

# ORDINANCE NUMBER 33

## CITY OF TOWER, MINNESOTA

An Ordinance granting to Joe Mesojedec a franchise to construct, operate, and maintain a television signal service and distribution system within the City of Tower and specifying the terms and conditions thereof.

The City of Tower does ordain as follows:

Section 1. GRANT OF AUTHORITY. The City of Tower (hereinafter referred to as "Grantor") subject to the limitations and conditions hereinafter set forth, does hereby grant to Joe Mesojedec, (hereinafter referred to as "Grantee") the non-exclusive right, privilege, franchise, and right-of-way in, upon, across, and along all of the streets, alleys, thoroughfares, and public grounds of the City of Tower, Saint Louis County, Minnesota for the purpose of erecting, constructing, and maintaining all necessary, needful and convenient poles, pale lines, posts, wires, cables, transformers, signal boosters, signal amplification apparatus, guy posts, and guy wires, apparatus, and appliances necessary and needful to properly and successfully locate, construct, maintain, and operate a television signal service and distribution system in the said City for a period of 20 years from and after the effective date of this ordinance.

Section 2. CONSTRUCTION.

- A. The grantee shall so erect and set its poles and place its wires and appliances as not to interfere with ordinary travel and use of the streets, alleys, thoroughfares, or public grounds, and shall so maintain the same during the life of this franchise. All of such installations shall be of a permanent nature, and at no time shall the Grantee place temporary or make shift line on two by fours or simulated poles unless preliminary to construction. All lines and poles shall be of a permanent nature, durable, and of sufficient height not to interfere in any manner with the rights of the public or individual property owners, and shall not interfere with the travel and use of such public places by the public as is practical and consistent with the work and improvements to be made. Such attachment of wires, cable, apparatus, and other facilities necessary to the existence and operation of the signal system may be made on poles of others already erected within the limits of the City of Tower.
- B. It is contemplated the Grantee shall use the poles and pole lines of others upon which to attach its cables and other facilities, and such poles and pole lines belonging to others shall be used for said purpose so as to avoid the parallel building of pole lines, in substantial duplication of already existing pole lines and pole facilities. In case it shall become necessary for Grantee to get and erect other additional poles to realize the purpose hereof, the locations thereof shall, in each instance be first approved in writing by said City Council, one set of plans showing such pole locations shall be filed in the office of the City Engineer and retained by him.

Section 3. AREA OF OPERATION. Grantee shall have the right to furnish and distribute television, radio, and music signals during the life of this franchise to all public and private customers, and shall have the right to extend its lines upon the streets, alleys, and public grounds of any addition or additions hereafter made to the Grantor's territory and to use the streets, alleys, thoroughfares, and public grounds for lines to continue such television, radio, and music signal system to points beyond the said territory. Grantee may, in conformity to the terms of this, and other ordinances of the City, locate its said lines, cables, and other apparatus in, on, and under all public streets, avenues, alleys, thoroughfares, and public places in furtherance of service to be rendered by the said Grantee.

Section 4. PROTECTION OF PUBLIC.

- A. All installations and other instrumentalities installed by authority of this ordinance shall be placed and installed in such manner as not to endanger the property, safety, health, or comfort of the residents of this City.
- B. Unless, otherwise authorized by the Grantor, installations and connection of each domestic user shall be so made that the use can quickly, and without assistance, switch, or change from such connection to the usual television antenna and ordinary television use.

Section 5. LIABILITY OF OPERATOR. The operator shall indemnify and save the City of Tower and its agents and employees harmless from any and all claims for personal injuries or property damages, and other claims, costs, including attorney's fees, expenses of investigations and litigation of claims and suits thereon which may arise from the installation and/or operation of said system. For this purpose the Operator shall carry and at all times maintain on file with the City Clerk insurance insuring such Operator and the City against any and all liability arising from such installation and/or operation, with limits of liability of not less than \$10,000.00 property damage, \$50,000.00 for any one person personal injury or death, and \$200,000.00 for any one accident resulting in personal injury or death. Such policy of insurance or certificate thereof by a company licensed to do a business in the State of Minnesota shall be filed with the City Clerk prior to commencement of such use together with a certificate that said policy of insurance shall not be terminated, revoked, cancelled without a ten (10) day written notice to the City of Tower.

Section 6. COMPLIANCE WITH CHARTER. By the acceptance of this franchise the Grantee shall accept, agree to, and be in all respects bound by all, and each part severally, of the Charter of said City of Tower as said Charter now is and as the same shall hereafter be during the term hereof. Where inconsistent herewith, the charter shall prevail.

Section 7. DISTURBANCE OF PROPERTY. Whenever the Grantee shall disturb any street, sewer, or any other property within the limits of the Grantor, the Grantee shall complete the project with the most reasonable dispatch, and the Grantee shall then as soon as may reasonably be done, restore all thereof to its equivalent, and as nearly as possible exact condition as before, and repair the same for 12 months thereafter.

Section 8. PROTECTION OF EXISTING PROPERTY. Nothing herein contained shall authorize the Grantee to disturb or interfere with any city installation, or to operate within unreasonable

proximity to such installations. Nor shall anything herein contained authorize the Grantee to cause damage except damage herein specifically categorized.

Section 9. MAPS. The Grantee shall prior to any construction within the limits of the Grantor, file with the City Council a map, or plat, otherwise herein referred to as a plat, showing the location and total plan of construction. The Grantee shall make no extension thereof or variation therefrom before filing with the City Council a plat thereof. The Grantee shall make no construction not in accordance with any such plat, and the Grantor shall be authorized to reasonably disapprove any such plat.

Section 10. RECORDS. The Grantee shall at all times keep and maintain a complete and separate record of all of its operations and other matters which in any manner affect said City in the determination of rates in said City. The Grantee shall also keep full records of all other matters which are referable to this franchise or the interests of the Grantor or its inhabitants. The Grantor shall have the right to inspect such records at any time, and the Grantee shall furnish to the Grantor copies of any or all thereof at any time on demand.

Section 11. CANCELLATION OF FRANCHISE. If the Grantee shall be in default in the performance of any of the terms and conditions of this ordinance, and shall continue in default for more than ninety (90) days after receiving notice from the City Council of such default, the City Council, may by ordinance duly passed and adopted terminate all rights granted under this ordinance. The said notice of default shall specify the provisions or provision in the performance of which it is claimed the Grantee is in default. Said notice shall be in writing and served in the manner provided by the Laws of Minnesota for the service of original notices in civil actions.

Section 12. REMOVAL OF PROPERTY. Upon cancellation or termination of this franchise, the Grantee shall be allowed a reasonable time not exceeding three months to remove all of its installations, whether above ground or below ground. If it is necessary that excavation be made in order to remove its underground installations any thereof remaining at the end of the above defined three months period shall be considered abandoned by Grantee and Grantor shall have the right to acquire title considered abandoned by Grantee, and Grantor shall have the right to acquire title thereto by motion or resolution accepting title. Any such removal by the Grantee shall be subject to the provisions hereof relating to "disturbance of property" and all of the rights of the Grantor and others.

Section 13. PERFORMANCE BOND. At any time on demand of the Grantor when action by the Grantee appears imminent under these sections relating to "Disturbance of Property", the Grantee shall furnish to the Grantor a suitable bond, approved by the Grantor for performance of such sections by the Grantee.

Section 14. INSPECTION. All installations, maintenance, removal of property, and other acts of the Grantee shall be subject to inspection and approval by the Grantor. The reasonable value of such inspection, not less than cost to Grantor, shall be paid by the Grantee to the Grantor from time to time on demand.

Section 15. ASSIGNMENT OR LEAESE. No part of this franchise or any rights of the Grantee hereunder shall be leased or assigned without the consent of the Grantor. To assist the Grantor

in determining whether such consent should be given the Grantee shall furnish the Grantor satisfactory proof relating to the character, financial responsibility, and history, of the proposed lease or assignee, and such further pertinent data as the Grantor shall reasonably acquire.

Section 16. SERVICING OF TELEVISION RECEIVERS. The Operator may not, either directly or indirectly, engage in the servicing or repair of television receivers in the City of Tower nor directly or indirectly require of any subscriber the patronage of any designated person or company engaged in such service or repair business. The foregoing shall not apply to the repair or adjustment of equipment other than receivers, which is part of the system of the operator.

Section 17. NON-PERFORMANCE. On ninety (90) days prior written notice to the Grantee, its lessees, successors, and assigns, of its intentions so to do, the Grantor after not less than two (2) years from the effective date hereof, may cancel and terminate the franchise unless before such cancellation or termination the Grantee, its lessees, successors, or assigns shall have substantially completed its main signal service and distribution installation and commenced actual and full service to a reasonable number of domestic users.

Section 18. MAJOR NETWORK PROGRAMS TO BE TELECAST. Grantee shall provide television reception from all of the three present major networks and any additional major networks that may come into existence during the period of this ordinance. This provision shall be complied with and any change is to be made only upon approval of the City Council.

Section 19. FILE RATES. Grantee shall file with the City a complete statement of its first rates to be charged for all users within the City, which statement is part of this ordinance. Said rates are as follows: \$10.00 installation charge and \$4.00 per month. Thereafter whenever any change of rate is proposed to be made to any user, the Grantee shall file with the City a statement thereof and before the same shall take effect is to be approved by Grantor.

Section 20. SEVERABILITY. Should any section or part of any section of this ordinance for any reason be declared void or invalid, the remainder of said ordinance shall not be affected thereby.

Section 21. This ordinance shall take effect and be in force from and after the date of its passage and publication, as provided by law.

Adopted on motion of Councilman Thomas supported by Council man Helstrom by the following vote:

Ayes: Anderson, Holm, Carlson, Helstrom, and Thomas.

Nays: None.

Adopted November 11, 1969.

Published in the Tower News November 21, 1969.

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H Anderson, Mayor

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Wallace Heikkinen, City Clerk