

EMERGENCY ORDINANCE NO. 192

AN ORDINANCE ESTABLISHING THE CONDITIONS FOR AWARDING A FIFTEEN YEAR NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM WITHIN THE CITY OF BONIFAY SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BONIFAY, FLORIDA, A MUNICIPAL CORPORATION, AS FOLLOWS:

ORDINANCE GRANTING

BEAN & WHITNEY, INC.

A FRANCHISE TO OPERATE

A COMMUNITY ANTENNA TELEVISION SYSTEM

IN AND ABOUT THE CITY OF BONIFAY, FLORIDA

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Sect. 1. Definitions.

For the purpose of the Ordinance, the following words 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.

- (a) "State" is the State of Florida.
- (b) "City" is the City of Bonifay, Florida.
- (c) "Company" is Bean & Whitney, Inc.
- (d) "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.
- (e) "Television" shall mean a system for communication of visual images or audio signals or both visual and audio signals by means of electrical impulses.
- (f) "Radio" shall mean a system for communications of audio signals by means of electrical impulses.
- (g) "System" shall mean the lines, fixtures, equipment, attachments, and all appurtenances thereto which are used in the construction, operation and maintenance of the Community Antenna Television System herein authorized.
- (h) "Customer" shall mean a person who is the owner or tenant of the premises receiving the Company's service, except that in the case of a multi-family dwelling "Customer" shall mean the tenant or occupant of the individual dwelling unit receiving the Company's service.

Sect. 2. Grant of Authority.

There is hereby granted by the City to the Company the non-exclusive right and privilege to construct, erect, operate and maintain in, upon, across, along, above, over and under the streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the City, wires, poles, cables, underground conduits, conductors, and fixtures necessary for the maintenance and operation in the City of a community antenna television system for the reception and distribution of television signals and energy, frequency, modulated radio signals, and commercial and non-commercial visual and aural signals which are not otherwise herein prohibited. The Company shall have the right in the operation of the system to make attachments to City owned property at such rates and upon such terms and conditions as shall from time to time be determined by governing body. The right herein granted shall extend to any area hereafter annexed to the City and the Company shall be bound by the same rules and regulations as to such area as are otherwise herein or hereafter provided.

The Company shall have the right to enter into agreements for the attachment onto and use of facilities owned and operated by public utilities operating within the City; the Company shall comply with terms, provisions, and restrictions of said agreements, and copies of all agreements made with public utilities operating within the City shall be placed of file with the City Clerk's office upon their execution. The approval is being granted as part of a full public proceeding affording due process.

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Sec. 3. Compliance with Laws, Regulations, Ordinances and Practices.

The Company shall at all times hereunder be subject to the lawful exercise of the police power by the City and to such reasonable regulation not inconsistent herewith as the City shall hereafter by Resolution or Ordinance provide. The construction, operation and maintenance of the system by the Company shall be in accord with good engineering practices and shall be in full compliance with the National Electric Code and applicable laws, regulations and ordinances and as from time to time such are amended and revised. Strict compliance with applicable Federal Communications Commission Regulations and Technical Standards is required at all times. Any modification of Section 76.31 of the Commission's rules resulting from amendment by the Commission shall be incorporated in the franchise within one, (1) year of the modification, or at the time of franchise renewal, whichever occurs first.

Sec. 4. Company Liability and Indemnification.

(a) The Company shall indemnify, protect and save harmless the City from losses on account of physical damages to property and bodily injury or death, including payments made under any Workmen's Compensation Law, which may arise out of or be caused by the erection, maintenance, extension, operation or removal of the Distribution System within the City, or by any act of the Company, its agents or employees; provided the City shall notify the Company in writing of the existence of such claims within ten days of the assertion thereof. The Company shall carry liability insurance to protect the Company and the City from and against all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury or damage. The amounts of such insurance for damages to property shall not be less than Five Hundred Thousand (\$500,000) Dollars as to any one occurrence and not less than Five Hundred Thousand (\$500,000) Dollars aggregate in any single policy year; and against liability due to bodily injury or death not less than Five Hundred Thousand (\$500,000) Dollars as to any one occurrence.

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The Company shall also carry an "Umbrella Policy" of not less than One Million Dollars(\$1,000,000) in excess coverage. The Company shall also carry such insurance as it deems necessary to protect it from all claims under the Workmen's Compensation Law that may be applicable to the Company. All insurance required by this Ordinance shall be maintained in full force and effect for the entire life of the Ordinance. The certificate of insurance with respect to said liability insurance shall be approved by the City and then deposited with and kept on file by the City.

(b) All insurance policies required of the Company in this Ordinance shall be written by a Company or Companies authorized and qualified to do business in the State. Certificates of all coverage required shall be promptly filed by the Company with the City.

Sect. 5. Conditions of Street Occupancy and System Construction.

(a) Use. All transmission and distribution structures, lines and equipment erected by the Company within the City shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the rights of reasonable convenience of property owners who adjoin any of said streets, alleys or other public ways and places.

(b) Restoration. In the case of any disturbance of pavement, sidewalks, driveways, or other surfacing, caused by the Company, the Company shall, at its own expense and in a manner approved by the City, replace and restore such places so disturbed in as good condition as before said work was commenced.

(c) Relocation. In the event that at any time during the period of this franchise the City shall lawfully elect to alter or change the location or grade of a street, alley, or other public way, the Company upon reasonable notice by the City shall remove, relay and relocated its equipment at its own expense.

(d) Placement of Fixtures. The Company shall not place any fixtures of equipment where the same will interfere with gas, electric, telephone or water lines, fixtures, and equipment, and the location by the Company of its lines and equipment shall be in such a manner as to not interfere

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with the usual travel on said streets, alleys, and public ways and the use of the same by gas, electric, telephone, and water lines and equipment.

(e) Temporary Removal of Wires. The Company, on request by any person holding a building or mobile home moving permit issued by the City will temporarily raise or lower its wires to accomodate the move. The expense of such temporary removal of wires shall be paid in advance by the person requesting the same. The Company shall have the authority to request such payment in advance and shall be notified not less than forty-eight (48) hours prior to such temporary wire change. Any temporary wire change required by the City will be made at no expense to the City.

(f) No Property Rights. Nothing in this Ordinance shall grant to the Company any right in City-owned property other than as expressly set forth herein nor shall the City be compelled to maintain any of its property any longer than, or in any fashion other than in the City's judgment its own business or needs may require.

(g) Permits, Easements and Agreements. The City shall not be required to assume any responsibility for the securing of any right-of-way or easements, nor shall the City be responsible for securing any permits or agreements with other persons or utilities.

Sec. 6. Submission of Construction Plans; Correction of Defects.

Except for individual service drops, the company shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced or changed without prior submission of plans to and approval by the City, and the City shall have and maintain the right to inspect the construction, operation, and maintenance of the system and service provided by the Company to insure the proper performance of the terms of this franchise and compliance with any of the rules and regulations as may be from time to time lawfully adopted.

Sec. 7. Service Standards.

(a) The Company will maintain and operate the system so that there will be no interference with television reception, radio reception, telephone communications or other installations which are now or may hereafter be installed

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and in use by the City or any persons in the City, and in such a manner as to prevent radiation from its facilities in excess of the limits specified in applicable rules and regulations of the Federal Communications Commission.

(b) The Company shall take all necessary steps so that the system shall maintain at all times:

(1) Use of all band equipment capable of passing the entire VHF television and FM radio spectrum.

(2) Equipment that passes standard color television signals without degradation and with no appreciable effect on color fidelity and intelligence.

(3) A minimum level of 1,000 micro-volts at the input terminals of each TV receiver on the lines.

(4) A system and all equipment designed and rated for 24 hours per day continuous operation.

(5) A signal-to-noise ratio of not less than forty-three decibels.

(6) A television signal with a hum modulation less than three (3%) percent.

(7) Components having voltage standing wave ratio of 1.4 or less.

(8) An inter-Modulation distortion not to exceed minus forty-six decibels.

(9) A plot of gain versus frequency across any six megacycle channel of a flat plus or minus one decibel.

(c) The Company shall provide and keep accurately calibrated test equipment on hand in the service area at all times for the testing of all service and the operational standards outlined in this Ordinance and shall conduct these tests as reasonably requested by the City under the supervision of a City representative, in order to establish the level of performance of the system.

Sec. 8. Company Rules.

The Company shall have the authority to promulgate such rules, regulations, terms, and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and to perform its obligations under this franchise and to assure an uninterrupted service to each and all its customers; provided, however, that such rules, regulations, terms, and conditions shall not be in conflict with the provisions hereof.

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Section 9. Rates to Customers.

The company is authorized to set, charge and collect installation fees and service fees from subscribers to which it provides services; provided, however, that the company shall not, as to rates, charges, or regulations, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage. However, nothing herein is intended to prohibit temporarily lower rates coincidental with sales promotions. No customer shall be required to continue to receive the services of the Company any longer than such customer shall desire, service to be terminated by the Company within ten (10) days after notice of termination by the customer. The Town expressly gives up and foregoes any right to fix any rates or charges that the Company makes and the Company is entitled to set any rates or other charges it thinks proper.

Sec. 10. Payment to the Town.

(a) The Company shall be liable for all taxes, business licenses, fees or other impositions as any other business having its place of business in the City of Bonifay, Florida.

(b) Franchise Tax. During the term of this franchise the Company shall annually pay to the City as a franchise tax the sum of Three Hundred (\$300) Dollars or Three (3%) Percent of its gross service revenue, whichever is greater. Gross service revenue for the purpose of this section, shall mean the gross amount of regular recurring service charges for basic cable service actually paid to the Company, and the installation charge for basic cable service actually paid to the Company by its customers.

(c) Manner of Payment; Records. All payments required under the preceding section shall be made quarterly in a calendar year and shall be due and payable within thirty (30) days of the close of the preceding quarterly period. The Company shall keep an annual record available for audit by the City for three (3) years after the close of the period covering the annual record, which annual record shall set forth the name of the customer, date of each receipt, and the amount of gross revenue derived from customer service fees.

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Sec. 11. Service to City.

The Company, at its own expense, shall provide and maintain one connection to all City office buildings, police stations, fire stations, hospitals, libraries, and public schools within the corporate limits of the City; provided that the Company shall not be responsible for providing the distribution system within any of such places. Further, no monthly Customer service fee shall be charged for service to such places. Such connections shall be provided only at such time as the Company's system is actually serving the area where such places are located.

Sec. 12. Commencement of Service.

The Company shall within twelve (12) months, after receiving the Federal Communications Commission certificate, construct eighty (80) percent of the planned system, with completion of the entire planned system by the end of the eighteenth (18th) month.

Sec. 13. Forfeiture and Termination.

Should the Company, its successors or assigns, violate any of the provisions of this Ordinance or any reasonable rules and regulations or other laws, or fail to promptly perform any of the provisions hereof, all rights herein granted to the Company shall, at the option of the City, be forfeited and terminated after written notice to the Company by the City and continuation of such violation, failure or default for a period of more than ninety (90) days from the date of mailing of such written notice which shall specify the nature of the violation, failure or default. If such violation, failure or default be corrected within said ninety (90) days, it shall be disregarded in determining the Company's compliance with the terms and conditions of this Ordinance; provided, however, the City reserves the right, on ninety (90) days' written notice, to terminate this franchise in the event of repeated or willful violation by the Company of the provisions of this Ordinance or any reasonable rules and regulations or other laws. In the event the Company is adjudged bankrupt, all rights herein granted to the Company shall, at the option of the City, be forfeited and terminated.

Sec. 14. New Developments.

The City may amend this Ordinance upon application by the Company when necessary to enable the Company to take

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advantage of any development in the field of transmission of television, radio signals and cable television, which will afford it an opportunity more effectively, efficiently, comprehensively or economically to serve its customers; provided, however, that this section shall not be construed to require the City to make any amendment.

Sec. 15. Separability.

In the event any section or part of this Ordinance shall be held invalid, such invalidity shall not affect the remaining sections or portions. If the terms of this Ordinance should conflict with any laws or regulations now in effect or hereafter adopted by the Federal Communications Commission (or any other governmental agency now existing or to be formed issuing rules and regulations affecting telecommunication), the State or the United States government, compliance by the Company with such rules shall not cause a forfeiture of this franchise.

Sec. 16. Duration of Franchise.

This franchise, subject to forfeiture and termination as herein provided, shall remain in full force and effect for a period of fifteen (15) years from its effective date and may be renewed for successive periods of fifteen (15) years as provided hereafter.

At least six (6) months prior to the termination of the original franchise period or any renewal period, a public proceeding affording due process shall be held at which the public shall be given an opportunity to comment on the performance of the Company. Either the City or the Company may give the other notice in writing prior to termination of the original or any renewal fifteen (15) year period of intention to terminate or renew this franchise; provided, however, such notice shall be given at least four (4) months prior to the date of the original period or any renewal period. The parties shall have the right to renegotiate the terms, conditions and provisions of the franchise, but notice of a request for renegotiation shall be given in the notice of intention to terminate or renew.

Upon termination of this franchise, for any reason whatsoever, the Company shall, within ninety (90) days after written notice of termination, immediately remove from the City all of its equipment of whatever nature and, in the event of failure of such removal by the Company, the City

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shall have the right to remove all or any part of said equipment and system and to retain the same as the City's property, without accountability to the Company, with expense of such removal to be charged to and paid by the Company with credit for any value of said equipment or system.

Sec. 17. Acceptance by the Company.

Upon the adoption of this Ordinance, the Company shall file with the City Clerk and Treasurer its written and dated acceptance of the terms, provisions and conditions of the Ordinance within ninety (90) days after said adoption, in the absence of which this franchise, at the option of the City, shall be forfeited and terminated.

Sec. 18. Initial Service by Company.

The Company, within sixty (60) days following the effective date of the franchise, shall make all necessary applications to the Federal Communications Commission for authority with respect to the Distribution System, including authority with respect to the operation of any necessary microwave service, and shall also proceed, within this time frame, to apply for all other necessary governmental licenses and authorizations for the construction of the Distribution System in the furnishing of Community antenna service. The Company shall also make prompt application to the City, the telephone company and the electric company for pole attachment agreements and facility sharing agreements for the erection, maintenance, extension, and operation of the Distribution System. In the event that at the end of a period of one (1) year following the effective date hereof the Company has not obtained the necessary governmental authorizations and pole attachment and facility sharing agreements required hereunder, then this Ordinance may at the option of the City, be repealed and the powers and rights granted the Company shall become void.

Sec. 19. Repeals.

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Sec. 20. Complaints.

Prior to and after the commencement of service the Company shall establish and maintain a business office

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in the City of Bonifay, Florida, which shall be open five (5) days a week during normal business hours. The personnel in this office will be responsible for receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. The manager of this office will be responsible for overseeing the resolution of these complaints and he shall administer procedures which the Company will establish to assure that all complaints are handled as expeditiously as possible. The notice of the procedures for reporting and resolving complaints will be given to each subscriber at the time of initial subscription to the Cable System. A record of all complaints and resolutions shall be maintained and made available to the City upon request. Any complaint which cannot be resolved satisfactorily by the Company may be taken before the City Council.

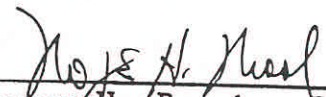
Section 21. This ordinance shall take effect immediately upon its passage and approval.

PASSED in regular session of the City Council of the City of Bonifay on the 10th day of November, 1980.

ATTEST:

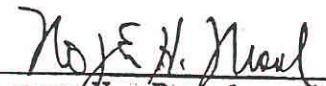


City Clerk



Roger H. Brooks, President of the
City Council

APPROVED this November 10, 1980



Roger H. Brooks, Acting Mayor