

ORDINANCE NO. 1429

AN ORDINANCE granting to RADIANT T.V., INC., its successors and assigns, a franchise for the furnishing and transmission of Cable Television Services, granting to it the right to erect, maintain and operate its facilities in, on, under, over, along, across, and upon the streets, sidewalks, alleys, bridges, and public places in the City of Camas, Washington, and imposing provisions and conditions relating to the exercise of such franchise and right.

THE COUNCIL OF THE CITY OF CAMAS DO ORDAIN AS FOLLOWS:

Section I

DEFINITIONS

For purposes of this Ordinance, the following terms shall have the following meanings:

1. "FCC" shall mean the Federal Communications Commission of the United States of America, an agency established by an Act of Congress.
2. "RULES" shall mean current rules and regulations promulgated by the FCC.
3. "CATV" shall mean a community antenna television system for the transmission of audio signals and/or visual images or any other type of closed circuit transmission and/or signal transmission by means of electrical impulses within coaxial cable.
4. "CITY" shall mean the City of Camas, State of Washington.
5. "FRANCHISE" means and includes any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a CATV system in the City.
6. "GRANTEE" means the person, firm, or corporation to whom or which a franchise, as hereinabove defined, is granted under this ordinance, and the lawful successor, transferee or assignee of such person, firm or corporation. For purposes of this ordinance, the terms Licensee, Franchisee, and Grantee mean the same.
7. "STREET" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, parkway or drive, now or hereafter existing as such within the City.

8. "PROPERTY OF GRANTEE" means all property owned, installed, or used by Grantee in the course of conducting a CATV business in the City under the authority of a franchise granted pursuant to this ordinance.

9. "CABLE TELEVISION SYSTEM" means a system of antenna, coaxial cables, wires, wave guides or other conductors, equipment or facilities designed, constructed or used for the purposes of providing broadcast and other signals by cable or through its facilities as herein contemplated.

10. "SUBSCRIBER" means any person or entity receiving for any purpose the CATV service of Grantee.

11. "GROSS SUBSCRIBER REVENUES" is meant to include only those revenues, derived from the supplying of regular subscriber service, that is, fees for regular cable benefits including the transmission of broadcast signals and access and origination channels if any. It does not include revenues derived from pay television service such as home box office, nor revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other income derived from the system.

12. "FRANCHISOR" shall mean the City of Camas.

## Section II

### GRANT OF FRANCHISE

RADIANT T.V., INC., its successors and assigns, is hereby granted the right to operate a CATV system in the City of Camas, Washington, and to construct and maintain and operate, towers, antenna, poles, conduit wires, cable, amplifiers, connectors, and any and all other plant, fixtures, equipment or apparatus required to gather and distribute audio and video program material to the persons, firms and corporations living or located within and near the City, and to enter upon, use, and occupy the bridges, avenues, streets, alleys, sidewalks, parkways, and all other such public grounds and places within the corporate limits of the City, as they shall become, for the above purposes and all other purposes reasonably necessary to the proper operation of such CATV system, provided, however, the City reserves the right to establish and enforce lawfully adopted reasonable rules

and regulations relating to the construction and installation of the system and designating where Grantee's facilities are to be placed within the public rights-of-way and places referred to above.

The rights herein granted shall be deemed non-exclusive and shall continue and endure throughout the term of this ordinance so long as the Grantee is in compliance with all the terms of this ordinance and all applicable laws and regulations of the federal, state and local government. The rights and the franchise granted hereunder, however, shall not relieve Grantee of any obligations of obtaining pole space from any department of local government, utility company, or from others maintaining poles in the streets. This franchise shall be in lieu of any and all other rights, privileges, powers, immunities and authorities owned, possessed, controlled or exercised by the Grantee, or any successor to any interest of Grantee, of or pertaining to the construction, operation, or maintenance of any CATV system in the City.

### Section III

#### TERM

The franchise and rights granted to Grantee in this ordinance shall extend and endure for a term of fifteen (15) years from the effective date hereof unless terminated sooner by the City as hereinafter provided.

### Section IV

#### CONSTRUCTION OF TRANSMISSION FACILITIES

A. Grantee shall construct or install or cause to construct an installation of and will maintain and operate the said towers, antenna, poles, conduits, wires, cables, amplifiers, connectors, and all other platns, fixtures, equipment and apparatus in accordance with good engineering and construction practices, and in full compliance with all applicable statutes, ordinances, codes, rules and regulations, and in such manner and places so as to not unreasonable interfere with travel upon and use by others of such bridges, avenues, streets, alleys, sidewalks, parkways, and other public grounds and places.

B. Grantee shall have the right to make excavations when and where required in the construction, installation, maintenance and operation of said CATV system, provided any such excavation or any taking up of pavement, curbing or sidewalk shall be done under the supervision and direction of and pursuant to permits issued by the Director of Public Works or his duly authorized agents. Such work shall be done pursuant to and in conformity with the ordinances and codes of the City. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its sole expense, replace and/or repair all paving, sidewalk, driveway or surface of any street or alley so disturbed.

C. Grantee shall have the right to cut or trim trees or shrubs upon or overhanging any bridges, avenues, streets, alleys, sidewalks, parkways or other public grounds and places as may be necessary to prevent the branches of such trees or shrubs from coming into contact with Grantee's wires, cables, or other facilities, provided all such cutting or trimming shall be done under the supervision and direction of the Director of Public Works or his duly authorized agents, and after notice to the owner of the property upon which such trees or shrubs may be located.

D. Grantee's transmission distribution system poles, wires, cables, antennas, conduits, amplifiers, connectors, and all other plants and equipment shall be located, erected and maintained so as not to endanger or interfere with the lives of persons, or to interfere with improvements the City may deem proper to make, or to hinder or obstruct the free use of the streets, alleys, bridges, or other public property. Removal of such poles, wires, cables, equipment, conduits antennas, and other plant, fixtures, and apparatus when necessary to avoid such interference will be at the Grantee's sole expense.

#### Section V

#### SHARED TRANSMISSION FACILITIES

The poles and posts used for the Grantee's distribution system shall be those erected by Grantee and/or erected and maintained by other persons, firms or corporations at the time maintaining poles

or posts within the City limits, when and where practicable, providing that mutually satisfactory contractual arrangements can be entered into with said companies. The City shall not be responsible for obtaining any pole line agreement with the various utility companies maintaining poles within the City limits.

#### Section VI

##### TEMPORARY RELOCATION OF EQUIPMENT

Grantee shall, upon a request made by any person holding a permit from the City to remove a building or structure or large implement or equipment along or across and public way, temporarily remove, raise, lower, or relocate any wires, cables, or other equipment to the extent necessary to permit the movement of such building, structure, or large implement without damaging such wire, cable or other equipment, provided however that the person making the request shall give Grantee at least forty-eight (48) hours advance notice of the intended move and shall pay the cost and expenses incurred by Grantee in complying with such request, and provided further, that Grantee may require payment by any such person of the costs and expenses Grantee estimates will be incurred in complying with such request before proceeding to remove, raise, or lower such wire, cable or other equipment.

#### Section VII

##### DUE CARE

In the maintenance and operation of its CATV system in the streets, alleys, and other public places, and in the course of any new construction or additions to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public. Any opening or obstruction in the streets or other public places made by Grantee in the course of its operations shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, and the bounds of which, during periods of dusk or darkness, shall be clearly marked. Any opening made in any streets, alleys, sidewalks, or any other public places shall be promptly refilled, and the surface restored to contour and maintained substantially at contour at all times. Streets when opened shall be repaired

with the same type of material as existing there and shall be kept level and even with the surface where the opening has been made.

Upon failure of the Grantee to commence, pursue, or complete any work required by law or by the provisions of this ordinance to be done in any street or other public place, within the time prescribed, and to the satisfaction of the appropriate City official, the City may, at its option, cause such work to be completed, and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City to the Grantee within thirty (30) days after receipt of such itemized report.

#### Section VIII

##### INDEMNIFICATION AND INSURANCE

A. Grantee shall indemnify and hold City and City's employees and agents harmless at all times during the term of this franchise from and against all claims for injury or damages to persons or property, both real and personal, caused by the Grantee's negligence or willful misconduct in construction, erection, operation, and maintenance of any structure, equipment, appliances, wire, cable, antenna, connector, conduit, amplifier, pole, or any other fixture or apparatus authorized or used pursuant to the authority of this franchise.

B. The Grantee shall obtain and shall maintain in full force and effect at all times a good and sufficient policy of liability insurance in which Grantee shall cause the City to be named as an additional insured, and providing liability coverage in the amount of \$500,000 for injuries resulting to any one person, \$1,000,000 for injuries to persons in any one accident or occurrence, and \$500,000 property damage coverage for any one accident or occurrence. Said policy shall protect the City from and against any and all claims for injury or damage to persons or property, both real and personal, caused by the construction, erection, operation or maintenance of any structure, antenna, pole, conduit, wire, cable, amplifier, connector, or any other plant, fixture, equipment or apparatus authorized or used pursuant to

the authority of this franchise. Grantee shall furnish to City a certificate of insurance for said policy.

C. The Grantee, upon receipt of due notice in writing from the City, shall defend at its own expense any action or proceedings against the City in which it is claimed that the injury or damage arose from the Grantee's activities in the operation of its CATV system, and from and against the City arising out of the granting of said franchise.

#### Section IX

##### RULES, REGULATIONS AND RATES

Grantee shall have the right to promulgate and put into effect such rules, regulations, and conditions respecting the sale, furnishing or use of the television service to be proved as shall be reasonably necessary to permit Grantee to carry on such business in an efficient manner, to exercise the rights granted under this ordinance, and to conduct such operation in the manner believed to be the most likely to assure his ability to provide uninterrupted service to his customers, provided such rules, regulations, and conditions are not inconsistent with the terms of this ordinance.

Grantee shall have the further right to establish, put into effect, and collect reasonable rates and charges for the services to be rendered, including charges for connection and disconnecting customers to the system, and penalties for late payments. All such rules, regulations, rates and charges shall first be approved by resolution of the City Council of the City.

#### Section X

##### OTHER COMMUNICATIONS SIGNALS

Installation and maintenance of Grantee's CATV system shall be such that no objectionable interference is caused to existing communication systems, and so as not to cause objectionable interference to direct off-air television signals received by conventional roof-top antennas, all as required by the FCC Rules.

Grantee's distribution system shall conform to the requirements of the FCC, particularly with respect to freedom from spurious radiation. In addition, Grantee will comply with all FCC regulations now or hereinafter put into effect. Grantee shall make such

applications and other filings with the FCC as may now or in the future be necessary to permit the continued operation of its CATV system. A copy of such filing shall be furnished to City for local public inspection at some accessible place in the City during regular business hours in accordance with existing rules and regulations of the FCC.

#### Section XI

##### SERVICES AND EQUIPMENT

The Grantee certifies that all cable and associated equipment to be provided pursuant to this ordinance shall be the most modern and up-to-date available and equal to that of other community antenna televisions systems operating in surrounding areas, and shall be consistent with prevailing practices in the industry, the financial capabilities of the Company, and the FCC Rules.

#### Section XII

##### FRANCHISE FEE

As compensation for the franchise granted by this ordinance, Grantee shall pay to the City an amount equal to three (3%) percent of the gross subscriber revenues collected by the Grantee from its customers for CATV services provided within the City. Said franchise fee shall be payable within ninety (90) days of the close of the calendar year for the services provided during the previous calendar year.

Grantee shall also pay all license fees and taxes which it may be required to pay by any ordinance now in effect or hereinafter enacted, including a business or occupation tax or public utility tax on persons engaged in the business carried on by Grantee.

#### Section XIII

##### RECORDS OF GRANTEE

The City shall have the right to inspect, upon reasonable notice and during regular business hours, all books and records maintained by the Grantee in the ordinary course of its business in connection with its operation in the City. In the event of a discrepancy in the Grantee's annual revenue statement, the City shall have the right to request that it be certified by an



independent certified public accountant.

Copies of the Grantee's annual financial report and other reports or other submissions containing financial information to City shall be confidential and shall not be made available to the public without Grantee's prior written consent.

#### Section XIV

##### SALE OR ASSIGNMENT OF FRANCHISE

This franchise shall be a privilege to be held in personal trust by the original Grantee. It cannot in any event be sold, transferred, leased, assigned or disposed of, in whole or in part, either by forced or involuntary sale, or by voluntary sale, merger, consolidation or otherwise, without the prior consent of the City, and then only under such conditions as may therein be prescribed. The consent of City shall not be arbitrarily withheld, provided, however, that the proposed successor of Grantee must show financial responsibility and must agree to comply with all provisions of this ordinance.

#### Section XV

##### NON-COMPLIANCE OF GRANTEE AND TERMINATION

Grantee shall maintain service in accordance with the technical standards of the FCC, and shall maintain a copy of its annual performance test measurements for local public inspection during regular business hours.

Should Grantee fail to meet the performance standards set forth in the FCC Rules, or should Grantee be in violation of any of the terms of this ordinance, and if such non-compliance shall continue for thirty (30) days after City has notified Grantee of such failure or non-compliance, then City shall have the right to terminate the rights granted to Grantee in this ordinance.

#### Section XVI

##### FORFEITURE

Grantee agrees that in the event this franchise shall be terminated by the City upon due cause, or in the event Grantee shall abandon the operation of said CATV system, then in either of such events, all equipment owned, maintained, and operated by Grantee upon public rights-of-way or upon property owned by

the City shall be forfeited and become the property of the City, provided however, that City shall first give Grantee sixty (60) days written notice of its intention to exercise such forfeiture provision, and prior to the expiration of said sixty (60) day period, Grantee shall have the right to remove such equipment from the public rights-of-way and from property owned by the City.

Section XVII

NOTICE

All notices to be sent by the City to Grantee pursuant to this notice shall be in writing and shall be mailed certified mail, return receipt requested, to Grantee's last known address.

Section XVIII

ACCEPTANCE

This franchise is made upon the express condition that Grantee shall within twenty (20) days after the adoption of this ordinance file with the City Clerk his written acceptance thereof.

Section XIX

SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by any Court of competent jurisdiction, or by regulation of the Federal Communications Commission, or any other governmental agency having appropriate jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section XX

EFFECTIVE DATE

This ordinance shall be in force and effect five (5) days from and after its publication according to law.

PASSED by the Council and Approved by the Mayor this 27 day of April, 1981.

SIGNED: Donald Christensen  
Mayor

ATTEST: [Signature]  
Clerk

APPROVED as to form:  
[Signature]  
City Attorney

Ordinance No. \_\_\_\_\_:

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The terms and conditions of the foregoing Franchise Ordinance No. 1429 are hereby accepted this 30 day of April, 1981.

RADIANT T.V., INC.

By: [Signature]

ATTEST:

[Signature]  
Corporate Secretary

Above acceptance received by:

[Signature]  
City Clerk

Dated May 4, 1981