

APPENDIX A FRANCHISES ^[1]

ARTICLE I. - ELECTRICITY

ARTICLE II. - CABLE TELEVISION

ARTICLE III. - TELEPHONE

ARTICLE IV. - GAS

FOOTNOTE(S):

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Editor's note— Printed herein are franchise ordinances, as adopted by the city council. Amendments to the ordinances are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets. The current language of the Public Utility Regulatory Act is found in V.T.C.A., Utilities Code ch. 11 et seq. ([Back](#))

Cross reference— Any ordinance granting any franchise, permit or other right saved from repeal, § 1-6(5); businesses, ch. 22; streets, sidewalks and other public places, ch. 86; utilities, ch. 98. ([Back](#))

ARTICLE I. ELECTRICITY

ORDINANCE NO. 345

AN ORDINANCE AUTHORIZING THE WEST TEXAS UTILITIES COMPANY TO CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC UTILITY SYSTEM IN THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS

Section 1. Be it ordained by the city council of the City of Alpine, Brewster County, Texas, that upon relinquishing its present franchise when this franchise becomes effective, the West Texas Utilities Company, a Texas Corporation (hereinafter called "company"), its successors and assigns, is hereby granted a franchise by the City of Alpine for the purpose of operating an electric utility system in said city for a period of 50 years from the passage of this ordinance.

Section 2. The company shall place its facilities in such manner as to not interfere with the ordinary travel and use of the streets, alleys, and other public grounds during the life of this franchise.

Section 3. The company shall have the right to furnish electric service, during the life of this franchise, to all consumers in the city, and to extend its system along, under, upon, and across the public grounds, streets, and alleys within the city's corporate territory.

Section 4. The company shall pay the city annually each year, during the life of this franchise, two percent of its gross receipts from all of its sales of electric service used within the City of Alpine, exclusive

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of use by the city and other governmental agencies, as compensation for this franchise. The city may have the books and accounts of the company audited at its own expense in order to determine the amount of franchise payment due the city for any year, and for a failure on the part of the company to pay said compensation within 60 days after the amount is determined to be due, this franchise and all rights and privileges herein granted shall be forfeited to the city, and [the] city shall have the right to collect any franchise payment due and owing the city by all legal and equitable remedies given by law for the collection of debts.

Section 5. This franchise is not exclusive and the city reserves all rights to grant any other franchise of a similar nature as is provided by the laws of the State of Texas.

Section 6. The company agrees to indemnify the City of Alpine and the city council of said city from all claims arising out of the construction, maintenance and operation of said electric utility system.

Section 7. The fact that West Texas Utilities Company is now operating under a franchise with a limited amount of time remaining in its term, the company is under necessity of expending large sums of money in enlarging, improving and extending electric service to the City of Alpine, and the fact that the company must secure funds with which to pay for the new investment, and the passage of this ordinance will help secure funds, creates an emergency and a necessity that this ordinance be passed on the day of its introduction, and it is so passed, and any rule requiring more than one reading is hereby waived.

PASSED AND APPROVED on this the 11th day of November, 1957.

ORDINANCE NO. 473

AN ORDINANCE EXTENDING THE FRANCHISE HERETOFORE GRANTED TO THE WEST TEXAS UTILITIES COMPANY FOR THE CONSTRUCTION, MAINTENANCE AND OPERATION OF ELECTRIC UTILITY SYSTEM IN THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS

BE IT ORDAINED BY THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That the franchise heretofore granted the West Texas Utilities Company on November 11, 1957, be and the same is hereby extended for a period of 50 years from the date of passage of this ordinance, subject, however, to the terms, conditions, restrictions and obligations recited in said franchise, it being the intention of this ordinance to extend such franchise so that same shall be for a period of 50 years from the date of passage of this ordinance, in full force and effect, without otherwise changing the terms of such franchise which is now held by the West Texas Utilities Company.

Section 2. This extension and said franchise is made in consideration of the benefits inuring to the City of Alpine by reason of the West Texas Utilities Company being enabled to make and carry out additional plans for the betterment of service and more economical operation heretofore and hereafter occurring.

PASSED AND APPROVED on this the 2nd day of January, 1973.

ORDINANCE NO. 80-411

AN ORDINANCE APPROVING RATE SCHEDULES TO BE CHARGED BY WEST TEXAS UTILITIES COMPANY IN THE CITY OF ALPINE, TEXAS; PROVIDING FOR AN EFFECTIVE DATE FOR SUCH RATE SCHEDULES; PROVIDING CONDITIONS UNDER WHICH SUCH RATE SCHEDULES MAY BE CHANGED, MODIFIED, AMENDED OR WITHDRAWN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT.

WHEREAS, on September 30, 1980, West Texas Utilities Company filed with the City of Alpine a request for an increase of approximately 8.27 percent in rates to be charged within the city (approximately \$12,729,691.00 per annum on a system wide basis); and

WHEREAS, the city, having suspended the effective date of such proposed rate increase from November 4, 1980, and having considered the same at a public hearing, is of the opinion, and finds that an increase in rates should be approved.

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS;

Section 1. That an increase in the rates, tariffs and charges of West Texas Utilities Company for electric power and energy sold within the city be approved in an amount such that the adjusted total systemwide operating revenues for the company be increased \$9,547,197.00 per annum, based on the adjusted test year ending June 30, 1980, which constitutes an increase of approximately 6.20 percent. Such Schedule of Rates, as are approved in accordance herewith, are those under which said company shall be authorized to render electric service and to collect charges from its customers for the sale of electric power and energy within the corporate limits of the city until such time as said rate schedules may be changed, modified, amended or withdrawn, with the approval of the city council.

Section 2. The attached Schedule of Rates and Tariffs, being the same Schedule of Rates and Tariffs filed with and approved by the Public Utility Commission of Texas in its Docket No. 3473, are based upon the increase in total operating revenues prescribed herein and are hereby approved as filed. Such Schedule of Rates and Tariffs shall apply to all power and energy used by each customer on and after December 15, 1980.

Section 3. That kilowatt hours used in designing the rates resulting herefrom shall not be adjusted for price elasticity.

Section 4. Fees charged for the use of the streets, alleys and public places within the city, up to two percent of the assessable revenues collected by WTU within the corporate limits of the city, shall be included within the company's base rates. Any such use fee charged by the city in excess of two percent of the assessable revenues collected by WTU within the corporate limits of that city shall be allocated directly and surcharged to the customers within the corporate limits of the city.

Section 5. That the action of the city council of the City of Alpine enacting this ordinance constitutes, on the date of its final passage, a final determination of rates for West Texas Utilities Company within the City of Alpine in accordance with Section 43(e) of the Public Utility Regulatory Act. ^[2]

Section 6. Nothing in this ordinance contained shall be construed now or hereafter as limiting or modifying, in any manner, the right and power of the city under the law to regulate the rates and charges of West Texas Utilities Company.

Section 7. If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word or provision of this ordinance for it is the definite intent of this city that each of such be given full force and intent for its purpose.

Section 8. That all ordinances, resolutions or parts of ordinances or resolutions in conflict herewith are repealed to the extent of such conflict.

PASSED AND APPROVED at a regular meeting of the city council of the City of Alpine, Texas, this the 16th day of December, 1980.

ORDINANCE NO. 82-2-2

AN ORDINANCE APPROVING RATE SCHEDULES TO BE CHARGED BY WEST TEXAS UTILITIES COMPANY IN THE CITY OF ALPINE, TEXAS; PROVIDING FOR SCHEDULE, CONDITIONS, SEVERABILITY, AND REPEAL OF CONFLICTING ORDINANCES.

WHEREAS, on November 25, 1982, West Texas Utilities Company filed with the City of Alpine a request for an increase in rates to be charged within the city (approximately \$32,256,983.00 per annum on a systemwide basis, revised to \$31,942,187.00, an increase in total adjusted test year revenues of approximately 15.3 percent); and

WHEREAS, the city, having suspended the effective date of such proposed increase from January 1, 1982, and having considered the same at a public hearing, is of the opinion and finds that an increase in rates should be approved; now, therefore,

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS;

Section 1. That an increase in the rates, tariffs, and charges of West Texas Utilities Company for electric power and energy sold within the city be approved in an amount such that the adjusted total systemwide operating revenues for the company be increased approximately \$17,318,050.00 (not including "other revenues") per annum, an increase of approximately 8.25 percent based on the adjusted test year ending September 30, 1981. Such Schedule of Rates, as are approved in accordance herewith, are those under which said company shall be authorized to render electric service and to collect charges from its customers for the sale of electric power and energy within the corporate limits of the city until such time as said rate schedules may be changed, modified, amended, or withdrawn, with the approval of the city council.

Section 2. The attached Schedule of Rates and Tariffs, being the same Schedule of Rates and Tariffs filed with the Public Utility Commission of Texas, in its Docket No. 4202, are based upon the increase in total operating revenues prescribed herein and are hereby approved as filed. Such Schedule of Rates and Tariffs, as the same may be modified or amended, shall apply to all power and energy used by each customer on and after February 12, 1982.

Section 3. That the action of the city council of the City of Alpine enacting this ordinance constitutes, on the date of its final passage, a final determination of rates for West Texas Utilities Company within the City of Alpine in accordance with Section 43(e) of the Public Utility Regulatory Act. ^[3]

Section 4. Nothing in this ordinance contained shall be construed now or hereafter as limiting or modifying, in any manner, the right and power of the city under the law to regulate the rates and charges of West Texas Utilities Company.

Section 5. If for any reason, any section, paragraph, clause, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any section, paragraph, clause, word, or provision of this ordinance, for it is the definite intent of this city that each of such provisions shall be given full force and intent for its purpose.

Section 6. That all ordinances, resolutions, or parts thereof, in conflict herewith, are repealed to the extent of such conflict.

PASSED AND APPROVED at a regular meeting of the city council of the City of Alpine, Texas, this the 16th day of February, 1982.

FOOTNOTE(S):

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Editor's note— See editor's note at the beginning of this appendix. [\(Back\)](#)

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Editor's note— See editor's note at the beginning of this appendix. [\(Back\)](#)

ARTICLE II. CABLE TELEVISION

ORDINANCE NO. 404 ^[4]

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ORDINANCE GRANTING TO GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, HIS HEIRS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF TEN YEARS, WITH AN OPTION TO RENEW FOR AN ADDITIONAL TEN-YEAR PERIOD, AND PROVIDING FOR THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE, RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SURROUNDED AND GOVERNED, AND PRESCRIBING THE PAYMENT OF A GROSS RECEIPTS TAX TO THE CITY OF ALPINE OF TWO PERCENT OF THE ANNUAL GROSS PROVIDED FOR AND EACH YEAR THEREAFTER DURING THE FRANCHISE, INSOFAR AS IT PERTAINS TO EACH SUBSCRIBER, OR IN LIEU THEREOF THE STATED AMOUNT TO BE PAID TO THE CITY OF ALPINE ANNUALLY OF \$1.00 FOR EACH SUBSCRIBER, WHICHEVER SHALL BE GREATER.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That subject to the conditions and limitations hereinafter set out, there is hereby granted to GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, his heirs and assigns, the non-exclusive right to locate, construct, maintain and operate a communication signal (whether it be radio or television service, or both) and distributing system along all of the streets, alleys, and public grounds of the City of Alpine, for the purpose of erecting, constructing and maintaining all necessary, needful, and convenient poles, towers, and antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts and guy wires, apparatus and appliances for a period of ten years from the passage of this ordinance. Grantee, his heirs or assigns, shall have an option to renew said franchise for an additional ten-year period. This option shall be exercised by grantee giving written notice to the City of Alpine 60 days prior to the expiration of the initial ten-year term.

Section 2. GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, his heirs and assigns, shall so set their poles and place their wires and appliances as not to interfere with the ordinary travel and use of the streets, alleys or public grounds, and shall so maintain same during the life of this franchise. 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. Such construction work shall be under the supervision of the city commission of the City of Alpine, or other governing authority; and all wires, poles, lines, and so forth, shall be placed in such position and location as may be designated by the city commission or under its authority.

Section 3. GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, his heirs and assigns, shall have the right to furnish and distribute television and/or radio cable during the life of this franchise, to all public and private customers, and shall have the right to extend his lines upon the streets, alleys and public grounds of any addition or additions hereafter made to the city's corporate territory, and to use the streets, alleys and public grounds for lines to continue such television and/or radio cable to points beyond the corporate limits of said city. In the event that such poles or lines are placed in any location which is inconvenient or improperly located, same will be removed at the instance and request and/or direction of the city commission of the City of Alpine or under its authority.

Section 4. This grant shall be non-exclusive of the use of such roads, streets, and alleys of the City of Alpine; the City of Alpine reserves the right to grant similar rights, privileges and authority for like purposes to other firms or individuals or corporations. All construction, repairs and extension of said distributing lines herein mentioned shall be performed and carried out with due diligence, so as not to interfere with the use of such roads, streets, alleys and public places, or the inhabitants of the City of Alpine, or property owners along such roads, streets, alleys and public places; such facilities and work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of said city commission, or under its direction, shall in no way be construed to relieve the grantee herein from any and all liability occasioned by negligence, improper or defective work or construction, or because of the maintenance or use of his equipment and instrumentalities, upon or

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over the streets of the City of Alpine, nor shall the City of Alpine be liable for any damages by reason thereof in any event.

Section 5. To compensate the City of Alpine, Texas, and as cash consideration to the same, GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, agrees to pay to the city two percent of his annual gross receipts, received from the rendition of television and/or radio cable service, or in lieu thereof, \$1.00 per subscriber, within the corporate limits of the city, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that the consideration shall be paid and received in lieu of any franchise tax, license, fee, or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. In the event the city does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals, and easement or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary to the satisfaction of GENE HENDRYX'S, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, obligation, if any, to pay such taxes, licenses, charges, fees, rentals, and easements or franchise taxes.

Section 6. The City of Alpine shall have the right and privilege, by and through its auditor, or other person designated by it, to free access to the books, voucher contracts and records of the grantee, his heirs and assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section 7. The construction work, repairs, maintenance, and improvements of said GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, provided for in this ordinance, shall be under the supervision and control of the city commission of the City of Alpine. All such instrumentalities so placed and used shall be placed in such a manner as not to endanger the property, safety, health and comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, his heirs and assigns. All such work shall be adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, his heirs and assigns, shall and does hereby agree to indemnify and hold harmless the City of Alpine from any and all liability, suits, judgments, claims and demands growing out of any injury to any person or property as a result of grantee's violation or failure to observe his proper duty or because of negligence or lack of care in whole or in part, arising out of construction, repair, extension, maintenance, or operation of his distributing lines, or other instrumentalities used in connection with same. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, his heirs or assigns, said City of Alpine shall be entitled to judgment over and against the grantee, his heirs or assigns, in such amount as may be obtained against the City of Alpine by reason thereof.

Section 8. The rights, privileges and authority herein granted shall not be sold or assigned by the grantee, his heirs or assigns, without the express consent of the city commission of the City of Alpine, or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, his heirs or assigns, shall entitle the City of Alpine to forfeit and terminate this grant and all rights thereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions hereof.

Section 9. The grantee will, upon request, raise or lower his wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above ground.

Section 10. GENE HENDRYX, d/b/a ALPINE COMMUNITY TELEVISION COMPANY, from and after the passage of this ordinance, shall have 30 days in which to file his written acceptance hereof with the city secretary, and upon such acceptance, this ordinance shall take effect and be in full force and effect from and after the date of the passage and approval.

Section 11. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering his service to the public. Nothing contained herein shall

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prevent the City of Alpine and the grantee from reaching an agreement with reference to his rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix his own rates by filing his rate schedule with the city secretary of the City of Alpine.

PASSED AND APPROVED this the 17th day of June, 1965.

ORDINANCE NO. 411 ⁵

ORDINANCE GRANTING TO ALPINE T.V. CABLE COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF TEN YEARS, WITH THE OPTION TO RENEW EVERY TEN YEARS THEREAFTER, AND PROVIDING FOR THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE, RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SURROUNDED AND GOVERNED, AND PRESCRIBING THE PAYMENT OF A GROSS RECEIPTS TAX TO THE CITY OF ALPINE OF TWO PERCENT OF THE ANNUAL GROSS PROVIDED FOR AND EACH YEAR THEREAFTER DURING THE FRANCHISE, INSOFAR AS IT PERTAINS TO EACH SUBSCRIBER, OR IN LIEU THEREOF THE STATE[D] AMOUNT TO BE PAID TO THE CITY OF ALPINE ANNUALLY OF \$1.00 FOR EACH SUBSCRIBER, WHICHEVER SHALL BE GREATER.

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That subject to the conditions and limitations hereinafter set out, there is hereby granted to ALPINE T.V. CABLE COMPANY, INC., its successors and assigns, the non-exclusive right to locate, construct, maintain and operate a communication signal (whether it be radio or television service, or both) and distributing system along all of the streets, alleys and public grounds of the City of Alpine, for the purpose of erecting, constructing and maintaining all necessary, needful and convenient poles, towers and antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts and guy wires, apparatus and appliances for a period of ten years from the passage of this ordinance. Grantee, its successors or assigns, shall have an option to renew said franchise for additional ten-year periods at the end of each ten-year period. This option shall be exercised by grantee giving written notice to the City of Alpine 60 days prior to the expiration of each ten-year period.

Section 2. ALPINE T.V. CABLE COMPANY, INC., its successors and assigns, shall so set their poles and place their wires and appliances as not to interfere with the ordinary travel and use of the streets, alleys or public grounds, and shall so maintain same during the life of this franchise. 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. Such construction work shall be under the supervision of the city commission of the City of Alpine, or other governing authority; and all wires, poles, lines, and so forth, shall be placed in such position and location as may be designated by the city commission or under its authority.

Section 3. ALPINE T.V. CABLE COMPANY, INC., its successors or assigns, shall have the right to furnish and distribute television and/or radio cable 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 city's corporate territory, and to use the streets, alleys and public grounds for lines to continue such television and/or radio cable to points beyond the corporate limits of said city. In the event that such poles or lines are placed in any location which is inconvenient or improperly located, same will be removed at the instance and request and/or direction of the city commission of the City of Alpine or under its authority.

Section 4. This grant shall be non-exclusive of the use of such roads, streets and alleys of the City of Alpine; the City of Alpine reserves the right to grant similar rights, privileges and authority for like purposes to other firms or individuals or corporations. All construction, repairs, and extension of said

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distributing lines herein mentioned shall be performed and carried out with due diligence, so as not to interfere with the use of such roads, streets, alleys and public places, or the inhabitants of the City of Alpine, or property owners along such roads, streets, alleys and public places; such facilities and work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of said city commission, or under its direction, shall in no way be construed to relieve the grantee herein from any and all liability occasioned by negligence, improper or defective work or construction, or because of the maintenance or use of his equipment and instrumentalities, upon or over the streets of the City of Alpine, nor shall be [the] City of Alpine be liable for any damages by reason thereof in any event.

Section 5. To compensate the City of Alpine, Texas, and as cash consideration to the same, ALPINE T.V. CABLE COMPANY, INC., agrees to pay to the city two percent of its annual gross receipts, received from the rendition of a television and/or radio cable service, or in lieu thereof, \$1.00 per subscriber, within the corporate limits of the city, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that the consideration shall be paid and received in lieu of any franchise tax, license, fee or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. In the event the city does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals and easements or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary, to the satisfaction of ALPINE T.V. CABLE COMPANY, INC., obligation, if any, to pay such taxes, licenses, charges, fees, rentals and easements or franchise taxes.

Section 6. The City of Alpine shall have the right and privilege, by and through its auditor or other person designated by it, to free access to the books, voucher contracts and records of the grantee, its successors and assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section 7. The construction work, repairs, maintenance and improvements of said ALPINE T.V. CABLE COMPANY, INC., provided for in this ordinance, shall be under the supervision and control of the city commission of the City of Alpine. All such instrumentalities so placed and used shall be placed in such a manner as not to endanger the property, safety, health and comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, its successors and assigns. All such work shall be adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, its successors and assigns, shall and does hereby agree to indemnify and hold harmless the City of Alpine from any and all liability, suits, judgments, claims and demands growing out of any injury to any person or property as a result of grantee's violation or failure to observe his proper duty, or because of negligence or lack of care, in whole or in part, arising out of construction, repair, extension, maintenance or operation of its distributing lines, or other instrumentalities used in connection with same. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, its successors or assigns, said City of Alpine shall be entitled to judgment over and against the grantee, its successors or assigns, in such amount as may be obtained against the City of Alpine by reason thereof.

Section 8. The rights, privileges and authority herein granted shall not be sold or assigned by the grantee, its successors or assigns, without the express consent of the city commission of the City of Alpine, or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, its successors or assigns, shall entitle the City of Alpine to forfeit and terminate this grant and all rights thereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions hereof.

Section 9. The grantee will, upon request, raise or lower his wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above ground.

Section 10. ALPINE T.V. CABLE COMPANY, INC., from and after the passage of this ordinance, shall have 30 days in which to file its written acceptance hereof with the city secretary, and upon such

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acceptance, this ordinance shall take effect and be in full force and effect from and after the date of the passage and approval.

Section 11. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering its service to the public. Nothing contained herein shall prevent the City of Alpine and the grantee from reaching an agreement with reference to its rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix its own rates by filing its rate schedule with the city secretary of the City of Alpine.

Section 12. It is the order of the city council of the City of Alpine that the ultimate total price of \$2.25 for the Tri-Package offering of the Christian, Spanish and sports (or variety) channels to Alpine's T.V. viewers be approved and, as each of the three channels are available and added, each Alpine subscriber's rates is to be increased \$0.75 per month. (Ord. No. 526, 10-24-1978)

PASSED AND APPROVED this the 23rd day of August, 1966.

ORDINANCE NO. 498

AN ORDINANCE FIXING RATES CHARGEABLE FOR SERVICES FURNISHED BY ALPINE T.V. CABLE COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, WITHIN THE CITY LIMITS OF THE CITY OF ALPINE, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 411, AS TO SUCH SERVICES AND FIXING SUCH RATES AS ESPECIALLY PROVIDED FOR IN SECTION 11 THEREOF, SUCH ORDINANCE 411 TO CONTINUE UNDER ITS TERMS AND CONDITIONS AS WRITTEN EXCEPT FOR SUCH STATED RATES CONTAINED HEREIN:

Residential

Installation—One outlet \$50.00*

Additional outlets—Cost of labor and material

Monthly rate 14.25

Additional outlets in building 2.50

Commercial

Installation—One outlet 50.00*

Additional outlets—Cost of labor and material

Monthly rate 14.25

Additional outlets in building 2.50

Miscellaneous Charges

Special installations—Those which require more than 100' of cable from the main line, or which represent other special problems—Cost of labor and materials.*

Relocation of outlet in same building—Cost of labor and materials.

Connection transfer (drop already installed) 10.00

Reconnection service 10.00

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*NOTE: All charges payable in advance. The company reserves the right to require a deposit when deemed necessary.

(Ord. No. 534, 11-20-1979; Ord. No. 81-115, 11-24-1981)

ORDINANCE NO. 510

AN ORDINANCE AMENDING ORDINANCE NO. 411 ADOPTED ON AUGUST 23, 1966, AS AMENDED BY ORDINANCE NO. 498 ADOPTED ON NOVEMBER 4, 1975, ADDING CERTAIN PROVISIONS REQUIRED BY THE FEDERAL COMMUNICATIONS COMMISSION REGARDING THE T.V. CABLE FRANCHISE GRANTED TO ALPINE T.V. CABLE COMPANY, INC., SUCH ORDINANCE 411 AND 498 TO CONTINUE UNDER THEIR TERMS AND CONDITIONS AS WRITTEN EXCEPT FOR SUCH ADDITIONS CONTAINED HEREIN:

That Ordinance No. 411 as amended by Ordinance No. 498, granting to Alpine T.V. Cable Company, Inc., a franchise in Alpine, Brewster County, Texas, shall be amended to include the following:

1. That in awarding the franchise to the Alpine T.V. Cable Company, Inc., the City of Alpine, Texas did consider the legal, character, financial, technical and other qualifications of the Alpine T.V. Cable Company, Inc., and the adequacy and feasibility of its construction arrangements were approved as part of a full public proceeding affording due process.
2. That Alpine T.V. Cable Company, Inc., has accomplished significant construction, and energized trunk cable has now been extended to 100 percent of the franchise area.
3. That the current franchise renewal period is for a term of 15 years from the 23rd day of August, 1976. Any renewal, if granted, will be after a full public proceeding affording due process. (Ord. No. 534, 11-20-1979)
4. That Alpine T.V. Cable Company, Inc., shall be required to maintain an agent in Alpine, Texas, and such agent shall maintain a complete file of written complaints, and this file shall be available for inspection by appropriate town [city] officials. This file shall include any and all written complaints received by Alpine T.V. Cable Company, Inc., concerning quality of service, equipment malfunction and similar matters during each calendar year. Alpine T.V. Cable Company, Inc., shall be required to make every reasonable effort to investigate all complaints regarding the above enumerated matters, and if such complaints remain unanswered after a period of 30 days from the first receipt thereof by Alpine T.V. Cable Company, Inc., it shall be required to forward a copy of such complaint to the mayor of Alpine, Texas, for such action as he shall deem appropriate. The mayor is hereby designated as the official with the primary responsibility for continuing administration of the franchise and implementation of complaint procedures. Further, Alpine T.V. Cable Company, Inc., is hereby required to provide each new subscriber with notice of said complaint procedures at the time of initial subscription to the cable system.
5. Any modifications of the franchise, compelled by a new and/or amended rule of the Federal Communications Commission, shall be incorporated into said franchise within one year of the adoption of that rule or at the time of the franchise renewal, whichever comes first.
6. The terms of the franchise provide that Alpine T.V. Cable Company, Inc., shall pay the City of Alpine, Texas, two percent of its annual gross receipts received from the rendition of television and/or radio cable service within the corporate limits of the city, and these payments are less than three percent of the Alpine T.V. Cable Company, Inc., gross subscriber revenues per year, derived from the installation of equipment and regular subscriber services in the franchise area.
7. That all other parts of said franchise and ordinance shall be and remain as originally granted and adopted or subsequently amended.

ORDINANCE NO. 81-116

APPENDIX A FRANCHISES

ORDINANCE GRANTING TO BIG BEND COMMUNICATIONS, INC., (GRANTEE), ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF TEN YEARS, WITH THE OPTION TO RENEW EVERY TEN YEARS THEREAFTER, AND PROVIDING FOR THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE, RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SURROUNDED AND GOVERNED, AND PRESCRIBING THE PAYMENT OF A GROSS RECEIPTS TAX TO THE CITY OF ALPINE OF TWO PERCENT OF THE ANNUAL GROSS REALIZED FROM SERVICES PROVIDED WITHIN THE CITY LIMITS OF ALPINE PROVIDED FOR AND EACH YEAR THEREAFTER DURING THE FRANCHISE, INSOFAR AS IT PERTAINS TO EACH SUBSCRIBER, OR IN LIEU THEREOF OF THE STATED AMOUNT TO BE PAID TO THE CITY OF ALPINE ANNUALLY OF \$1.00 FOR EACH SUBSCRIBER WITHIN THE CITY LIMITS, WHICHEVER BE GREATER.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That subject to the conditions and limitations hereinafter set out, there is hereby granted to BIG BEND COMMUNICATIONS, INC., (grantee), its successors and assigns, the non-exclusive right to locate, construct, maintain and operate a communication signal and distributing system (of all natures and kinds exclusive of telephone communication) along all of the streets, alleys and public grounds of the City of Alpine, for the purpose of erecting, constructing and maintaining all necessary, needful, and convenient poles, towers, and antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts and guy wires, apparatus and appliances, for a period of ten years from the passage of this ordinance. Grantee, its successors or assigns, shall have an option to renew said franchise for additional ten-year periods at the end of each ten-year period should grantee comply with its obligations hereunder. This option shall be exercised by grantee giving written notice to the City of Alpine 60 days prior to the expiration of each ten-year period; provided, however, that each such renewal shall only be granted after a full public proceeding affording due process to grantee, the City of Alpine, and all of the grantee's in-city subscribers.

Section 2. BIG BEND COMMUNICATIONS, INC., its successors and assigns, shall use existing poles in place in the City of Alpine and shall place their wires and appliances thereon so as not to interfere with the ordinary travel and use in the streets, alleys or public grounds, and shall so maintain same at heights no less than 18 feet at any point and shall add no additional poles except with the express permission of the city council, evidenced by its resolution after application, notice and public hearing (if deemed necessary by the city council) relative to the possible interference with the ordinary travel and use of the city's streets, alleys and public grounds, the possible degradation of the ecological and/or esthetic quality of the location of the additional pole placement and the rights of individual property owners in the area and shall so maintain such lines, poles and appliances during the life of this franchise. Franchisee, in addition to using only existing poles, except as hereinbefore provided, shall also utilize, by contract or otherwise, existing towers and antennas, subject to the supervision of the city council, and any additional or substitute towers or antennas at sites different than existing tower or antenna sites shall be subject to application, notice and public hearing (if deemed necessary by the city council) as in the case of erecting additional poles within the city limits of the City of Alpine as hereinbefore specified.

Section 3. BIG BEND COMMUNICATIONS, INC., its successors and/or assigns, shall have the right to furnish and distribute communication signals by cable during the life of this franchise, to all public and private customers, without discrimination, provided the mandates and requirements of this ordinance be observed, obeyed and fulfilled by franchisee, grantee herein, during the term of this franchise and during any renewal and/or extension or amendment hereof, and shall, subject to the provisions of the above Section 2 of this ordinance, have the right to extend its lines upon the streets, alleys and public grounds, and the right to continue such cable communications signals to points beyond the corporate limits of the City of Alpine. In the event that any poles or lines, whether presently existing or that may be added subject to said Section 2 hereinabove, are, or become, placed in any location which is inconvenient, improperly located, are broken, damaged or that constitutes a hazard to the public or the residents of the

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area where such is located, such will, at the instance, and/or direction of the Alpine city council, or under its authority, be removed, repaired or replaced by franchisee to cure the valid, legal objection thereto.

Section 4. This grant shall be non-exclusive of the use of such roads, streets and alleys of the City of Alpine; the City of Alpine reserved the right to grant similar rights, privileges and authority for like purposes to other firms or individuals or corporations. All construction, repairs and extension of said distributing lines herein mentioned shall be performed and carried out with due diligence, so as not to interfere with the use of such roads, streets, alleys and public places or the inhabitants of the City of Alpine, or property owners along such roads, streets, alleys and public places; such facilities and work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of said city council or under its direction, shall in no way be construed to relieve the grantee herein from any and all liability occasioned by negligence, improper or defective work or construction, or because of the maintenance or use of its equipment and instrumentalities, upon or over the streets of the City of Alpine, nor shall the City of Alpine be liable for any damages by reason thereof in any event.

Section 5. To compensate the City of Alpine, Texas, and as cash consideration to the same, BIG BEND COMMUNICATIONS, INC., agrees to pay to the city two percent of its annual gross receipts, received from the rendition of a television, radio or other communication cable service, or in lieu thereof, \$1.00 per subscriber within the corporate limits of the city, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that consideration shall be paid and received in lieu of any franchise tax, license fee or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied. In the event the city does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals and easements or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary to satisfaction of BIG BEND COMMUNICATIONS, INC.'s, obligation, if any, to pay such taxes, licenses, charges, fees, rentals and easements or franchise taxes.

Section 6. The City of Alpine shall have the right and privilege, by and through its auditor or other person designated by it, to free access to the books, voucher contracts and records of the grantee, its successors and assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section 7. The construction work, repairs, maintenance and improvements of said BIG BEND COMMUNICATIONS, INC., provided for in this ordinance, shall be under the supervision and control of the city council of the City of Alpine. All such instrumentalities so placed and used shall be placed in such a manner as not to endanger the property, safety, health and comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, its successors and assigns. All such work shall be adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, its successors and assigns, shall and does hereby agree to indemnify and hold harmless the City of Alpine from any and all liability, suits, judgments, claims and demands growing out of any injury to any person or property as a result of grantee's violation or failure to observe its proper duty or because of negligence or lack of care in whole or in part, arising out of construction, repair, extension, maintenance or operation of its distributing lines, or other instrumentalities used in connection with same, or as a result of latent unknown defects. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, its successors or assigns, said City of Alpine shall be entitled to judgment over and against the grantee, its successors or assigns, in such amount as may be obtained against the City of Alpine by reason thereof, and franchisee shall furnish the City of Alpine a copy of insurance against such liability of the city, or a bond in such amount required by the city to guarantee its immunity from liability in such cases.

Section 8. The rights, privileges and authority herein granted, shall not be sold or assigned by the grantee, its successors or assigns, without the express consent of the city council of the City of Alpine, or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, its successors or assigns, shall entitle the City of Alpine to forfeit and terminate this grant

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and all rights thereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions hereof.

Section 9. The grantee will, upon request, raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above ground.

Section 10. BIG BEND COMMUNICATIONS, INC., from and after the passage of this ordinance, shall have 30 days in which to file its written acceptance hereof with the city secretary, and upon such acceptance, this ordinance shall take effect and be in full force and effect from and after the date of the passage and approval.

Section 11. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and public hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering its service to the public. Nothing contained herein shall prevent the City of Alpine and the grantee from reaching an agreement with reference to its rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion, or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix its own rates by filing its proposed rate schedule with the city secretary of the City of Alpine, subject to council approval and pending public hearing and ordinance fixing rates. The rates (approval and review thereof) provided for under this section shall have no effect on rates grantee may set or choose to charge for such service as it may provide, if any, outside the corporate limits of the City of Alpine. Nor shall grantee be prohibited from charging lower rates than those so approved, should it so desire, provided no unlawful discrimination of any character be practiced or encouraged in any respect, and provided, further, that no such differing rate schedule shall be allowed if same would cause an interruption of service to in-city subscribers should there be any regulatory authority having jurisdiction over the approval or setting of grantee's out-of-city or differing rate schedule.

Section 12. BIG BEND COMMUNICATIONS, INC., shall be required to maintain an agent in Alpine, Texas, and such agent shall maintain a complete file of written complaints, and this file shall be available for inspection by appropriate city officials. This file shall include any and all written complaints received by BIG BEND COMMUNICATIONS, INC., concerning quality of service, equipment malfunction and similar matters during each calendar year. BIG BEND COMMUNICATIONS, INC., shall be required to make every reasonable effort to investigate all complaints regarding the above-enumerated matters, and if such complaints remain unanswered after a period of 30 days from the first receipt thereof by BIG BEND COMMUNICATIONS, INC., it shall be required to forward a copy of such complaint to the mayor of Alpine, Texas, for such action as he shall deem appropriate. The mayor is hereby designated as the official with the primary responsibility for continuing administration of the franchise and implementation of complaint procedures. Further, BIG BEND COMMUNICATIONS, INC., is hereby required to provide each new subscriber with notice of said complaint procedures at the time of initial subscription to the cable system.

Section 13. Any modifications of the franchise, compelled by a new and/or amended rule of the Federal Communications Commission, or other authorized regulatory agency, shall be incorporated into said franchise within one year of the adoption of that rule, or at the time of the franchise renewal, or as may otherwise be required by any such rule, whichever comes first. Further, this franchise is contingent in all respects upon grantee's obtaining and complying with all necessary Federal Communications Commission permits, licenses or agreements; and if any provision herein is deemed to conflict with any rule or regulation of the Federal Communications Commission, then such conflicting provision of this ordinance shall be null and void.

Section 14. In awarding this franchise to BIG BEND COMMUNICATIONS, INC., the City of Alpine, Texas, did consider the legal, character, financial, technical and other qualifications of BIG BEND COMMUNICATIONS, INC., and the adequacy and feasibility of its construction arrangements were approved as part of a full public proceeding affording due process.

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PASSED AND APPROVED by the city commission of the City of Alpine to be effective on and after the publication of the caption hereof, on this the 22nd day of December, 1981.

ORDINANCE NO. 85-7-2

ORDINANCE GRANTING TO MOUNTAIN ZONE TV, A SOLE PROPRIETORSHIP, SOLELY OWNED BY WALLACE I. NEU, DOING BUSINESS AS, AND HEREIN REFERRED TO, FOR ALL PURPOSES, AS MZ SATELLITE VUE, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYS AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF TEN YEARS, WITH THE OPTION TO RENEW EVERY TEN YEARS THEREAFTER, AND PROVIDING FOR THE TERMS AND CONDITIONS UNDER WHICH SUCH FRANCHISE, RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SURROUNDED AND GOVERNED, AND PRESCRIBING THE PAYMENT OF A GROSS RECEIPTS TAX TO THE CITY OF ALPINE OF TWO PERCENT OF THE ANNUAL GROSS PROVIDED FOR AND EACH YEAR THEREAFTER DURING THE FRANCHISE, INsofar AS IT PERTAINS TO EACH SUBSCRIBER, OR IN LIEU THEREOF THE STATED AMOUNT TO BE PAID TO THE CITY OF ALPINE ANNUALLY OF \$1.00 FOR EACH SUBSCRIBER, WHICHEVER SHALL BE GREATER:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That subject to the conditions and limitations hereinafter set out, there is hereby granted to Mountain Zone TV, a sole proprietorship solely owned by Wallace I. Neu, of Alpine, Brewster County, Texas, doing business as and herein referred to for all purposes as MZ Satellite Vue, its successors and assigns, the non-exclusive right to locate, construct, maintain and operate a communication signal (whether it be radio or television service, or both) and distributing system along, under and over all of the streets, alleys and public grounds of the City of Alpine, for the purpose of erecting, constructing and maintaining all necessary, needful, and convenient poles, towers and antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts and guy wires, apparatus and appliances for a period of ten years from the passage of this ordinance.

Grantee, its successors or assigns, shall have an option to renew said franchise for additional ten-year periods at the end of each ten-year period. This option shall be exercised by grantee giving written notice to the City of Alpine 60 days prior to the expiration of each ten-year period.

Section 2. Said MZ Satellite Vue, its successors and assigns, shall so set their poles and place their wires and appliances as not to interfere with the ordinary travel and use of the streets, alleys or public grounds, and shall so maintain same during the life of this franchise. All lines and poles shall be of a permanent nature, durable and of sufficient height and, if buried, it must be to such depth as required by the city council or city manager, as prescribed by each ditching permit that is required for any subsurface laying of cable, or other subsurface material, 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. Such construction work shall be under the supervision of the city council of the City of Alpine, or other governing authority, and all wires, poles, lines and/or buried cable shall be placed in such position and location as may be designated by the city council, City of Alpine, or under its authority.

Section 3. Said MZ Satellite Vue, its successors and assigns, shall have the right to furnish and distribute television and/or radio cable during the life of this franchise, to all public and private customers, and shall have the right to extend its lines along, upon, over and under the streets, alleys and public grounds of any addition or additions hereafter made to the city's corporate territory, and to use the streets, alleys and public grounds for lines to continue such television and/or radio cable to points beyond the corporate limits of said city. In the event that such poles, lines or buried cable are placed in any location which is inconvenient or improperly located, same will be removed at the instance and request and/or direction of the city council of the City of Alpine or under its authority.

Section 4. This grant shall be nonexclusive of the use of such roads, streets and alleys of the City of Alpine; the City of Alpine reserves the right to grant similar rights, privileges and authority for like

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purposes to other firms or individuals or corporations. All construction, repairs and extension of said distributing lines herein mentioned shall be performed and carried out with due diligence, so as not to interfere with the use of such roads, streets, alleys and public places, or the inhabitants of the City of Alpine, or property owners along such roads, streets, alleys and public places; such facilities and work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of said city council, or under its direction, shall in no way be construed to relieve the grantee herein from any and all liability occasioned by negligence, improper or defective work or construction, or because of the maintenance or use of his equipment and instrumentalities, upon, over or under the streets of the City of Alpine, nor shall the City of Alpine be liable for any damages by reason thereof, in any event.

Section 5. To compensate the City of Alpine, Texas, and as cash consideration to the same, said MZ Satellite Vue, agrees to pay to the City of Alpine two percent of its annual gross receipts, received from the rendition of a television and/or radio cable service, or in lieu thereof, \$1.00 per subscriber, within the corporate limits of the City of Alpine, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that the consideration shall be paid and received in lieu of any franchise tax, license, fee or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied; in the event the city does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals and easements or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary to the satisfaction of said MZ Satellite Vue, obligation, if any, to pay such taxes, licenses, charges, fees, rentals and easements or franchise taxes.

Section 6. The City of Alpine shall have the right and privilege, by and through its auditor or other person designate[d] by it, to free access to the books, voucher contracts and records of the grantee, its successors and assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section 7. The construction work, repairs, maintenance and improvements of said MZ Satellite Vue, provided for in this ordinance, shall be under the supervision and control of the city council of the City of Alpine. All such instrumentalities so placed and used shall be placed or buried in such a manner as not to endanger the property, safety, health and/or comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, its successors and assigns. All such work shall be adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, its successors and assigns, shall and does hereby agree to indemnify and hold harmless the City of Alpine from any and all liability, suits, judgments, claims and demands growing out of any injury to any person or property as a result of grantee's violation or failure to observe his proper duty, or because of negligence or lack of care, in whole or in part, arising out of construction, repair, extension, maintenance or operation of its distributing lines, or other instrumentalities used in connection with same. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, its successors or assigns, said City of Alpine shall be entitled to judgment over and against the grantee, its successors or assigns, in such amount as may be obtained against the City of Alpine by reason thereof.

Section 8. The rights, privileges and authority herein granted shall not be sold or assigned by the grantee, its successors or assigns, without the express consent of the city council of the City of Alpine, or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, its successors or assigns, shall entitle the City of Alpine to forfeit and terminate this grant and all rights thereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions hereof.

Section 9. The grantee will, upon request, raise or lower his wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above ground and all buried cable no less than 2½ feet deep, or deeper, if the city so directs, and such buried cable, or line, to be buried to a deeper or to a more shallow depth, if so ordered by the City of Alpine.

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Section 10. Said MZ Satellite Vue, from and after the passage of this ordinance, shall have 30 days in which to file its written acceptance hereof with the city secretary, and upon such acceptance, this ordinance shall take effect, and be in full force and effect from and after the date of the passage and approval.

Section 11. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering its service to the public. Nothing contained herein shall prevent the City of Alpine and the grantee from reaching an agreement with reference to its rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix its own rates by filing its rate schedule with the city secretary of the City of Alpine.

Section 12. The following matters, facts, circumstances and conditions were fully presented to the city council by Mountain Zone TV, a sole proprietorship wholly owned and operated by Wallace I. Neu, doing business as MZ Satellite Vue, at a public hearing on June 25, 1985, and by the council fully considered and approved, and such franchise found to be of convenience to the public and in the public's interest, as follows:

- (1) That in awarding the franchise to the applicant, MZ Satellite Vue, the City of Alpine, Texas, did consider the legal, character, financial, technical and other qualifications of the said applicant, and the adequacy and feasibility of its construction arrangements were approved as part of a full public proceeding affording due process.
- (2) That MZ Satellite Vue, has accomplished significant construction, and has a fully capable 12-channel SMATV satellite receiving station in the city, is now furnishing customers with satellite receptions and has the technical, mechanical and available expertise to accomplish requirements necessary to the fulfillment of applicant's franchise commitments.
- (3) That the current franchise renewal period is for a term of ten years from the 25th day of June, 1985. Any renewal, if granted, will be after a full public proceeding affording due process.
- (4) That MZ Satellite Vue, shall be required to maintain an agent in Alpine, Texas, and such agent shall maintain a complete file of written complaints, and this file shall be available for inspection by appropriate city officials. This file shall include any and all written complaints received [by] MZ Satellite Vue, concerning quality of service, equipment malfunction, and similar matters during each calendar year. MZ Satellite Vue, shall be required to make every reasonable effort to investigate all complaints regarding the above-enumerated matters, and if such complaints remain unanswered after a period of 30 days from the first receipt thereof by MZ Satellite Vue, it shall be required to forward a copy of such complaint to the mayor of Alpine, Texas, for such action as he shall deem appropriate. The mayor of the City of Alpine is hereby designated as the official with the primary responsibility for continuing administration of the franchise and implementation of complaint procedures. Further, MZ Satellite Vue, is hereby required to provide each new subscriber with notice of said complaint procedures at the time of initial subscription to the cable system.
- (5) Any modifications of the franchise, compelled by a new and/or amended rule of the Federal Communications Commission, shall be incorporated into said franchise within one year of the adoption of that rule, or at the time of the franchise renewal, whichever comes first.
- (6) The terms of the franchise provide that MZ Satellite Vue, shall pay the City of Alpine, Texas, two percent of its annual gross receipts received from the rendition of television and/or radio cable service within the corporate limits of the city, and these payments are less than three percent of the MZ Satellite Vue's, gross subscriber revenues per year derived from the installation of equipment and regular subscriber services in the franchise area.

PASSED AND APPROVED this the 25th day of June, 1985, by the city council of the City of Alpine.

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ORDINANCE NO. 85-7-2 [CONTINUED]

AN ORDINANCE FIXING RATES CHARGEABLE FOR SERVICES FURNISHED BY MZ SATELLITE VUE, ITS SUCCESSORS AND ASSIGNS, WITHIN THE CITY LIMITS OF THE CITY OF ALPINE, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 85-7-2 AS TO SUCH SERVICES AND FIXING RATES FOR SAME.

Residential

Installation—One outlet \$50.00*

Additional outlets—Cost of labor and material

Monthly rate—One outlet 7.50

Additional outlets in building 2.00

Commercial

Installation—One outlet 50.00*

Additional outlets—Cost of labor and material

Residential

Installation—One outlet 50.00*

Additional outlets—Cost of labor and material

Monthly rate 14.25

Additional outlets in building 2.50

Commercial

Installation—One outlet 50.00*

Additional outlets—Cost of labor and material

Monthly rate 14.25

Additional outlets in building 2.50

Miscellaneous Charges

Special installations—Those which require more than 100' of cable from the main line, or which represent other special problems: Cost of labor and materials.*

Relocation of outlet in same building—Cost of labor and materials.

Connection transfer (drop already installed) 10.00

Reconnection service 10.00

*NOTE: All charges payable in advance. The company reserves the right to require a deposit when deemed necessary.

PASSED AND APPROVED by the city council, City of Alpine, this the 5th day of July, 1985.

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ORDINANCE NO. 86-11-1

AN ORDINANCE GRANTING TO ALPINE TV COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYWAYS, AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF 15 YEARS FROM AND AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, WITH THE CONDITIONAL OPTION TO RENEW AT THE END OF EACH 15-YEAR PERIOD THEREAFTER, SUBJECT TO CITY COUNCIL FINDING, AFTER PUBLIC HEARING, THAT FRANCHISE HAS BEEN OPERATED ACCORDING TO THE TERMS, CONDITIONS, REGULATIONS AND AUTHORITY CONTAINED IN THE FRANCHISE GRANTED BY THIS ORDINANCE; PROVIDING FOR THE TERMS, CONDITIONS, STIPULATIONS AND REGULATIONS UNDER WHICH SUCH FRANCHISE RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SUBJECT TO AND GOVERNED; PRESCRIBING AN ANNUAL GROSS RECEIPTS TAX TO BE PAID EACH YEAR TO THE CITY OF ALPINE IN THE AMOUNT OF TWO PERCENT OF THE ANNUAL GROSS REVENUE RECEIVED BY FRANCHISEE IN THE FIRST YEAR AND FOR EACH YEAR THEREAFTER DURING THE TERM OF THE FRANCHISE OR, IN LIEU OF SUCH TWO PERCENT GROSS RECEIPT TAX, FRANCHISEE SHALL PAY \$1.00 ANNUALLY FOR EACH SUBSCRIBER TO CABLE TV AND/OR OTHER COMMUNICATION SERVICE, OR SERVICES, PROVIDED BY FRANCHISEE UNDER SUCH FRANCHISE, WHICHEVER SHALL BE GREATER:

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section I. That, subject to the conditions, limitations and specifications hereinafter set out, there is hereby granted to Alpine TV Cable Company, Inc., its successors and assigns, the non-exclusive right, privilege and authority to locate, construct, maintain and operate a specific or general communication signal system, whether it be television, radio, telephone, a combination of any of such services, or any deviate therefrom, which utilizes the equipment so constructed and maintained by franchisee, as a means of transmission, for use by the subscribing public, for sale or rent, at fees approved, from time to time, by the city council of the City of Alpine, upon, over, along and under all of the streets, alleyways, rights-of-way and public grounds under the city's exclusive dominion and control for the purpose of erecting, constructing and maintaining all necessary, needful and convenient poles, towers, antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts and guy wires, apparatus and appliances, that do not interfere with the public's right to normal, authorized use of streets, alleyways, rights-of-way and public grounds of the City of Alpine, for a period of 15 years from and after the effective date of this ordinance. Grantee, its Alpine city council approved successors or assigns, shall have the option, upon having given 60 days' prior notice to the Alpine city council of franchisee's, its successor's or assign's, desire to exercise such option at the end of said option period or at any time to materially alter or amend this franchise ordinance and the Alpine city council having found, after a public hearing to be held within such 60-day period, that such system has theretofore operated under this franchise in compliance with the public's interest and within the authorization, prerequisites, regulations, restraints, conditions and specifications set out in this franchise ordinance, to renew such franchise, as it may be altered or amended by the Alpine city council, for good cause, or its term extended for an additional period of 15 years, or less, as the parties may agree at such time, if it be found by the city council of the City of Alpine to be in the general public's interest and in harmony with the health, safety, entertainment and general welfare of the citizens of Alpine either to alter, amend or extend the term of the same.

Section II. Alpine TV Cable Company, Inc., its successors and/or assigns, shall begin construction of such system and have it available for the subscribing public's use within a reasonable time from the date of this franchise, not to exceed the period of one year from this date, except for good cause found by the city council for franchisee to extend such minimum operational date after franchisee's application for such extension of time to become operational and said city council finding good cause therefore after public hearing by said city council on such application for such extension. Franchisees shall so set their poles and place their wires and appliances so as not to interfere with the ordinary travel and use of the streets,

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alleys or public grounds of the City of Alpine and shall so maintain same during the life of this franchise. 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 general public or of individual property owners, and no part of any such construction or instrumentalities shall interfere with the travel and use of any such public places by the public. Any such construction work by franchisee shall be under the supervision of the city council of the City of Alpine, or other governing authority, and all wires, poles, lines and/or buried cable shall be placed in such position and location that may be designated by the Alpine city council, or under its authority.

Section III.

- (a) Alpine TV Cable Company, Inc., its successors and/or assigns, shall have the right to furnish and distribute television and/or radio, or other approved cable signals during the life of this franchise, to all public and private customers, and shall have the right to extend its lines along, upon, over and under the streets, alleys and public grounds of any addition or additions hereafter made to the city's corporate territory, and to use the streets, alleys and public grounds for lines to continue such television, radio, telephone or other cable signal, to points beyond the corporate limits of said city. In the event that such poles, lines or buried cable are placed in any location which is inconvenient or improperly located, same will be removed at the instance and request and/or direction of the city council of the City of Alpine, or under its authority.
- (b) Any construction, maintenance, repair or extension of such signal-carrying apparatus, be it cable, wire, conduit or other matter desired or required by grantee of this franchise to be buried or tunneled under any street, sidewalk or other surface, shall first secure a city permit to so excavate or tunnel, and abide by all requirements of Section III, of the Code of Ordinances of the City of Alpine, regulating and proscribing the city's requirements concerning excavations and tunneling [being Section 22-38 [86-81] et seq.] on, through or under, city controlled grounds.

Section IV.

- (a) This grant shall be non-exclusive as to the use of such public roads, streets, alleys or other public grounds of the City of Alpine; the City of Alpine reserves the right to grant similar rights, privileges and authority for like purposes to other firms, individuals, corporations or other entities, public or private, if the city council determines, after public hearing, that to grant such similar rights, privileges and authority to others is in the best interest of the citizens of Alpine to do so.
- (b) All construction, repairs and extension of such distribution lines and equipment herein set out, shall be performed and carried out with due diligence, so as not to interfere with the reasonable use of such city roads, streets, alleys and grounds by the general public and so that the inhabitants of the City of Alpine and/or property owners along such roads, alleys and public places in, and of, the City of Alpine be not interfered with in the peaceful and unobstructed use and enjoyment of such property.
- (c) Before obtaining any excavation or tunneling permit under Alpine's Code of Ordinances, Article III thereof [being Section 22-38 [86-81] et seq.], the person, firm, contractor, agent, servant or employee of grantee here who is in charge of such proposed excavation or tunneling shall notify each utility service that has any lines, pipes or other service instrumentality buried beneath the ground or road surface, within the City of Alpine, of the proposed location of any such excavation and tunneling by grantee corporation and shall obtain specific information from such other utility company as to the location of any underground pipes, lines, wires or other matter, fixtures or service instrumentality, in the area where grantee herein proposes to excavate or tunnel, that could be damaged, that could be interfered with or that the proximity of grantee's proposed burying of cable, lines or other signal distribution or supporting material could foreseeably be interfered with by such proximate location of grantee's distribution system, so buried, to any such other utility's lines, pipes, wires, meters or other distribution media, or that the proximity of grantee's and such other utility's distribution system could reasonably and foreseeably pose a fire, electrical, flooding or other hazard or unreasonable damage to grantee's or such other utility's distribution system in the process of

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maintaining, repairing or removing such buried instrumentality of grantee, or that of such other utility, in such proximity to grantee's.

- (d) Such facilities and such work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of the said city council, City of Alpine, or under its direction, shall in no way be construed to relieve grantee herein from any and all negligence, improper or defective work on construction or because of the maintenance or use of its equipment and instrument capabilities, upon, over or under the streets of the City of Alpine, nor shall the City of Alpine be liable for any damages by reason thereof in any event, including, but not limited to, work done by grantee to remove, change, alter, raise or modify any part of such distribution system, at the demand of the City of Alpine, if such installation, or a part thereof, is found by the City of Alpine to constitute a present or potentially dangerous hazard or unnecessary obstruction to the ordinary use of the public area where such hazard or obstruction is located, which demand the City of Alpine reserves the right to make of grantee herein if the city council finds that it is in the public interest that such change, alteration, removal or correction of any part of grantee's installation be made, or done.

Section V. To compensate the City of Alpine, Texas, and as cash consideration to the same, said Alpine TV Cable Company, Inc., its successors and assigns, agree to pay to the City of Alpine two percent of its annual gross receipts received from the rendition of a television and/or radio or other cable service, through cable which is, in whole or in part, occupying public grounds within the city limits of the City of Alpine, or in lieu thereof, \$1.00 per subscriber, within the corporate limits of the City of Alpine, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that the consideration shall be paid and received in lieu of any franchise tax, license, fee or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied; in the event the City of Alpine does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals and easements or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary to the satisfaction of said Alpine TV Cable Company, Inc., obligation, if any, to pay such taxes, licenses, charges, fees, rentals and easements or franchise taxes.

Section VI. The City of Alpine shall have the right and privilege, by and through its auditor or other person or persons, designated by it, upon reasonable notice, to free access to the books, vouchers contracts and records of the grantee, its successors and/or assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section VII. The construction work, repairs, maintenance and improvements of said Alpine TV Cable Company, Inc., provided for in this ordinance, shall be under the supervision and control of the city council of the City of Alpine. All such instrumentalities so placed and used shall be placed or buried in such a manner as not to endanger the property, safety, health and/or comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, its successors and/or assigns. All such work shall be adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, its successors and assigns, shall, and does hereby agree to, indemnify and hold harmless the City of Alpine from any injury to any person or property as the result of grantee's violation or failure to observe its proper duty or because of negligence or lack of care, in whole or in part, arising out of construction, repair, extension, maintenance or operation of it[s] distributing lines, or other instrumentalities used in connection with the same. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, its successors or assigns, said City of Alpine shall be entitled to judgment over and against the grantee herein by reason thereof. The foregoing applies to all work done at the city's demand, if it finds it to be in the public interest that some potential or present hazard or unnecessary obstruction exists.

Section VIII. The rights, privileges and authority herein granted, shall not be sold or assigned by the grantee, its successors or assigns, without the express consent by resolution duly made, seconded and passed by the city council of the City of Alpine or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, its successors and/or assigns, shall

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entitle the City of Alpine to forfeit and terminate this grant and all rights hereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions of this non-exclusive franchise.

Section IX. The grantee will, upon request, by the City of Alpine, its city manager or its chief of police, raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above mean ground surface level and all buried cable to be buried no less than 2½ feet deep or deeper, if the city so directs, and such buried cable, or line, to be buried to a deeper or to a more shallow depth if so ordered by the City of Alpine, its city manager or chief of police.

Section X. Alpine TV Cable Company, Inc., from and after the passage of this ordinance, shall have 30 days in which to file its written acceptance hereof with the city secretary, and upon such acceptance, this ordinance shall take effect and be in full force and effect from and after the date of its passage.

Section XI. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and public hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering its service to the public. Nothing contained herein shall prevent the City of Alpine and the grantee from reaching an agreement with reference to its rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix its own rates by filing its rates schedule with the city secretary of the City of Alpine. This Section XI is subject to the rates set by the Texas Public Utilities Commission (T.P.U.C.) should state laws now existing, or should be passed subsequently, giving said T.P.U.C. sole authority to set, control and govern such rates.

PASSED AND APPROVED this the 25th day of November, 1986.

ORDINANCE NO. 86-11-1A [6](#)

AN ORDINANCE FIXING RATES CHARGEABLE FOR SERVICES FURNISHED BY ALPINE TV CABLE COMPANY, INC., ITS SUCCESSORS AND ASSIGNS, WITHIN THE CITY LIMITS OF THE CITY OF ALPINE, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 86-11-1, AS TO SUCH SERVICES AND FIXING RATES FOR SAME.

Residential

Installation—One outlet \$50.00

Additional outlets—Cost of labor and material

Monthly rate—One outlet 14.25

Additional outlets in building 2.50

Commercial

Installation—One outlet 50.00

Additional outlets—Cost of labor and material

Monthly rate—One outlet 14.25

Additional outlets in building 2.50

Miscellaneous Charges

Special installation—Those which require more than 100' of cable from the mail line, or which represent other special problems: Cost of labor and material.[*]

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Relocation of outlet in same building—Cost of labor and material.

Connection transfer (drop already installed) 10.00

Reconnection service 10.00

*NOTE: All charges payable in advance. The company reserves the right to require a deposit when deemed necessary.

PASSED AND APPROVED this the 25th day of November, 1986.

ORDINANCE NO. 86-11-3

AN ORDINANCE GRANTING TO STEVE NEU, MANAGER OF MOUNTAIN ZONE TELEVISION SYSTEMS, A NEU FAMILY PROPRIETORSHIP, DOING BUSINESS AS M.Z. SATELLITE VUE IN ALPINE AND BREWSTER COUNTY, TEXAS, HEREIN REFERRED TO AS M.Z. SATELLITE VUE, ITS SUCCESSORS AND ASSIGNS, THE NON-EXCLUSIVE RIGHT TO MAINTAIN AND OPERATE A COMMUNICATION SIGNAL SERVICE AND DISTRIBUTING SYSTEM WITHIN THE CITY OF ALPINE AND ALONG THE STREETS, ALLEYWAYS, AND PUBLIC GROUNDS OF THE CITY OF ALPINE FOR A PERIOD OF 15 YEARS FROM AND AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, WITH THE CONDITIONAL OPTION TO RENEW AT THE END OF EACH 15-YEAR PERIOD THEREAFTER, SUBJECT TO CITY COUNCIL FINDING, AFTER PUBLIC HEARING, THAT FRANCHISE HAS BEEN OPERATED ACCORDING TO THE TERMS, CONDITIONS, REGULATIONS AND AUTHORITY CONTAINED IN THE FRANCHISE GRANTED BY THIS ORDINANCE; PROVIDING FOR THE TERMS, CONDITIONS, STIPULATIONS AND REGULATIONS UNDER WHICH SUCH FRANCHISE RIGHTS, PRIVILEGES AND AUTHORITY SHALL BE SUBJECT TO AND GOVERNED; PRESCRIBING AN ANNUAL GROSS RECEIPTS TAX TO BE PAID EACH YEAR TO THE CITY OF ALPINE IN THE AMOUNT OF TWO PERCENT OF THE ANNUAL GROSS REVENUE RECEIVED BY FRANCHISEE IN THE FIRST YEAR AND FOR EACH YEAR THEREAFTER DURING THE TERM OF THE FRANCHISE OR, IN LIEU OF SUCH TWO PERCENT GROSS RECEIPT TAX, FRANCHISEE SHALL PAY \$1.00 ANNUALLY FOR EACH SUBSCRIBER TO CABLE T.V. AND/OR OTHER COMMUNICATION SERVICE, OR SERVICES, PROVIDED BY FRANCHISEE UNDER SUCH FRANCHISE, WHICHEVER SHALL BE GREATER:

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS:

Section 1. That, subject to the conditions, limitations and specifications hereafter set out, there is hereby granted to Steve Neu, Manager of Mountain Zone Television systems, a Neu family proprietorship, doing business as M.Z. Satellite Vue, its successors and assigns, the non-exclusive right, privilege and authority to locate, construct, maintain and operate specific or general communication signal system, whether it be televisions, radio, telephone, a combination of any of such services, or any deviate therefrom, which utilizes the equipment so constructed and maintained by franchisee, as a means of transmission, for use by the subscribing public, for sale or rent, at fees approved, from time to time, by the city council of the City of Alpine, upon, over, along and under all of the streets, alleyways, right-of-ways and public grounds under the city's exclusive dominion and control for the purpose of erecting, constructing and maintaining all necessary, needful and convenient poles, towers, antennas, pole lines, posts, wires, cables, transformers, boosters, signal amplification apparatus, guy posts, guy wires and appliances, that do not interfere with the public's right to normal authorized use of such streets, alleyways, right-of-ways and public grounds of the City of Alpine, for a period of 15 years from and after the effective date of this ordinance. Grantee, its Alpine city council approved successors or assigns shall have the option, upon having given 60-days' prior notice to the [City of] Alpine city council of franchisee's, its successor's or assign's, desire to exercise such option at the end of said option period or at any time to materially alter or amend this franchise ordinance and the Alpine city council having found, after a public hearing to be held within such 60-day period, that such system has theretofore operated under this franchise in compliance with the public's interest and within the authorization, prerequisites, regulations,

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restraints, conditions and specifications set out in this franchise ordinance, to renew such franchise, as it may be altered or amended by the Alpine city council, for good cause, or its term extended for an additional period of 15 years, or less, as the parties may agree at such time, if it be found by the city council of the City of Alpine to be in the general public's interest and in harmony with the health, safety, entertainment and general welfare of the citizens of Alpine either to alter, amend or extend the term of the same.

Section II. M.Z. Satellite Vue, its successors and/or assigns, shall begin construction of such system and have it available for the subscribing public's use within a reasonable time from the date of this franchise, not to exceed the period of one year from this date, except for good cause found by the city council for franchisee to extend such minimum operational date after franchisee's application for such extension of time to become operational and said city council finding good cause therefore after public hearing by said city council on such application for such extension. Franchisees shall so set their poles and place their wires and appliances so as not to interfere with the ordinary travel and use of the streets, alleys or public grounds of the City of Alpine and shall so maintain same during the life of this franchise. 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 general public or of individual property owners, and no part of any such construction or instrumentalities shall interfere with the travel and use of any such public places by the general public. Any such construction work by franchisee shall be under the supervision of the city council of the City of Alpine, or other governing authority, and all wires, poles, lines and/or buried cable shall be placed in such position and location that may be designated by the Alpine city council, or under its authority.

Section III.

- (a) M.Z. Satellite Vue, subsidiary of Mountain Zone Television Company, its successors and/or assigns, shall have the right to furnish and distribute television and/or radio, or other approved cable signals during the life of this franchise, to all public and private customers, and shall have the right to extend its lines along, upon, over and under the streets, alleys and public grounds of any addition or additions hereafter made to the city's corporate territory, and to use the streets, alleys and public grounds for lines to continue such television, radio, telephone or other cable signal, to points beyond the corporate limits of said city. In the event that such poles, lines or buried cable are placed in any location which is inconvenient or improperly located, same will be removed at the instance and request and/or direction of the city council of the City of Alpine, or under its authority.
- (b) Any construction, maintenance, repair or extension of such signal-carrying apparatus, be it cable, wire, conduit or other matter desired or required by grantee of this franchise to be buried or tunneled under any street, sidewalk or other surface, shall first secure a city permit to so excavate or tunnel, and abide by all requirements of Section III, of the Code of Ordinances of the City of Alpine, regulating and proscribing the city's requirements concerning excavations and tunneling [being Section 22-38 [86-81] et seq.] on, through or under, city controlled grounds.

Section IV.

- (a) This grant shall be non-exclusive as to the use of such public roads, streets, alleys or other public grounds of the City of Alpine; the City of Alpine reserves the right to grant similar rights, privileges and authority for like purposes to other firms, individual, corporations or other entities, public or private, if the city council determines, after public hearing, that to grant such similar rights, privileges and authority to others is in the best interest of the citizens of Alpine to do so.
- (b) All construction, repairs and extension of such distribution lines and equipment herein set out, shall be performed and carried out with due diligence, so as not to interfere with the reasonable use of such city roads, streets, alleys and grounds by the general public and so that the inhabitants of the City of Alpine and/or property owners along such roads, alleys and public places in, and of, the City of Alpine be not interfered with in the peaceful and unobstructed use and enjoyment of such property.

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- (c) Before obtaining any excavation or tunneling permit under Alpine's Code of Ordinances, Article III thereof [being Section 22-38 [86-81] et seq.], the person, firm, contractor, agent, servant or employee of grantee here who is in charge of such proposed excavation or tunneling shall notify each utility service that has any lines, pipes or other service instrumentality buried beneath the ground or road surface, within the City of Alpine, of the proposed location of any such excavation and tunneling by grantee corporation and shall obtain specific information from such other utility company as to the location of any underground pipes, lines, wires or other matter, fixtures or service instrumentality, in the area where grantee herein proposes to excavate or tunnel, that could be damaged, that could be interfered with or that the proximity of grantee's proposed burying of cable, lines or other signal distribution or supporting material could foreseeably be interfered with by such proximate location of grantee's distribution system, so buried, to any such other utility's lines, pipes, wires, meters or other distribution media, or that the proximity of grantee's and such other utility's distribution system could reasonably and foreseeably pose a fire, electrical, flooding or other hazard or unreasonable damage to grantee's or such other utility's distribution system in the process of maintaining, repairing or removing such buried instrumentality of grantee, or that of such other utility, in such proximity to grantee's.
- (d) Such facilities and such work shall at all times be subject to the police power of the City of Alpine; provided, further, that the exercise of such authority on the part of the said city council, City of Alpine, or under its direction, shall in no way be construed to relieve grantee herein from any and all negligence, improper or defective work on construction or because of the maintenance or use of its equipment and instrument capabilities, upon, over or under the streets of the City of Alpine, nor shall the City of Alpine be liable for any damages by reason thereof in any event, including, but not limited to, work done by grantee to remove, change, alter, raise or modify any part of such distribution system, at the demand of the City of Alpine, if such installation, or a part thereof, is found by the City of Alpine to constitute a present or potentially dangerous hazard or unnecessary obstruction to the ordinary use of the public area where such hazard or obstruction is located, which demand the City of Alpine reserves the right to make of grantee herein if the city council finds that it is in the public interest that such change, alteration, removal or correction of any part of grantee's installation be made, or done.

Section V. To compensate the City of Alpine, Texas, and as cash consideration to the same, M.Z. Satellite Vue, and/or its parent company, Mountain Zone Television Company, its successors and assigns, agree to pay to the City of Alpine two percent of its annual gross receipts received from the rendition of a television and/or radio or other cable service, through cable which is, in whole or in part, occupying public grounds within the city limits of the City of Alpine, or in lieu thereof, \$1.00 per subscriber, within the corporate limits of the City of Alpine, whichever amount is greater. Payments are to be made annually, and are to be made within 30 days after the end of an anniversary year. The city agrees that the consideration shall be paid and received in lieu of any franchise tax, license, fee or rental, and in lieu of any imposition other than the usual general or special ad valorem taxes now or hereafter levied; in the event the City of Alpine does not have the legal power to agree that the foregoing cash consideration shall be in lieu of the taxes, licenses, charges, fees, rentals and easements or franchise taxes aforesaid, the city agrees that it will apply so much of said payments as may be necessary to the satisfaction of said M.Z. Satellite Vue, obligation, if any, to pay such taxes, licenses, charges, fees, rentals and easement or franchise taxes.

Section VI. The City of Alpine shall have the right and privilege, by and through its auditor or other person or persons, designated by it, upon reasonable notice, to free access to the books, vouchers contracts and records of the grantee, its successors and/or assigns, for the purpose of determining therefrom the amount to be paid to the City of Alpine.

Section VII. The construction work, repairs, maintenance and improvements of said M.Z. Satellite Vue, provided for in this ordinance, shall be under the supervision and control of the city council of the City of Alpine. All such instrumentalities so placed and used shall be placed or buried in such a manner as not to endanger the property, safety, health and/or comfort of the citizens of said City of Alpine, and all such work shall be done at the expense of grantee, its successors and/or assigns. All such work shall be

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adequately guarded and protected by means of suitable barricades and red lights so as to prevent injury to persons or property. Grantee herein, its successors and assigns, shall, and does hereby agree to, indemnify and hold harmless the City of Alpine from any injury to any person or property as the result of grantee's violation or failure to observe its proper duty or because of negligence or lack of care, in whole or in part, arising out of construction, repair, extension, maintenance or operation of it[s] distributing lines, or other instrumentalities used in connection with the same. In case the City of Alpine is impleaded in any suit by reason of some alleged act or omission of said grantee, its successors or assigns, said City of Alpine shall be entitled to judgment over and against the grantee herein by reason thereof. The foregoing applies to all work done at the city's demand, if it finds it to be in the public interest that some potential or present hazard or unnecessary obstruction exists.

Section VIII. The rights, privileges and authority herein granted, shall not be sold or assigned by the grantee, its successors or assigns, without the express consent by resolution duly made, seconded and passed by the city council of the City of Alpine or other governing body of said city. Failure or refusal to observe the terms and provisions of this ordinance, by the grantee, its successors and/or assigns, shall entitle the City of Alpine to forfeit and terminate this grant and all rights hereunder, and the City of Alpine may exercise such right at any time after such failure or violation of the terms and provisions of this non-exclusive franchise.

Section IX. The grantee will, upon request, by the City of Alpine, its city manager or its chief of police, raise or lower its wires temporarily to permit the moving of houses or other bulky structures. The minimum height of all wires shall be no less than 18 feet above mean ground surface level and all buried cable to be buried no less than 2½ feet deep or deeper, if the city so directs, and such buried cable, or line, to be buried to a deeper or to a more shallow depth if so ordered by the City of Alpine, its city manager or chief of police.

Section X. Said M.Z. Satellite Vue, subsidiary of Mountain Zone Television Company, from and after the passage of this ordinance, shall have 30 days in which to file its written acceptance hereof with the city secretary, and upon such acceptance, this ordinance shall take effect and be in full force and effect from and after the date of its passage.

Section XI. The City of Alpine shall have the right to fix the rates to be charged by the grantee, after notice to the grantee, and public hearing; provided, however, the rates so fixed shall provide the public with adequate service at a reasonable price, and provide the grantee with a reasonable return upon the fair value of the property used or useful in rendering its service to the public. Nothing contained herein shall prevent the City of Alpine and the grantee from reaching an agreement with reference to its rates. Such rates shall be subject to review, from time to time, by the City of Alpine on its own motion or on motion of the grantee. Until the rates of the grantee are fixed by ordinance, the grantee may fix its own rates by filing its rates schedule with the city secretary of the City of Alpine. This Section XI is subject to the rates set by the Texas Public Utilities Commission (T.P.U.C.) should state laws now existing, or should be passed subsequently, giving said T.P.U.C. sole authority to set, control and govern such rates.

PASSED AND APPROVED this the 9th day of December, 1986.

ORDINANCE NO. 86-11-3A

AN ORDINANCE FIXING RATES CHARGEABLE FOR SERVICES FURNISHED BY SAID M.Z. SATELLITE VUE, SUBSIDIARY OF MOUNTAIN ZONE TELEVISION COMPANY, ITS SUCCESSORS AND ASSIGNS, WITHIN THE CITY LIMITS OF THE CITY OF ALPINE, IN ACCORDANCE WITH THE PROVISIONS OF ORDINANCE NO. 86-11-3, AS TO SUCH SERVICES AND FIXING RATES FOR SAME.

Residential

Installation—One outlet \$50.00

Additional outlets—Cost of labor and material

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Monthly rate—One outlet 14.25

Additional outlets in building 2.50

Commercial

Installation—One outlet 50.00

Additional outlets—Cost of labor and material

Monthly rate—One outlet 14.25

Additional outlets in building 2.50

Miscellaneous Charges

Special installation—Those which require more than 100' of cable from the main line, or which represent other special problems: Cost of labor and material.[*]

Relocation of outlet in same building—Cost of labor and material.

Connection transfer (drop already installed) 10.00

Reconnection service 10.00

*NOTE: All charges payable in advance. The company reserves the right to require a deposit when deemed necessary.

PASSED AND APPROVED this the 9th day of December, 1986.

FOOTNOTE(S):

--- (4) ---

Editor's note— Provisions concerning the franchise renewal for a ten-year period are contained in Resolution No. 3862, adopted Nov. 4, 1975. Such resolution is not set out herein, but is on file in the office of the city secretary. ([Back](#))

--- (5) ---

Editor's note— The fourth paragraph of Ord. No. 526, adopted Oct. 24, 1978, instructed the codifiers to include the substantive provisions of the ordinance as part of Ord. No. 411, inserting the provisions in their proper sequence. The provisions of Ord. No. 526 have, therefore, been included as § 12. ([Back](#))

--- (6) ---

Editor's note— With the city's concurrence, Ordinance No. 86-11-2, fixing rates for services furnished by Alpine TV Cable Company, Inc., was renumbered as Ordinance No. 86-11-1A in order to avoid

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duplicative ordinance numbers (reference: Ord. No. 86-11-2, adopted Nov. 25, 1986, vacating an alleyway—Such ordinance, omitted from codification, is on file in the office of the city secretary). ([Back](#))

ARTICLE III. TELEPHONE

AN ORDINANCE NO. 95-6-10

AN ORDINANCE WHEREBY THE CITY OF ALPINE, TEXAS, AND SOUTHWESTERN BELL TELEPHONE COMPANY AGREE THAT, FOR THE PURPOSE OF OPERATING ITS TELECOMMUNICATIONS BUSINESS, THE TELEPHONE COMPANY SHALL MAINTAIN AND CONSTRUCT ITS POLES, WIRES, ANCHORS, FIBER, CABLES, MANHOLES, CONDUITS AND OTHER PHYSICAL PLANT AND APPURTENANCES IN, ALONG, ACROSS, ON, OVER, THROUGH, ABOVE AND UNDER ALL PUBLIC STREETS, AVENUES, HIGHWAYS, ALLEYS, SIDEWALKS, BRIDGES OR PUBLIC PROPERTY IN SAID CITY; PRESCRIBING THE ANNUAL COMPENSATION DUE THE CITY UNDER THIS ORDINANCE; PRESCRIBING THE CONDITIONS GOVERNING THE USE OF PUBLIC RIGHTS-OF-WAY AND THE PERFORMANCE OF CERTAIN CONSTRUCTION WORKS ON PUBLIC RIGHTS-OF-WAY FOR THE TELEPHONE COMPANY'S TELECOMMUNICATIONS BUSINESS; PROVIDING AN INDEMNITY CLAUSE; SPECIFYING GOVERNING LAWS; PROVIDING FOR A RELEASE OF ALL CLAIMS UNDER PRIOR ORDINANCES; PROVIDING FOR FUTURE CONTINGENCIES; PROVIDING FOR WRITTEN ACCEPTANCE OF THIS ORDINANCE BY THE TELEPHONE COMPANY; AND PROVIDING FOR A TERM AND AN EFFECTIVE DATE.

WHEREAS, Southwestern Bell Telephone Company (hereinafter referred to as the "telephone company") is now and has been engaged in the telecommunications business in the State of Texas and in furtherance thereof, has erected and maintained certain items of its physical plant in the City of Alpine, Texas, (hereinafter referred to as the "city"), for many years pursuant to such rights as have been granted it by and under the laws of the State of Texas, and subject to the reasonable exercise of the powers granted by and under said laws to the city and as reflected in prior ordinances of the city; and

WHEREAS, the telephone company has operated its telecommunications business in the city under successive ordinances of the city, the last of which was Ordinance Number 296, adopted November 12, 1951, which provided compensation to the city for that agreement based upon a percentage of gross receipts received by the telephone company from certain services rendered within the corporate limits of the city; and

WHEREAS, certain disputes have arisen regarding those prior ordinances and it is recognized by the parties that changes in the telecommunications industry, changes in technology, changes in state and federal law, and changes in the accounting practices mandated by the Uniform System of Accounts promulgated by the Federal Communications Commission ("FCC"), along with regulatory requirements of the Texas Public Utility Commission ("PUC"), have caused the traditional method of determining the amount of compensation to municipalities to become administratively impractical for telecommunications utilities. In order to resolve these issues in a manner satisfactory to both the city and the telephone company, the city and the telephone company have chosen the method of determining the amount of compensation provided for in this ordinance to eliminate the expense and time related to audits, to achieve administrative simplicity, to provide the city with predictable revenues and an opportunity for growth and to avoid the expense and delays of further litigation which otherwise would be necessary to resolve the issues in controversy between parties; and

WHEREAS, it is to the mutual advantage of both the city and the telephone company that an agreement should be entered into between the telephone company and the city establishing the conditions under which the telephone company shall maintain and construct its physical plant in the city in the future;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS, THAT:

[Section 1. Purpose.](#)

[Section 2. Additional authority required.](#)

[Section 3. Definitions.](#)

[Section 4. Term.](#)

[Section 5. Supervision by city of location of poles and conduits.](#)

[Section 6. Attachments to poles and space in ducts.](#)

[Section 7. Streets to be restored to pre-existing condition.](#)

[Section 8. Temporary rearrangement of aerial wires.](#)

[Section 9. Tree trimming.](#)

[Section 10. Indemnity.](#)

[Section 11. Administration of ordinance.](#)

[Section 12. Compensation to the city.](#)

[Section 13. Assignment of ordinance.](#)

[Section 14. Mutual releases.](#)

[Section 15. Adoption of stipulation of settlement.](#)

[Section 16. Repeal of conflicting ordinances and agreements.](#)

[Section 17. Future contingency.](#)

[Section 18. Governing law.](#)

[Section 19. Acceptance of agreement and effective date.](#)

Section 1. Purpose.

Pursuant to the laws of the State of Texas, the city Charter and this ordinance, the telephone company has the non-exclusive right and privilege to use the public rights-of-way in the city for the operation of a telecommunications system subject to the restrictions set forth herein. The telephone company may use such rights-of-way for its telecommunications facilities. The telephone company's facilities and transmission media used in or incident to the provision of telecommunications service, and to the maintenance of a telecommunications business by the telephone company in the city, shall remain as now constructed, subject to such changes as under the conditions prescribed in this ordinance may be considered necessary to the public health and safety by the city in the exercise of its lawful powers and such changes and extensions as may be considered necessary by the telephone company in the pursuit of its telecommunications business. The terms of this ordinance shall apply throughout the city, and to all operations of the telephone company within the city, and shall include all operations and facilities used in whole, or in part, in the provision of telecommunications services in newly annexed areas upon the effective date of any annexation.

Section 2. Additional authority required.

The telephone company is not authorized to provide cable television service as a cable operator in the city under this ordinance, but must first obtain a franchise from the city for that purpose, under such terms and conditions as may be required by law.

Section 3. Definitions.

Whenever used in this ordinance, the following words and terms shall have the definitions and meanings provided in this section:

- (a) *Facilities*: All telephone company duct spaces, manholes, poles, conduits, underground and overhead passageways, and other equipment, structures and appurtenances, and all associated transmission media.
- (b) *Use*: The telephone company's acquisition, construction, reconstruction, maintenance or operation of any facilities in, over, under, along, through or across the public rights-of-way, for any telecommunications purpose whatsoever.
- (c) *City*: The City of Alpine, Texas.
- (d) *Rights-of-way*: All present and future streets, avenues, highways, alleys, bridges and public ways within the city limits of the city.
- (e) *Transmission media*: All telephone company cables, fibers, wires or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristics, and whether for voice, data or other telecommunications purposes.
- (f) *Nonexclusive*: No rights provided in this ordinance by the city shall be exclusive, and the city reserves the right to grant franchises, licenses, easements or permissions to use the public rights-of-way within the city to any person or entity as the city, in its sole discretion, may determine to be in the public interest.
- (g) *Telephone company*: Southwestern Bell Telephone Company.
- (h) *Stipulation of settlement*: As filed by the Settlement Class and Settling Defendants in connection with Cause No. D-142,176 in the 136th District Court of Jefferson County, Texas.

Section 4. Term.

- (a) Subject to paragraph 4(b) below, this ordinance shall continue for a period of five years from the effective date hereof; provided, that at the expiration of the initial period, such term shall be automatically extended for successive periods of one year, unless written notice of intent to terminate this agreement is given by either party not less than 90 days prior to the expiration of the then current period. When such notice is given, this agreement shall terminate at the expiration of the then current period.
- (b) Notwithstanding the term set out in paragraph 4(a) above, this ordinance shall terminate if final approval does not occur as set forth in the stipulation of settlement.

Section 5. Supervision by city of location of poles and conduits.

All poles placed shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that the same will not unduly interfere with ordinary travel on the streets or sidewalks. The city shall have the option, but not the obligation, to exercise any and all lawful, reasonable and proper control related to the location and route of all poles, stubs, guys, anchors, conduits, fiber and cables placed and constructed by the telephone company in the construction and maintenance of its telecommunications system in the city.

Section 6. Attachments to poles and space in ducts.

Nothing contained in this ordinance shall be construed to require or permit any pole attachments for electric light or power wires or communications facilities or systems not provided by the telephone company to be attached to the telephone company's poles or other physical plant, or placed in the telephone company's conduit. If the city desires pole attachments for electric light or power wires or communications facilities or systems not provided by the telephone company, or if the city desires to place communications facilities or systems not provided by the telephone company in any telephone company duct, then a further separate, noncontingent agreement shall be prerequisite to such attachment(s) or such use of any duct by the city. Nothing contained in this ordinance shall obligate or restrict the telephone company in exercising its rights, voluntarily, to enter into pole attachment, pole usage, joint ownership or other wire space or facilities agreements with light and/or power companies or with other wire-using companies which are authorized to operate within the city.

Section 7. Streets to be restored to pre-existing condition.

The surface of any street, alley, avenue, highway or public place disturbed by the telephone company in building, constructing, renewing or maintaining its telecommunications system, shall be restored within a reasonable time after the completion of the work to as good a condition as before the commencement of the work, and maintained to the satisfaction of the city council, or of any city official to whom such duties have been or may be delegated for one year from the date the surface of said street, alley, avenue, highway or public place is broken for such construction or maintenance work, after which time responsibility for the maintenance shall become the duty of the city; provided, however, that the telephone company shall not take up or excavate any pavement at any time without first securing permission, in writing, of the city manager or his nominee, except in cases of emergencies; and provided, further, that all excavation and installation so made shall be performed in such a manner as will cause the least inconvenience to the public. No street, alley, avenue, highway or public place shall be encumbered for a longer period than shall be necessary to execute the work.

Section 8. Temporary rearrangement of aerial wires.

Upon request, the telephone company shall remove, raise or lower its aerial wires, fiber or cables temporarily to permit the moving of houses or other bulky structures. The expense of such temporary rearrangements shall be paid by the party or parties requesting them, and the telephone company may require payment in advance. The telephone company shall be given not less than 48 hours advance notice to arrange for such temporary rearrangements.

Section 9. Tree trimming.

The right, license, privilege and permission is hereby granted to the telephone company, its contractors and agents, to trim trees upon and overhanging the streets, avenues, highways, alleys, sidewalks and public places of the city, so as to prevent the branches of such trees from coming in contact with the aerial wires, fiber or cables of the telephone company, and when so directed by the city, said trimming shall be done under the supervision and direction of the city or of any city official to whom said duties have been or may be delegated.

Section 10. Indemnity.

The telephone company shall indemnify and hold the city harmless from all costs, expenses (including attorney's fees) and damages to persons or property arising directly or indirectly out of the construction, maintenance or operation of the telephone company's facilities located within the public

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rights-of-way found to be caused solely by the negligence of the telephone company. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of the telephone company and the city; nor is this provision intended to abrogate the common law or statutory rights of either the city or the telephone company to indemnity or contribution from the other.

Section 11. Administration of ordinance.

- (a) The city may, at any time, make inquiries pertaining to this ordinance and the telephone company shall respond to such inquiries on a timely basis by providing information which is prepared, maintained and available in the ordinary course of business.
- (b) Copies of specifically identified petitions, applications, communications and reports submitted by the telephone company to the Federal Communications Commission or the Public Utility Commission of Texas shall be provided to the city upon request.
- (c) The city may establish, after reasonable notice, such rules and regulations as may be appropriate for the administration of this ordinance and the construction of the telephone company's facilities on city property to the extent permitted by law.

Section 12. Compensation to the city.

- (a) As compensation for the use, occupancy, oversight, supervision and regulation of the city's rights-of-way, and for any other consideration provided by the city under this agreement, and in lieu of and in full compensation for any lawful tax or license or charge or right-of-way permit fee or inspection fee, whether charged to the telephone company or its contractor(s), or any right-of-way easement or street or alley rental or franchise tax or other character of charge for use and occupancy of the rights-of-way within the city, except the usual general ad valorem taxes, special assessments in accordance with state law or sales taxes now or hereafter levied by the city in accordance with state law, the city hereby imposes a charge upon the gross receipts (as hereinafter defined) of the telephone company. The amount of the charge for the first year this ordinance is in effect shall be \$28,500.00. In no event shall such charge be less than the above amount for each year this ordinance is in effect, except as provided in the case of disannexation as set forth in paragraph 12(e), or as provided in Section 16 herein.

The telephone company will, according to tariff, bill such charge to the customers billed the customer service charges included within the term "gross receipts," as defined herein. Gross receipts, for purposes of this charge, shall include only customer service charges which meet all four of the following conditions:

- (1) Such charges are for telephone company services provided within the city;
- (2) Such charges are billed through the telephone company's Customer Records Information System ("CRIS");
- (3) Such charges are the recurring charges for the local exchange access rate element specified in the telephone company's tariffs filed with the PUC; and
- (4) Such charges are subject to an interstate end user common line ("EUCL") charge as imposed by the Federal Communications Commission ("FCC").

For the second and subsequent years while this ordinance remains in effect, the above charge is subject to adjustment by application of the growth factor set out in paragraph 12(c). This adjustment for the growth factor will be made effective as of each anniversary date of this ordinance.

The telephone company shall adjust its billings to customers to account for any undercollection or overcollection of the charge due the city.

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- (b) The charge for each year shall be paid in four equal payments. The first payment under this ordinance shall be due on the last day of the fifth month following the effective date hereof, with subsequent payments due on the last day of each third successive month thereafter during the term of this ordinance. In the event of any over or undercollection from customers at the expiration of this ordinance, the telephone company may make a pro rata one-time credit or charge to the customer billing for affected customers who are billed for a service included within gross receipts, as defined in paragraph 12(a). This will be accomplished within 150 days following the date of expiration of this ordinance. If however, it is impractical to credit any overcollection to customers, then such overcollection shall be paid to the city.
- (c) The growth factor shall be calculated by dividing the telephone company's revenues within the corporate limits of the city subject to state sales taxes ("sales tax revenues") for the 12-month period ending three months prior to the next anniversary date of this ordinance by the sales tax revenues for the 12-month period ending three months prior to either the initial effective date or the preceding anniversary date of this ordinance, as applicable. The growth factor calculated by the method set forth in the preceding sentence, if greater than one, shall be multiplied by the current year's charge to determine the dollar amount of the charge for the next year. If the growth factor calculated above is one or less, the charge for the next year shall be equal to the current year's charge. The telephone company will adjust its customer billing to account for the growth factor calculated above.

Once the growth factor calculation is completed, the telephone company will provide the city with the sales tax revenues upon which the growth factor calculation was based.

The city agrees to rely upon audits by the Texas Comptroller of Public Accounts of state sales taxes as reported by the telephone company which are performed in compliance with V.T.C.A., Tax Code §§ 151.023 and 151.027. The growth factor shall be recomputed to reflect any final, nonappealable adjustments made pursuant to an audit finding by the Texas Comptroller of an inaccuracy in the telephone company's reports of revenues subject to state sales taxes. The charge shall be recalculated using the growth factor recomputed as specified in the preceding sentence, and the recalculated charge shall be used for all future calculations required by this ordinance. Any overpayment of [or] underpayment resulting from such recalculation shall be subtracted from or added to the first installment due the following year. If any overpayment or underpayment shall be due during the final year of this ordinance, then payment shall be made as follows. In the case of overpayment by the telephone company, the city shall pay such overpayment to the telephone company within 150 days following the expiration of this ordinance and, in the case of underpayment by the telephone company, the telephone company shall pay such underpayment to the city within 150 days following the expiration of this ordinance.

- (d) Such payments shall not relieve the telephone company from paying all applicable municipally-owned utility service charges. Should the city not have the legal power to agree that the payment of the foregoing charge shall be in lieu of the taxes, licenses, charges, rights-of-way permit or inspection fees, rentals, rights-of-way easements or franchise taxes aforesaid, then the city agrees that it will apply so much of such payments as may be necessary to the satisfaction of the telephone company's obligation, if any, to pay any such taxes, licenses, charges, rights-of-way permit or inspection fees, rentals, rights-of-way easements or franchise taxes.
- (e) In the event that either:
 - (1) Territory within the boundaries of the city shall be disannexed and a new incorporated municipality created which includes such territory; or
 - (2) An entire, existing incorporated municipality shall be consolidated or annexed into the city,

then notwithstanding any other provision of this ordinance, the charge shall be adjusted. To accomplish this adjustment, within 30 days following the action effecting a disannexation/annexation as described above, the city shall provide the telephone company with maps of the affected area(s) showing the new boundaries of the city.

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In the event of an annexation as described above, the charge for the city will be adjusted to include the amount of the payment by the telephone company to the existing incorporated municipality being annexed. In the event that the annexed municipality had no ordinance imposing a charge, or in the event of a disannexation, then the adjustment to the charge will be calculated using the effective date of the imposition of local sales taxes as determined by the Texas Comptroller of Public Accounts. The adjustment shall be the percent increase/decrease in the telephone company's gross receipts as defined herein for the city for the first calendar month following the local sales tax effective date compared to the last month prior to such effective date. This adjustment to the charge will be made on the first day of the second month following the local sales tax effective date and the adjusted charge shall be prorated from that date through the remainder of the payment year. The charge as adjusted shall be used for all future calculations required by this ordinance.

Section 13. Assignment of ordinance.

This ordinance and any rights or privileges hereunder shall not be assignable to any other entity without the express consent of the city. Such consent shall be evidenced by an ordinance which shall fully recite the terms and conditions, if any, upon which such consent is given.

Section 14. Mutual releases.

Upon final approval, as defined in the stipulation of settlement, the city hereby fully releases, discharges, settles and compromises any and all claims which the city has made or could have made arising out of or connected with Ordinance Number 296, adopted November 12, 1951, and renewed or extended, from time to time thereafter, and its predecessor ordinances, if any (hereinafter referred to collectively as "Ordinance 296"). This full and complete release of claims for any matters under Ordinance 296 shall be for the benefit of Southwestern Bell Telephone Company, its parent, its affiliates, their directors, officers, attorneys and employees, successors and assigns, and includes any and all claims, actions, causes of action and controversies, presently known or unknown, arising directly or indirectly out of or connected with the telephone company's obligations to the city pursuant to the provisions of Ordinance 296. Upon final approval as defined in the stipulation of settlement, Southwestern Bell Telephone Company, its parent, its affiliates, successors and assigns, hereby fully release, discharge, settle and compromise any and all claims, actions, causes of action or controversies heretofore made or which could have been made, known or unknown, against the city, its officers, attorneys or its employees, arising out of or connected with any matters under Ordinance 296.

It is the intent of the city and the telephone company to enter into the foregoing mutual releases in order to reach a compromise that is acceptable to both the city and the telephone company. This ordinance and the mutual releases set forth in this section represent a compromise of each party's claims as well as each party's defenses, and is not intended to be and is not an admission of liability or vulnerability by either party to the other with respect to either the claims or the defenses asserted against the other.

Section 15. Adoption of stipulation of settlement.

The city hereby adopts, ratifies, confirms, and agrees to be bound by the terms of the stipulation of settlement in Cause No. D-142,176 in the 136th Judicial District Court in and for Jefferson County, Texas (the "class litigation"), in its entirety, in all respects as if the city were an original signatory thereto. The city acknowledges that as a member of the settlement class in the class litigation it has received and reviewed the stipulation of settlement and that the city has had access to and/or has consulted counsel, to the extent that it desired to do so, in connection with its evaluation of the stipulation of settlement.

Section 16. Repeal of conflicting ordinances and agreements.

Ordinance Number 296 adopted November 12, 1951, is hereby repealed; provided, however, such repeal shall take effect at 11:59 p.m. on the day immediately preceding the effective date specified in the section of this ordinance entitled "acceptance of agreement and effective date." The final payment (including payment for any partial year) under Ordinance Number 296 shall be due 60 days following the effective date of this ordinance, as set out in Section 19 hereof. All other ordinances and agreements and parts of ordinances and agreements in conflict herewith are also repealed, to the extent of such conflict only, which repeal shall take effect at the time and on the date specified in the preceding sentence.

Section 17. Future contingency.

- (a) Notwithstanding anything contained in this ordinance to the contrary, in the event that:
- (1) This ordinance or any part thereof;
 - (2) Any tariff provision by which the telephone company seeks to collect the charge imposed by this ordinance;
 - (3) Any procedure provided in this ordinance; or
 - (4) Any compensation due the city under this ordinance,

becomes, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful or otherwise inapplicable, in whole or in part, the telephone company and city shall meet and negotiate a new ordinance that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the new ordinance shall provide the city with a level of compensation comparable to that set forth in this ordinance provided that such compensation is recoverable by the telephone company in a mutually agreed manner permitted by law for the expired portion of the term of this ordinance.

- (b) Notwithstanding anything contained in the preceding paragraph to the contrary, the city and telephone company agree that in the event this ordinance is submitted for review to any court, in which the currently existing case styled City of Port Arthur, et al v. Southwestern Bell Telephone Company, et al, Cause No. D-142,176 in the 136th Judicial Court, Jefferson County, Texas, is pending, the city and telephone company agree to take any and all actions reasonably necessary to obtain approval and ratification of the ordinance by the court.

Section 18. Governing law.

- (a) This ordinance shall be construed in accordance with the city Charter and city Code(s) in effect on the date of passage of this ordinance to the extent that such Charter and Code(s) are not in conflict with, or in violation of, the Constitution and laws of the United States or the State of Texas.
- (b) This ordinance shall be construed and deemed to have been drafted by the combined efforts of the city and the telephone company.

Section 19. Acceptance of agreement and effective date.

The city shall deliver a properly certified copy of this ordinance to the telephone company within three working days of its final passage. The telephone company shall file its written acceptance of this ordinance in accordance with the stipulation of settlement. This ordinance shall become effective beginning on the first day of the first calendar month which begins not less than 30 days after entry of judgment, as defined in the stipulation of settlement.

PASSED AND APPROVED following the second reading hereof this 11th day of July, A.D., 1995.

ARTICLE IV. GAS

AN ORDINANCE NO. 396

GRANTING A FRANCHISE AND FIXING GAS RATES AND RULES AND REGULATIONS REGARDING SAME.

THE STATE OF TEXAS	:
COUNTY OF BREWSTER	:
CITY OF ALPINE	:

WHEREAS, Southwest Texas Municipal Gas Corporation was organized and is operating at the instance and request of the City of Marfa, Texas, as joined by this city for the exclusive purpose of "...promoting the public interest of the Cities of Marfa, Texas, and Alpine, Texas, by constructing, acquiring, owning, leasing and operating municipal gas utility facilities in behalf of and for the benefit of such cities"; and

WHEREAS, the City of Marfa and this city have each determined to grant to said company identical franchises and respectively to fix rates to be charged by said company.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALPINE, TEXAS:

1. That Southwest Texas Municipal Gas Corporation, its successors and assigns, be, and they are hereby, granted the right, privilege and franchise in the City of Alpine, Texas, as the boundaries thereof are presently constituted or as such boundaries hereafter may be enlarged or extended, to conduct the business of constructing, installing, maintaining, managing, operating, repairing, relocating, adding to and replacing a gas distribution system, including all pipes, pipelines, regulators, pressure stations, and all other facilities used or useful in the operation of a gas distribution system and public gas utility, and to have access to and to use the streets, roads, alleys and public ways within said city for any and all of such purposes.
2. The pipes, pipelines, and other facilities of grantee herein situated in the streets, roads, alleys and public ways, shall be placed and erected in such manner and in such places as not to interfere with the use of the streets, roads, alleys and public ways by said city, or the inhabitants thereof, or with the orderly conduct of the business of such city, or of the rights of any other public service corporations having a right or franchise to operate other businesses in such city; and the placing, construction and manner of installing such facilities shall at all times be subject to reasonable rules and regulations adopted by the governing body of said city in order to protect the rights and conveniences of third parties and the public generally within such city; and the grantee shall, at its own expense, promptly restore all streets, roads, alleys and public ways in which ditches or other excavations are made by it to the same conditions they were in prior to such excavation.
3. This franchise, as well as the rights hereunder, may be assigned by the grantee herein to any assignee, successor or transferee of the business of grantee, as well as by all succeeding grantees to similar parties, at their option, or the rights of such grantee or successors hereunder may be transferred under foreclosure proceedings or judicial sale, or may be transferred from one holder to a third party by the operation of, or forfeiture clause of, any agreement between such persons, in which case said assignees shall succeed to all the rights, duties and liabilities of the grantee hereunder, but

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subject to the conditions hereof, including the rights of the city to the properties thereof upon all the payment of debt as herein provided.

4. The term of this grant shall be for a period of 40 years from this date, at the end of which time the rights herein granted shall terminate unless expressly extended by the city; provided that the grantee, its successors and assigns, by accepting this franchise, specifically agree that when all indebtedness and all extension and renewals thereof incurred by grantee, its successors and assigns, for the construction, enlargement, improvement, repair and replacement, in whole or in part, of the utility plant and municipal gas utility facilities and transmission lines of grantee, its successors and assigns (exclusive of current operating and maintenance expenses) has been fully and finally paid at maturity, this franchise shall terminate and be of no further force or effect; and grantee, its successors and assigns, shall, upon the payment of all such indebtedness, and all extensions and renewals thereof as aforesaid, execute and deliver such conveyances as may be necessary to transfer record title to such properties to the city. In further consideration of this grant, grantee hereby grants to the city the perpetual and irrevocable right and option (exercisable jointly with the City of Marfa) to purchase the said natural gas utility system and transmission lines and other properties (in the shares indicated) from the grantee at any time for an amount equal to the grantee's indebtedness at the time outstanding, together with accrued interest thereon to the next interest payment date, plus the premium for redemption, if any prescribed in the bonds and other evidences representing said indebtedness; provided, however, that the date of purchase of such property shall never be fixed prior to a date on which all of the bonds and other evidence of debt of the grantee at the time outstanding are redeemable in accordance with their terms; but provided further, however, that in the event said bonds and/or other evidence of debt are not redeemable the city, acting jointly with the City of Marfa, shall have the right and option to purchase said properties (in the aforesaid shares) by assuming said indebtedness, if then permitted by law, upon the condition that they jointly lawfully assume and agree to perform and to take said properties subject to all the conditions, covenants, agreements, obligations and undertakings which the grantee has theretofore agreed to observe, meet, keep and perform in connection with said indebtedness and/or the security thereof.

5. The rates to be charged by the grantee, and all successors and assigns hereto, for gas sold within the corporate limits of this city, shall not exceed the following:

RATE SCHEDULE

<i>Residential and Small Commercial</i>	
First 5 MCF	\$4.06 per MCF
Next 10 MCF	3.86 per MCF
Next 35 MCF	3.76 per MCF
Next 450 MCF	3.38 per MCF
Next 500 MCF	2.90 per MCF
Minimum monthly bill	4.06
<i>Large Commercial</i>	

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First 50 MCF	3.92 per MCF
Next 50 MCF	3.35 per MCF
Next 100 MCF	3.13 per MCF
Next 300 MCF	2.94 per MCF
Next 500 MCF	2.72 per MCF

Delayed payment penalty: The penalty is computed at five percent of the gas charges is not paid within 15 days after mailing customer statement.

PURCHASED GAS ADJUSTMENT PROVISION

The above-enumerated rates shall be adjusted either upward or downward by the amount the then current cost of gas purchased by Southwest Texas Municipal Gas Corporation from Delhi Gas Pipeline Corporation is more or less than \$1.3859 MCF. Such adjustment shall be reflected in each month's billing showing each customer's credit or debit variance, up or down, from the base gas cost paid by Southwest Texas Municipal Gas Corporation to its supplier as determined for each year as well as the customer's pro rata share of any refund ordered by railroad commission auditors to be paid to Southwest Texas Municipal Gas Corporation by its supplier in the event such railroad commission's audit shows such supplier to have overcharged Southwest Texas Municipal Gas Corporation in its current year's contract. The cost of gas pass through here provided for shall be rounded off to the nearest cent, with less than one-half cent being eliminated and one-half cent or more being counted a full cent.

Southwest Texas Municipal Gas Corporation shall notify the Cities of Marfa, Balmorhea and Alpine, Texas, in writing of its new gas purchase cost and its intended gas cost adjustment before the sending of any bills at the new rate. Such written notice shall be sent no later than January of each year or within a reasonable time after actual notice from Delhi Gas Pipeline Corporation, whichever is earlier, of any change in that year's gas costs to Southwest Texas Municipal Gas Corporation.

Each city reserves the right to disallow any adjustment if it has reason to believe that the gas cost adjustment has not been properly computed. The cities shall notify Southwest Texas Municipal Gas Corporation in writing that they believe that the adjustment is improper and substantially identify the reason, or reasons, why they believe the adjustment is in error. If Southwest Texas Municipal Gas Corporation has not been notified in writing by the cities three days before the bills are rendered, then it shall proceed to make the adjustment it has determined to be proper under procedures provided for in Section 43 of Article 1446c, Texas Revised Civil Statutes.

OTHER CHARGES FOR GAS COMPANY SERVICES

Consumers shall be required to make deposits to guarantee payment of the gas bills in the amount of \$50.00, in the opinion of the grantee. Said deposit requirement may be waived for homeowners and/or for those consumers with a credit rating satisfactory to the grantee.

For laying and connecting new service line, the charge shall be \$1.25 for each foot of gas line from gas supply line to gas meter on customer's property.

A charge of \$10.00 shall be made for connecting each new customer to existing service line.

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A charge of \$5.00 shall be made for reconnecting or turning on customer's gas service after vacation cut-off.

Gas company shall be permitted to charge \$5.00 for service calls made at customer's request if the problem encountered by the service man is found to be in customer's equipment and not to be any problem concerned with grantee gas company's obligation and responsibility to supply gas to customer as set out in grantee's franchise. If the problem existing is with grantee's equipment, and is within the scope of grantee's obligation and responsibility to supply customer, as stated in grantee's franchise, grantee shall repair or correct such problem, if any be found, at no cost to customer.

Should grantee find the problem to be with the customer's equipment on any service call, customer may have any licensed plumber repair same or may, if he chooses, contract with grantee to repair, replace or correct such of customer's equipment found to be causing such problem if any, and such charges by grantee made for such services will be the usual, reasonable and customary charges in Alpine, Brewster County, Texas.

These rates will be subject to constant review by the board, and in the event of a substantial drop in the price to the grantee of natural gas, said grantee will request the Alpine city council for an amendment to this ordinance to allow a corresponding decrease in the rates to be charged by grantee. (Ord. No. 447, § 1, 11-4-1969; Ord. No. 469, § 1, 9-12-1972; Ord. No. 479, § 1, 3-19-1974; Ord. No. 492, § 1, 2-18-1975; Ord. No. 500, §§ 1, 2, 1-20-1976; Ord. No. 506, §§ 1, 2, 6-22-1976; Ord. No. 513, §§ 1, 2, 1-4-1977; Ord. No. 520, §§ 1, 2, 1-24-1978; Ord. No. 523, §§ 3, 4, 10-8-1978; Ord. No. 532, § 1, 8-21-1979; Ord. No. 80-108, § 5, 9-2-1980; Ord. No. 82-3-5, § 1, 3-30-1982)

6. It is provided that the aforesaid rates will be reviewed not less frequently than annually during the last quarter of each calendar year. Prior to any such regularly scheduled time for reviewing rates, the grantee shall not increase any of the foregoing rates without first obtaining the approval of this city council, it being understood that this city reserves its rate-making authority as the same and said rates are governed by Vernon's Ann. Civ. St. arts. 1119, 6050 et seq. ^[8], as amended, the same being applicable to the rate provisions of this franchise. (Ord. No. 447, § 2, 11-4-1969)
7. The following rules and regulations, together with such other reasonable rules and regulations as the grantee shall determine, shall be observed in the operation of said natural gas utility, to wit:
 - (a) Consumers shall be required to make deposits to guarantee payment of the gas bills in amount equivalent to the estimated largest two months' bill per annum, in the opinion of the grantee. Said deposit requirement may be waived for homeowners and/or for those consumers with a credit rating satisfactory to the grantee.
 - (b) No unmetered service shall be allowed.
 - (c) All bills shall be due and payable monthly and within 15 days from the date rendered, and shall become delinquent on the 15th day after the bill was mailed, for which the grantee may charge a penalty of five percent of that month's bill. The grantee shall be authorized if it desires to bill consumers on a "gross-net" basis in accordance with usual utility practices. The grantee shall be authorized to discontinue service if the bill is not paid within ten days after the delinquency date; and prior to resumption of gas service grantee may require payment of all delinquencies and all penalties together with a reconnect charge not to exceed \$5.00.
8. This franchise agreement shall be binding upon the city and its successors, including any other municipal corporation with which it may be consolidated, merged, or otherwise become a part, and shall also be binding upon grantee, its successors and assigns.
9. It is further provided that if the corporation has not obtained its financing for the construction of this distribution system in Alpine within six months from the date hereof, this franchise will terminate and be of no further force and effect.

PASSED AND APPROVED this 22nd day of October, 1964.

ORDINANCE NO. 2008-09-03

APPENDIX A FRANCHISES

AN ORDINANCE GRANTING TO SOUTHWEST TEXAS MUNICIPAL GAS CORPORATION THE RIGHT, PRIVILEGE AND FRANCHISE TO USE STREETS, ALLEYS AND THOROUGHFARES TO OPERATE AND MAINTAIN A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF ALPINE, BREWSTER COUNTY, TEXAS; PROVIDING REGULATIONS FOR THE CONDUCT OF THE SYSTEM BY THE GRANTEE, AND REPEALING ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH.

[Section 1. Grant of franchise.](#)

[Section 2. Location of facilities.](#)

[Section 3. Effect of other ordinances.](#)

[Section 4. Damage to city properties.](#)

[Section 5. Grantee's rules of service.](#)

[Section 6. Term.](#)

[Section 7. Renewal of franchise.](#)

[Section 8. Approval of rates.](#)

[Section 9. Assignment.](#)

[Section 10. Parties.](#)

[Section 11. Franchise fees.](#)

[Section 12. Annexations by city.](#)

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[Section 14. Satisfaction of prior franchise ordinances.](#)

[Section 15. Repeal of conflicting ordinances; severability.](#)

[Section 16. Effective date.](#)

[Section 17. Acceptance by grantee.](#)

[Section 18. Duration of prior franchise ordinance.](#)

Section 1. Grant of franchise.

- a. Subject to the terms and conditions of this franchise ordinance, the right, privilege and franchise is hereby granted to Southwest Texas Municipal Gas Corporation (hereinafter "grantee"), and to its successors, lessees and assigns, to have, own, acquire, install, construct, reconstruct, operate, maintain, use, and extend a system of mains, pipelines, conduits, valves, feeders, regulator stations, laterals, service lines, measuring devices, and all other necessary plants, attachments, land, structures facilities and appurtenances (hereinafter the "system") for the purpose of selling, storing, supplying conveying, transmitting, distributing, and/or transporting natural gas, including the equivalent substitutes, for all other lawful purposes in, through, upon, under, and along the present and future streets, avenues, alleys, bridges, sidewalks, parks, easements, highways, and any other public places including any streams, water courses or water ways within the city limits of the City of Alpine, Brewster County, Texas (the "City"), the extraterritorial jurisdiction of the City of Alpine subject to its regulatory or legal control, and including any territory that the city may hereafter annex, acquire or purchase; and to distribute, sell, store, supply, transport, carry and/or convey natural gas

APPENDIX A FRANCHISES

through the system in the city to other cities, towns, communities and areas outside the city and to inhabitants thereof, for the full term of this franchise ordinance.

- b. For purposes of this franchise ordinance, "transport gas" or "transported gas" shall mean gas owned or controlled by a user or its designee (i.e. gas that is purchased or otherwise acquired by a user from someone other than grantee) and delivered by such user or its designee to grantee at a point on grantee's distribution system, such point of delivery to be defined by grantee, and carried, delivered or transported through grantee's system at a point of re-delivery in the city by grantee to the user for a fee. The terms and conditions of the transportation arrangement, including but not limited to the point(s) of delivery, point(s) of re-delivery, measurement and location of title transfer, shall be as set forth in the contract entered into between grantee and the transportation customer and/or grantee's transportation tariffs on file with the Railroad Commission of Texas or other appropriate regulatory authority. Grantor reserves the right to charge a franchise fee upon such transport gas.

Section 2. Location of facilities.

- a. The mainlines and service pipes of the grantee shall be laid in alleys, streets, and avenues, and other public places, and when in streets and avenues, shall be laid parallel with the curb line thereof, or in such locations as shall be most practical, provided, however, that in no case shall any main be laid less than 18 inches below the established street grade, without permission of the city engineer.
- b. When the grantee shall desire to lay any mains hereunder, and before commencing its construction work, it shall submit to the city engineer, or other proper authority, a map or plan showing the streets, avenues, alleys, and other public places wherein it proposes to construct its facilities. The city engineer, or other proper authority, shall respond in writing to Grantee within ten (10) calendar days of grantee's submission either approving or rejecting the plan and if a rejection, listing the reasons for such rejection, otherwise the approval of the city shall be deemed to have been granted to grantee. Actual or deemed approval by the city engineer, or other proper authority shall constitute a permit to the grantee for the opening of all of the streets, avenues, alleys and other public places shown on the map or plan, and for the construction or laying of the mainlines and other facilities or equipment by the grantee (the "permit"). Provided, however, that it shall not be necessary for grantee to secure a permit for the laying of service pipes from the mainline pipes of the grantee to its customers.
- c. In the refilling of all openings made by the grantee, it shall attempt to restore the city public rights-of-way to a condition reasonably approximate to the original condition, and when the grantee shall open any ground in the city rights-of-way, the grantee shall open no more space nor keep the space open any longer than is reasonably necessary to properly execute the work for which such space shall have been opened. The grantee shall at all times display and keep the necessary danger signals and barricades around all excavations and obstructions, and shall keep sufficient space in good condition for the travel of automobiles, trucks, and other motor vehicles, on at least one side of all excavations and obstructions.

Section 3. Effect of other ordinances.

Except as provided in section 14, the grantee, its successors, lessees or assigns, shall at all times be subject to any ordinances now in existence, or which may hereafter be passed, not inconsistent herewith. No fee or other charges of any kind shall be imposed upon the grantee, or upon any consumer of gas for the breaking or opening of any streets or other public rights-of-way or for the laying, construction, or maintenance of mainlines, service pipes or other facilities therein except as provided for hereunder. Nothing in this franchise ordinance shall be construed in such manner as to in any way abridge the right of the city to pass the necessary police ordinances for the protection of the citizens of

the city and their property, and the property of this grantee, as long as such ordinances are not inconsistent with this franchise ordinance.

Section 4. Damage to city properties.

Subject to an exception for emergencies, the grantee shall do no permanent injury to any street, avenue, alley, lane, bridge, stream, watercourse, park or public place. Grantee and city shall exercise reasonable efforts to ensure that any future installations of utilities in city rights-of-way by grantee, city or other utility providers authorized by city do not interfere unnecessarily with any facilities of grantee, city or other utility providers.

Section 5. Grantee's rules of service.

Grantee, and its successors and assigns, shall have the right to adopt and enforce rules of service for service hereunder not inconsistent with law or this franchise ordinance. Grantee shall supply natural gas and provide regulated services at the rates and under the terms and conditions specified by such rules, its tariffs filed with the city and as provided herein.

Section 6. Term.

This franchise ordinance shall continue and remain in full force and effect for a period of forty (40) years from and after the date it shall become effective.

Section 7. Renewal of franchise.

- a. In the event grantee shall desire renewal of this franchise ordinance, the grantee shall notify the city within the last twelve (12) months prior to the expiration of the franchise ordinance.
- b. In the event this franchise ordinance is not renewed or extended, at the expiration of the franchise term the grantee may, at its sole option either: (1) abandon its facilities in place in accordance with the regulations with the Railroad Commission of Texas, in which case the city shall support grantee's abandonment filing at the Railroad Commission; or (2) remove such facilities and restore the streets, alleys, parks and public places of the city to a reasonably as good condition as before such removal; or (3) any combination of the foregoing, all at grantee's cost and expense. Nothing in this section shall prohibit the city and grantee from mutually agreeing to extend the term of this franchise ordinance so as to allow for good faith negotiations on a new franchise ordinance.

Section 8. Approval of rates.

Grantee must submit to grantor (City of Alpine) any proposed rates which grantee proposes to charge to its customers within the area subject to this contract, and the Alpine City Council must approve such rates before grantee may impose them.

Section 9. Assignment.

Subject to the provisions of section 8 above, the grantee herein is expressly given the power and privilege to sell, transfer or assign this franchise ordinance, or any part of this franchise ordinance, to any person, entity or corporation, subject to prior written approval of grantor.

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Section 10. Parties.

Whenever the words "the grantee" occur in this franchise ordinance, it shall mean and shall be understood to be Southwest Texas Municipal Gas Corp., its successors, lessees or assigns, and any individual, co-partnership, corporation, receiver, or other person or authority owning or operating such franchise or plant; and whenever the words "authority", "proper authority", "Alpine" or "City" occur in this franchise ordinance they mean and shall be understood to be the authorized officer or officers, committee, city council, commission or other body representing the City of Alpine, Texas.

Section 11. Franchise fees.

- (a) The city, is co-owner of SWTMGC with the City of Marfa. As full consideration for the rights and privileges conferred by this franchise ordinance, and as a charge for the use of the streets, alleys and public ways, grantee agrees to continue to operate its gas services in and to the citizens of Alpine and its ETJ during the term of this agreement, in accordance with all federal and state laws and regulations applicable thereto, and to operate its utility in a professional and efficient manner.
- (b) No franchise fee is to be paid.
- (c) The city may, upon reasonable prior written notice and during reasonable business hours, inspect and review the books and records of grantee to verify that the operation of grantee is being conducted in a professional and efficient manner. It is understood and agreed that such representative may be an independent agent, assigned by the city council to conduct the inspection of grantee's books and records. Grantee will promptly provide any and all information requested by grantor, within ten (10) days of receipt of such request.
- (d) The rights, privileges, and franchises granted by this franchise ordinance are to be considered exclusive, and city hereby expressly gives up the right to grant, at any time as it may see fit, like privileges, rights, and franchises to any other person or corporation for the purpose of furnishing natural gas in the city (not liquid petroleum gas). Until after the expiration of this franchise, no other entity may provide natural gas sales, install pipelines in city right of way, or provide gas transportation service to customers within the city or its ETJ (other than grantee).
- (e) The city reserves the right to impose a franchise fee for gas purchased by grantee for wholesale sale to third parties, or if transport gas is redelivered by grantee within the city. Upon request of city, or if grantee enters into any wholesale or transport agreement, the grantee agrees to provide city, within a reasonable time of its receipt of the request, or within ten (10) days of entering into a wholesale or transport contract, with written notice setting forth the amounts of any such wholesale contract or transport agreement for the transportation or sale of gas in the city that is ultimately transported or delivered through grantee's system in the city.
- (f) The city reserves the right to charge a franchise fee to any other entity seeking to provide gas services, or gas distribution, within the city or its ETJ.

Section 12. Annexations by city.

The city shall notify grantee in writing of the annexation of any new territory into the city limits of Alpine by providing maps that highlight the newly annexed territories.

Section 13. Dispute resolution.

If any dispute arises between the city and the grantee, or any of its affiliates (collectively the "parties", or individually a "party"), relating to this franchise ordinance, the parties agree to use the following procedure prior to either party pursuing other available remedies:

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- a. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority (or telephone access to such individuals) regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
- b. If within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of this dispute, they will jointly appoint a mutually acceptable arbitrator qualified by education and training to rule upon the matter in controversy and not affiliated with either of the parties (the arbitrator). In the event the parties have been unable to agree upon such appointment within fifty (50) days from the initial meeting, the parties will seek the assistance of CPR Institute or other mutually agreeable dispute resolution organization to appoint the arbitrator, who shall have a reasonable level of experience with similar issues. The fees of the arbitrator shall be shared equally by the parties. Each party in such proceedings shall bear the costs and expenses of its counsel, witness and employees. All other costs and expenses of the arbitration proceeding shall be borne equally by both parties.
- c. The arbitrator shall promptly hear and determine the controversy, dispute or question in accordance with the provisions of the Texas General Arbitration Act or other mutually agreeable arbitration act. The arbitrator shall render a final award within ninety (90) days following the date upon which the arbitrator is appointed. The parties agree that the arbitrator may award all available contractual remedies to the parties, including injunctive relief, if necessary.
- d. All arbitration proceedings hereunder shall be subject to the Texas General Arbitration Act, and any amendments thereto (unless otherwise mutually agreed to in writing by the parties), where such act is not in conflict with the provisions hereto.

Section 14. Satisfaction of prior franchise ordinances.

To the extent otherwise permitted by law, grantee and city agree that upon the execution and approval of this franchise ordinance, that grantee has fully complied with all the terms and conditions of any previous franchise ordinances, including but not limited to the previous franchise ordinance.

Section 15. Repeal of conflicting ordinances; severability.

All ordinances or parts of ordinances in conflict herewith, are hereby repealed. Should any part of this ordinance be found to be illegal or unenforceable, the remainder of such ordinance shall remain in force and effect.

Section 16. Effective date.

This franchise ordinance shall take effect and be in full force from and after its final passage and approval by the mayor in accordance with the Charter of the City of Alpine and the acceptance hereof in writing by grantee as herein provided.

Section 17. Acceptance by grantee.

The grantee shall, within sixty (60) days from the approval of this franchise ordinance by the mayor, file in the office of the city clerk its consent to and written acceptance of provisions and conditions of this franchise ordinance.

Section 18. Duration of prior franchise ordinance.

The previous franchise ordinance has expired.

PASSED AND APPROVED this 6th day of January, 2009.

DISSOLUTION (ORDINANCE NO. 2011-10-01)

FOOTNOTE(S):

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Editor's note— Ord. No. 2011-08-01, § 1—8, adopted Oct. 6, 2011; Ord. No. 2011-10-01, §§ 1-8, adopted Nov. 1, 2011; and Ord. No. 2011-11-01, adopted Dec. 6, 2011; provided for the transfer of the city's gas system to the City of Alpine from Southwest Texas Municipal Gas Corporation. Ord. No. 2011-10-01, which provides for the dissolution of Southwest Texas Municipal Gas Corporation, is set out at the end of this article. ([Back](#))

Cross reference— Gas franchise, App. A, Art. IV. ([Back](#))

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Editor's note— For current law, see V.T.C.A., Utilities Code ch. 103 and § 121.155. ([Back](#))

DISSOLUTION (ORDINANCE NO. 2011-10-01)

AN ORDINANCE CREATING PARAMETERS FOR SOUTHWEST TEXAS MUNICIPAL GAS CORPORATION TO OPERATE AFTER DISSOLUTION TO ALLOW CLAIMS AND OUTSTANDING DEBTS AND LIABILITIES TO BE RESOLVED.

Whereas, the City of Alpine will assume all assets as prescribed in the Inter local Agreement and will assume all infrastructure (Gas Plant Operations) as determined by the Board of Directors of Southwest Texas Municipal Gas Corporation, subject to SWTMGC agreeing that:

Now, therefore, be ordained that the City of Alpine has authorized the following criteria for dissolution of Southwest Texas Municipal Gas Corporation as follows:

1. SWTMGC remain in existence legally for two years after the spin-off of assets to the Cities of Alpine and Marfa, or until the SWTMGC Board and Auditor verify that there are no outstanding debts, liabilities, lawsuits, or contingent liabilities owned by SWTMGC,
2. SWTMGC indemnify the City of Alpine from any and all claims, debts, lawsuits, or contingent liabilities of any kind arising from SWTMGC operations prior to the City of Alpine assuming ownership and operation of Alpine's portion of the gas company.
3. SWTMGC perform an audit to ensure that all claim, debts, and liabilities are paid by SWTMGC as of the date of dissolution. This audit must be given to the City of Alpine prior to dissolution.
4. SWTMGC set aside funds sufficient to pay any future or contingent liabilities, as recommended by the auditor.
5. SWTMGC ensure that insurance policies sufficient to cover contingent liabilities of the Melvin Davis employment claim remain in force. If the claim is not completely covered by insurance, reserve funds must be set aside to cover any potential liability.

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6. SWTMGC ensure that all SWTMGC employee obligations, retirement plan obligations, or unemployment claims, etc. have been met prior to dissolution.
7. SWTMGC attorney and auditor certify that there are sufficient reserve funds and insurance policies to cover any and all unpaid or future debts, obligations, or contingent liabilities of SWTMGC.
8. SWTMGC certify, upon the transfer of assets to the City of Alpine, that the foregoing steps have been taken, and that the assets being transferred to the City of Alpine are free and clear of any debts, obligations, and contingent liabilities.

Passed by a majority vote of the Alpine City Council on November 1st, 2011 after reading of the ordinance.