

**CITY OF RUSSELLVILLE, KENTUCKY
ORDINANCE NO. 2005-20**

AN ORDINANCE OF THE CITY OF RUSSELLVILLE GRANTING A
NON-EXCLUSIVE FRANCHISE TO CEBRIDGE CONNECTIONS FOR THE
CONSTRUCTION AND OPERATION OF A CABLE SYSTEM; PROVIDING DEFINITIONS;
STANDARDS AND REGULATIONS FOR SERVICE; COMPLIANCE AND MONITORING
STANDARDS; PROVISIONS FOR TERMINATION; AND PROVIDING A REPEALER CLAUSE,
SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.

** ** *

WHEREAS, the City of Russellville, Kentucky, desires to grant, in accordance with Sections 163 and 164 of the Constitution of the Commonwealth of Kentucky, a non-exclusive franchise for the erection, construction, maintenance and operation of a community cable television system within the City limits of the City of Russellville; and

WHEREAS, the City of Russellville deems the granting of such a non-exclusive franchise is in keeping with the general health, safety and welfare of the citizens of the City of Russellville;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL IN AND FOR THE CITY OF RUSSELLVILLE, KENTUCKY, AS FOLLOWS:

SECTION 1 - Definition of Terms

For the purpose of this Ordinance (the "Ordinance"), the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- a. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.
- b. "Basic Cable" means the tier of Cable Service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.
- c. "Cable Service" means:
 - (i) the one-way transmission to Subscribers of Video Programming or other programming service, and

- (ii) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other programming service.
- d. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other equipment that is designed to provide Cable Service or other service to Subscribers.
- e. "FCC" means Federal Communications Commission or successor governmental entity thereto.
- f. "Franchise" means the initial authorization, or renewal thereof, issued by Franchising Authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to subscribers.
- g. "Franchising Authority" means the City of Russellville or the lawful successor, transferee or assignee thereof.
- h. "Grantee" means Cequel III Communications II, LLC, doing business as Cebridge Connections, or the lawful successor, transferee, or assignee thereof.
- i. "Gross Revenues" shall have the same meaning as contained in House Bill 272, Section 89, *et seq.*, as enacted by the General Assembly of the Commonwealth of Kentucky, effective January 1, 2006, and any subsequent legislative amendments to this statute.
- j. "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- k. "Public way" is the surface and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, alley, right-of-way, public utility easement, and any other public ground or water subject to the jurisdiction and control of the Franchising Authority.
- l. "Service Area" means the present municipal boundaries of Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- m. "Subscriber" means a user of the Cable System who lawfully receives Cable Service or other service there from with Grantee's express permission.
- n. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2 - Grant of Franchise

2.1 *Grant.*

Franchising Authority hereby grants to Grantee a non-exclusive Franchise which authorizes Grantee to construct and operate a Cable System and offer Cable Service and other service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables and other related property or equipment as may be necessary or appurtenant to the Cable System.

2.2 *Term.*

The Franchise granted pursuant to this Ordinance shall be for a term of fifteen (15) years from the passed and adopted date of the Franchise unless otherwise lawfully terminated in accordance with the terms of this Ordinance.

2.3 *Acceptance.*

Grantee shall accept the Franchise granted pursuant hereto by signing this Ordinance and filing same with the City Clerk or other appropriated official or agency of Franchising Authority within sixty (60) days after the passage and final adoption of this Ordinance.

2.4 *Favored Nations.*

In the event the Franchising Authority enters into a franchise, permit, license, authorization or other agreement of any kind with an Person other than Grantee to enter into Franchising Authority's streets and public ways for the purpose of constructing or operating a Cable System or providing Cable Service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and provide all parties equal protection under the law.

SECTION 3 - Standards of Service

3.1 *Conditions of Street Occupancy.*

All transmission and distribution structures, poles, other lines and equipment installed or erected by Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and

reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 *Restoration of Public Ways.*

If, during the course of Grantee's construction, operation or maintenance of the Cable System there is a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 *Relocation at Request of Franchising Authority.*

Upon its receipt of reasonable advance notice, not to be less than 30 days, Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Grantee when lawfully required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by Franchising Authority; but, Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Grantee.

3.4 *Relocation at Request of Third Party.*

Grantee shall, on the request of any Person holding a moving building permit issued by Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided: (a) the expense of such temporary raising or lowering of wires is paid by such Person, including, if required by Grantee, making such payment in advance, and (b) Grantee is given not fewer than ten (10) business days advance written notice to arrange for such temporary wire changes.

3.5 *Trimming of Trees and Shrubbery.*

Grantee shall at all times observe Ordinance 2004-01 (the "Tree Ordinance") of the City of Russellville, Kentucky, and the Comprehensive Plan of the Tree Board adopted in furtherance of said Tree Ordinance, and any subsequent amendments to said Ordinance and Comprehensive Plan.

3.6 *Safety Requirements.*

Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable

System shall not unreasonably endanger or interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction.

In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Grantee shall place its transmission and distribution cables underground. Grantee shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.

3.8 Required Extensions of Service.

The Cable System, as constructed as of the date of the passage and final adoption of this Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to such Subscribers for system extension, other than the usual connection fees for all Subscribers, provided that such extension is technically and economically feasible.

3.9 Subscriber Charges for Extensions of Service.

No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscribers or a density of fewer than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction; including cost of material, labor, and easements. Potential subscribers shall bear the costs of the construction and other costs on a *pro rata* basis. Grantee may require payment in advance of the capital contribution in aid of construction borne by such potential subscribers.

3.10 *Service to Public Buildings.*

Grantee shall provide without charge one (1) outlet of Basic Cable to Franchising Authority's office building(s), including the City Fire Department, as well as public school building(s) that are passed by its Cable System within the Russellville Independent School District, and to provide such other services as may be requested by the Russellville Independent School District, provided, however, it is both technically and economically feasible for Grantee to provide such services. The outlets of Basic Cable shall not be used to distribute or sell Cable Service in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public. Users of such outlets shall hold Grantee harmless from any and all liability or claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section 3.10, Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to such buildings or premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and if the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of 150 cable feet. In the event that additional outlets of Basic Cable are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Cable and the additional outlets relating thereto.

SECTION 4 - Regulation by Franchising Authority

4.1 *Franchise Fee.*

In consideration of the granting of a Nonexclusive Franchise, Grantee shall pay as a fee and as compensation for the rights and privileges enjoyed five percent (5%) of Grantee's annual gross revenue from its cable television system located in the City of Russellville. Said fee shall be in lieu of all other fees or taxes including occupational, license, excise and special taxes or fees, whatsoever except municipal ad valorem taxes on each Grantee's property located within the limits of the City of Russellville. Grantee shall abide by the terms of House Bill 272, enacted by the 2005 General Assembly, as it pertains to telecommunication franchises and franchise fees.

4.2 *Transfer of Franchise.*

All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the Franchising Authority and the successors and assigns of Grantee: and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for

debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of the Franchising Authority ("intracompany transfers"). Grantee shall notify Franchising Authority in writing within 30 days of the closing of such intracompany transfer.

SECTION 5 - Compliance and Monitoring

5.1 Books and Records

Grantee agrees that Franchising Authority may review such of Grantee's books and records, during normal business hours and on a non-disruptive basis, as are reasonably necessary to monitor compliance with the terms hereof. Such records include, but are not limited to, any public records required to be kept by Grantee pursuant to the rules and regulations of the FCC. Franchising Authority agrees to treat any information disclosed to it by Grantee as confidential, and to disclose it only to employees, representatives and agents of Franchising Authority that have a need to know, or in order to enforce the provisions hereof.

SECTION 6 - Insurance, Indemnification, and Bonds or Other Surety

6.1 Insurance Requirements.

Grantee shall maintain in full force and effect during the term of the Franchise, at its own cost and expense, Comprehensive General Liability Insurance in the amount of \$1,000,000. Such insurance shall designate Franchising Authority as an additional insured, and on an annual basis, beginning July 1, 2006, Grantee shall furnish to the Franchising Authority a Certificate of Insurance evidencing such insurance.

6.2 Indemnification.

Grantee agrees to indemnify, save and hold harmless, and defend Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death) which arise out of Grantee's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs.

6.3 Bonds and other Surety.

Except as expressly provided herein, Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. Franchising Authority acknowledges that the legal, financial, and technical

qualifications of Grantee are sufficient to afford compliance with the terms of the Franchise and the enforcement thereof. Grantee and Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Service or other service. In order to minimize such costs, Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material terms, covenants and conditions of the Franchise. Initially, no bond or other surety shall be required. In the event that one is required in the future, Franchising Authority agrees to give Grantee at least sixty (60) days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

SECTION 7 - Enforcement and Termination of Franchise

7.1 Notice of Violation.

In the event that Franchising Authority believes that Grantee has not complied with the terms of the Franchise, it shall notify Grantee in writing of the exact nature of the alleged default.

7.2 Grantee's Right to Cure or Respond.

Grantee shall have sixty (60) days from receipt of the notice described in Section 7.1 to:

- (a) respond to Franchising Authority contesting the assertion of default;
- (b) cure such default; and
- (c) in the event that, by the nature of the default, such default cannot be cured within the sixty (60) day period, to initiate reasonable steps to remedy such default and to notify Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing.

In the event that Grantee fails to respond to the notice described in Section 7.1 pursuant to the procedures set forth in Section 7.2, or in the event that the alleged default is not remedied within sixty (60) days after Grantee is notified of the alleged default pursuant to Section 7.1, Franchising Authority shall schedule a public meeting to determine whether the Franchise should be terminated. Such public meeting shall be

held at the next regularly scheduled meeting of Franchising Authority which is scheduled either at a regular or special-called meeting of the City Council of the City of Russellville. Franchising Authority shall provide adequate notice to Grantee of the time and place of such meeting and provide Grantee with a meaningful opportunity to be heard.

7.4 Enforcement.

Subject to applicable federal and state law, in the event Franchising Authority determines, after such meeting, that Grantee is in default of any provision of the Franchise, Franchising Authority may:

- (a) Commence an action at law for damages or seek equitable relief; or
- (b) In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- (c) Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages.

Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of Franchising Authority to enforce prompt compliance.

7.5 Acts of God.

Grantee shall not be held in default of the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such alleged default is caused by acts of God, power outages, or other events beyond its ability to control.

SECTION 8 - Miscellaneous Provisions

8.1 Preemption.

If the Congress of the United States, or the General Assembly of the Commonwealth of Kentucky, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise created by this Ordinance, then to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by Franchising Authority, the Jurisdiction of Franchising Authority shall cease and no longer exist.

8.2 *Actions of Franchising Authority.*

In any action by Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.3 Grantee agrees to provide to the City of Russellville Fire Department, at no cost to the City of Russellville, Expanded Basic Cable Television.

8.4 *Notice.*

Unless expressly otherwise agreed between the parties, every notice or response to be served upon Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service, or by or express mail, or by other recognized mail carriers, with the date the transmitting agency received said document from the sender noted by the transmitting agency on the outside of the container used for transmitting.

The notices or responses to Franchising Authority shall be addressed as follows:

attn: Mayor
CITY OF RUSSELLVILLE
168 South Main Street
Russellville, KY 42276

attn.: City Attorney
CITY OF RUSSELLVILLE
168 South Main Street
Russellville, KY 42276

The notices or responses to Grantee shall be addressed as follows:

attn: Michael Zarrilli
CEBRIDGE CONNECTIONS
12444 Powerscourt Drive, Suite 450
St. Louis, MO 63131

Franchising Authority and Grantee may designate such other address or addresses from time to time by giving written notice to the other party.

8.4 *Descriptive Headings.*

The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

Section 9 - SEVERABILITY CLAUSE

If any provision of this Ordinance is deemed by a court of competent jurisdiction to be unenforceable, the remaining provisions of this Ordinance shall continue in full force and effect.

Section 10 - REPEALER CLAUSE

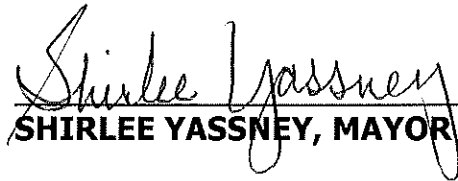
Any and all parts of Ordinances now in effect which conflict with Ordinance are hereby repealed.

Section 11 - EFFECTIVE DATE

This Ordinance shall become effective upon publication.

FIRST READING conducted the 8th day of November, 2005.

SECOND READING AND PASSAGE this the 2nd day of May, 2006.


SHIRLEE YASSNEY, MAYOR

ATTEST:


BOB RIGGS, CITY CLERK

Ayes: Jones, Russell; McPherson, Lanny; Phillips, Chuck; Stratton, Mark; Whipple, Jack; Zick, Eugene

Nays: none

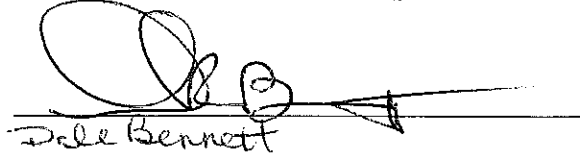
Absent: none

Abstaining: none

Accepted this 20th day of June, 2006, subject to applicable federal, state and local law.

Ceque III Communications II, LLC
DBA CEBRIDGE CONNECTIONS

By:



A handwritten signature in black ink, appearing to read "Dale Bennett", is written over a horizontal line. The signature is stylized and somewhat cursive.

Title S. Vice President