant of this Franchise Ordinance shall be limited to the real property where Grantee is presently operating in Otero County. Said real property is fully described on Exhibit "A" which is attached hereto and made a part hereof, except as hereinafter otherwise provided.

8. Complaint Procedure:

Grantee shall maintain a business office within the County (or within any city or village within the County) for the purpose of receiving inquiries and complaints from its subscribers. Grantee shall investigate all complaints within six (6) days of its receipt of the same, and shall in good faith attempt to resolve any such complaints promptly and equitably.

9. Operation and Maintenance of System:

(a) 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 and shall occur during periods of minimum use of the system.

(b) Grantee shall at all times employ ordinary care and shall install and maintain in use such safety devices as are customary in the cable television industry for preventing failures and accidents which are likely to cause damages, injuries and nuisances to the public.

(c) Grantee shall install and maintain its poles, pipes, lines, facilities, structures and equipment in accordance with ordinances of Grantor and in such manner that the same shall not interfere with any installations of Grantor or with a public utility serving Grantor.

(d) All poles, pipes, lines, facilities, structures and equipment erected by Grantee in the County shall at all times be kept and maintained in good order and repair.

(e) All poles, pipes, lines, facilities, structures and equipment erected by Grantee within the County shall be located so as to cause minimum interference with the proper use of the streets, alleyways, public easements and other public ways and public places, and to cause minimum interference with the right and reasonable conveyance of property owners, and Grantee shall comply with all reasonable, proper and lawful ordinances of Grantor now or hereafter in force.

(f) Grantor reserves the right of reasonable regulation of the erection, construction and installation of any poles, pipes, lines facilities, structures and equipment by Grantee and to reasonably designate where the same are to be placed upon any public way or public place.

(g) During the term of this Franchise Ordinance, Grantee shall, upon Grantor's request, file with the County Clerk

a true and accurate map showing the exact location of all pipes, lines, facilities, structures and equipment, together with a statement showing the exact nature of the same. Such map shall be kept current with appropriate additional filings by the County Engineer on a bi-annual basis, or as may be requested by the County Engineer or his authorized representative.

10. Quality Standards.

Grantee shall, to the best of its ability, provide audio and video signals of uniform quality throughout the System. No subscriber shall receive a signal which is, on a continuous basis, significantly inferior to that of any other subscriber, and the signals shall meet such standards as may be promulgated by the Federal Communications Commission and the National Cable Television Association. Installation and service shall also conform to the National Electric Code of the National Bureau of Fire Underwriters. Signal leakage limits shall not exceed those specified by Part 15 of the Rules of the Federal Communications Commission.

11. Construction Disturbances.

(a) In case of any disturbance of pavement, sidewalk, driveway or other such surfacing, Grantee shall, at its own cost and expense, replace and repair all paving, sidewalks, driveways or surfaces so disturbed to as good a condition as before the work involving such disturbance was done.

(b) If at any time during the term of this Franchise Ordinance Grantee shall lawfully elect to alter or change the grade of any street, sidewalk, alleyway or other public way requiring the relocation of the facilities of Grantee, then upon reasonable notice by Grantor, Grantee shall remove, relay and relocate the same at its own expense.

(c) Grantee shall, on the request of any person holding a building moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Company shall have the authority to require such payment in advance. The Company shall be given not less than forty-eight (48) hours advance notice to arrange for such temporary wire changes.

(d) Grantee shall not place poles or other fixtures where the same will interfere with any gas, electric, or telephone fixture, water hydrant or main and all such poles or other fixtures placed in any street shall be placed in the right-of-way between the roadway and property line as directed by the County Engineer or his authorized representative.

(e) Grantee shall have the authority (but no obligation) to trim trees upon and overhanging all the streets, alleys, easements, sidewalks and public places of the County so as to prevent the branches of such trees from coming in contact with the facilities of Grantee.

12. Extent of Services:

The services provided by Grantee under this Franchise Ordinance shall be made available to any financially responsible household desiring such service, without regard to sex, race, religion, national origin or handicap, provided that such household can be served within 150 feet of the existing trunk or feeder lines of the System. Service may be rendered to potential customers located more than 150 feet from a distribution line upon such customer's individual negotiation of an additional payment or fee with and to the Company.

13. Rates:

(a) This franchise may be amended by Grantor to provide for the regulation of fees and charges if such regulation is hereafter permitted by federal law or regulation during the term of this franchise, provided that Grantor shall give Grantee ninety (90) days prior written notice of any such proposed amendment, and provided further that any such regulation by Grantor of fees and charges shall be fair and reasonable to Grantee and shall in no event limit or restrict Grantee's right to increase such fees and charges by not more than 12.5% within any consecutive thirty (30) month period of time.

(b) Notwithstanding Paragraph (a) above, Grantee shall give Grantor at least thirty (30) days prior written notice of any changes in monthly subscriber fees.

14. Franchise Term:

This Franchise Ordinance shall take effect and be in full force from and after the effective date hereof, and the same shall continue in full force and effect for a term of fifteen (15) years. Upon expiration of this Franchise, Grantee shall have the option of renewing the Franchise for an additional ten (10) year term. Should Grantee desire to exercise this option, it shall so notify Grantor in writing not less than six (6) months prior to the expiration of this Franchise Ordinance.

15. Forfeiture of Franchise:

If Grantee should violate any of the material terms, conditions or provisions of this Franchise Ordinance, and any such violation shall continue for ninety (90) days after Grantee

shall have been notified in writing by Grantor to desist or correct such violation as specified, then Grantor may terminate and cancel this franchise, and thereupon all of the rights and privileges granted by this franchise shall be deemed to have been forfeited and annulled. In the event such forfeiture is imposed, Grantee shall be afforded a period of one (1) year after a final, non-appealable Court order or decision for forfeiture, and including any appeal thereof, within which to sell, transfer or convey the System(s) to a qualified purchaser(s) at a fair market value as a going business, together with this Franchise in full force and effect. During the one-year period, Grantee shall operate the System(s) pursuant to the terms and provisions of this Franchise.

16. Transfer of Franchise:

All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise Ordinance shall pass to and be binding upon the successors of Grantor and the successors and assigns of Grantee.

17. Fees:

Grantee agrees to reimburse Grantor for any and all fees incurred by Grantor in connection with the publication of this Franchise Ordinance, and for any other costs incurred by Grantor in connection with the grant of the franchise evidenced hereby, pursuant to Section 3-42-1, N.M.S.A., 1978 Compilation, as amended.

18. Severability:

In any section, subsection, sentence, clause, phrase or portion of this Franchise Ordinance is for any reason held invalid or unconstitutional by any federal or state court of competent jurisdiction, each provision hereof shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining provisions hereof.

19. Effective Date:

This Franchise Ordinance shall become effective and be in full force and effect from and after the 7TH day of MARCH, 1990.

THUS DONE AND SIGNED in triplicate this 16th day of January, 1990:

GRANTOR:

COMPANY:

BOARD OF COUNTY COMMISSIONERS  
OF OTERO COUNTY, NEW MEXICO

CHAPARRAL CABLE COMPANY

By: Joseph W. Chambers  
Joseph W. Chambers, Chairman

By: Ben W. Mossa  
Benjamin Mossa, President

Attest:

Dianna J. Duran  
Dianna J. Duran,  
Otero County Clerk

Attest:

Greg Groth  
Greg Groth, Vice President/  
Secretary

EXHIBIT "A"

Beginning at a point where the Otero County/Dona Ana County line intersects with the New Mexico/Texas border and proceeding North along the Otero County/Dona Ana County line to the intersection of said county line with Wicker Road; then proceeding East to the intersection of Wicker Road and New Mexico State Highway 54; then proceeding South along New Mexico State Highway 54 to the intersection of New Mexico State Highway 54 and the New Mexico/Texas State Line; then proceeding West to the point of beginning.

In addition, attached to this Exhibit as page 2 is a map of the proposed service area.