

ORDINANCE

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**AN ORDINANCE GRANTING TO STARWEST INC.
AND ITS SUCCESSORS, A NON-EXCLUSIVE FRANCHISE AND RIGHT
FOR A PERIOD OF FIFTEEN YEARS TO ERECT, CONSTRUCT,
RECONSTRUCT, MAINTAIN AND OPERATE
A COMMUNITY TELEVISION SYSTEM IN THE
CITY OF FARMINGTON, IOWA, AND TO SELL, DISTRIBUTE
AND SUPPLY CABLE TELEVISION TO SAID CITY OF FARMINGTON
AND THE INHABITANTS THEREOF AND OTHERS
WITHIN AND WITHOUT SAID CITY FOR ALL PURPOSES, AND
PRESCRIBING THE TERMS AND CONDITONS OF THE GRANT AND
REPEALING ALL ORDINANCES IN CONFLICT THEREWITH
AND PROVIDING PENALTIES FOR THE VIOLATION THEREOF
AND PROVIDING FOR THE SUBMISSION OF SAID
FRANCHISE MATTER TO THE LEGAL ELECTORS OF THE CITY OF
FARMINGTON, IOWA, AT A SPECIAL ELECTION**

BE IT ENACTED by the City Council of Farmington, Iowa:

SECTION 1 Short Title. This Ordinance shall be known and may be cited as the "Cable Television Ordinance".

SECTION 2 Definitions. The following definitions shall apply to those words and phrases found in this Ordinance:

1. "Cable television system (or CATV system)" shall mean any facility that, in whole or in part, receives directly, or indirectly over the air, and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals, and other signals originated or supplied by Grantee or others, by wire or cable to subscribing members of the public who pay for such service, but such terms shall not include any facility that serves only the residents of one or more apartment dwellings under common ownership, control or management, and commercial establishments located on the premises of such an apartment house.

2. "City" shall mean the City of Farmington, Iowa.

3. "FCC" shall mean the Federal Communications Commission.

4. "Franchise" shall mean an agreement between the City and a company which contains terms and conditions for construction and operating a cable television system.

5. "Grantee" is a person holding a franchise to operate a cable television system.

6. "Person" shall mean an individual or any corporation, partnership, business, firm or other organization.

7. "Public Way" is the surface, air space above the surface and the area below the surface of any public street, sidewalk, other right-of-way or public places, and public utility easements.

8. "Subscriber" shall mean a person who purchases cable television services.

SECTION 3 Term of Franchise. Starwest Inc., doing business under the trade name of Starwest Inc., of Atkins, Iowa, its successors and assigns (hereinafter referred to as "Grantee"), be and is hereby granted the right, franchise and authority to operate a cable television system for a period of fifteen (15) years. At the termination of the non-exclusive fifteen (15) years franchise, another election of the qualified voters of Farmington is in order to necessitate another awarding of a franchise.

SECTION 4 Non-Exclusive Franchise. This franchise shall not be exclusive and shall neither restrict the City Council in the exercise of its regulatory power nor prevent it from granting any other cable television system franchise(s).

SECTION 5 Agreement and Waiver. Grantee agrees to abide by all provisions of this franchise and all other applicable ordinances of the City. Further, grantee agrees that it will not set up as against the City any claim that the provisions of this franchise or any other applicable Ordinances are unreasonable or arbitrary.

Repealed 7/19/82

SECTION 6 Performance Bond. The grantee shall maintain and by acceptance of this franchise specifically agrees that it will maintain a performance bond running to the City in the sum of Fifty-Five Thousand Dollar (\$55,000.00) to insure completion of the initial installation.

SECTION 7 Compliance with Applicable Law and FCC Regulations. Grantee shall at all times comply with the rules and regulations of the FCC

and shall also comply with all other applicable statutes, ordinances and regulations which are now in effect or which may hereafter by promulgated. FCC rules and regulations shall in all cases be controlling if any part of this cable television franchise is in conflict with any FCC rules and regulations.

SECTION 8 Subscriber Selections, Options, Rates and Charges. All selections offered on this franchise shall be as follows: Channel 3, KTVO Ottumwa/Kirksville; 6, WOC Quad Cities; 7, KHQA Hannibal/Quincy; 10, WGEMQuincy, 12 KIIN PBS Iowa City, WTBS Atlanta; WGN Chicago; ESPN All Sports; and Showtime.

Installations Charges shall be as follows:

Special Promotion Sign Up..... \$15.00

Single Dwellings

First..... \$30.00

Additional Outlets each will cost = time & material.

(Extra outlets will be the property of subscriber and not maintained by Grantee.)

Trailer Parks..... \$30.00

Multiple Family Dwellings per unit..... \$30.00

Service drops in excess of 150 feet on subscriber's

Property.....Cost=material & labor

Installation in low density areas (fewer than 6 potential subscribers per 900 feet)..... Cost=material & labor

Commercial property subscribers..... \$30.00

Service Charges shall be as follows:

Single Dwelling

8 channels only..... \$10.50 + tax/month

8 channels and Showtime..... \$17.45 + tax/month

(Showtime is \$6.95 + tax more per month.)

Public or Commercial Billings..... same as above

All patrons taking a movie channel (i.e., Showtime, HBO, or the Movie Channel) will be required to make an additional ten dollars (\$10.00) deposit for the movie channel box.

All reconnects will be \$30.00. No charge to disconnect.

In consideration for services rendered to subscribers, grantee shall have the right to charge and collect reasonable and just compensation, which shall reflect, among other things, the grantee's need to attract new capital, upon notice and justification to the City Council along with proper publication and public hearings. Any revisions in the Grantee's rates shall be filed with the City Clerk at least thirty (30) days prior to the date the revised rates become effective.

SECTION 9 Service to schools. The grantee shall provide service to the public school known as the Harmony Community School District for educational purposes upon request by the City at no cost to it.

SECTION 10 Construction Schedule and Operation and Maintenance of System. The grantee will initiate and maintain contracts with individual cable networks and initiate full usage contracts with the local utility company or companies. Grantee will have the CATV system in operation within 365 days of completion of the necessary contractual and licensing requirements unless otherwise restricted by weather or conditions beyond the control of said grantee.

SECTION 11 Complaints. Grantee shall maintain a local office and/or local person with toll-free listed phone number so located that maintenance service shall be promptly available to subscribers upon request. Grantee shall establish and given notice of procedure for reporting and resolving complaints to each subscriber at the time of initial subscription to the cable system.

SECTION 12 Removal of Existing Antenna. Grantee shall in no way tamper with or remove an existing television antenna.

SECTION 13 Safety Requirements. Grantee shall at all times employ reasonable care in the installation and maintenance of its cable television system and shall install and maintain such system in accordance with commonly accepted good engineering methods and practices. All structures, lines, equipment or connections in, over, under or upon the streets, sidewalks, alleys and public ways or places of the City shall at all times be kept and retained in a safe condition and in good working order and repair and shall not in any way interfere

with any installations of the City or any public utility service in the City.

SECTION 14 Conditions of Streets Occupancy. It is hereby granted by the City to the grantee the right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, valleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes, and other, television conductors and fixtures necessary for the maintenance and operation in the City of the CATV system for the interception, sale and distribution of television and radio signals; however, that in such use and occupancy grantee shall be subject to all applicable City Ordinances.

SECTION 15 Placement and/or Use of Poles. Where poles and other wire holding structures already serving the City are available for use by Grantee, but Grantee does not make arrangements for such use, the City may require grantee to use such pole and structures if the City determines that the public convenience would be enhanced thereby and if the terms of the use available to grantee are just and reasonable.

Where the City or a public utility serving the City desires to make use of the poles or other wire-holding structures of grantee but agreement with grantee cannot be reached, the City may require grantee to permit such use for such consideration and upon such terms as the City shall deem to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operations.

Grantee shall be liable for damage due to their neglect if not properly notified beforehand by markings, notifications, etc., of public utilities.

SECTION 16 Removal of Equipment Upon Expiration of Franchise. Upon the termination or cancellation of this cable television franchise, grantee shall remove its poles, cable television transmission and distribution systems, and all other appurtenances from the streets, sidewalks, and public ways of the City, when ordered by do so by the City, and shall restore the same to their original condition. If grantee refuses to remove such items or fails to remove such items in a reasonable time after notification by the City, the City shall have the right and authority to remove such poles, cable television transmission and distribution systems, and other appurtenances from the City streets, sidewalks, and public ways.

SECTION 17 Service rules and regulations of grantee. Grantee shall have the right to prescribe reasonable service rules and regulations regarding access channels not inconsistent with the provisions of the grantee's franchise or of the Code of the City of Farmington, Iowa, and not inconsistent with the laws of the Code of Iowa and the FCC.

SECTION 18 Right-of-ways. The City shall provide methods of information showing right-of-ways to the Grantee.

SECTION 19 Maps, Plats, and Reports. Grantee shall submit to the City Clerk, maps and plats showing all existing proposed cable television installations in the City. Grantee shall submit upon request by the City all relevant business records or reports to the City. Such business records and reports shall be full, complete and accurate.

SECTION 20 Emergency Use of Facilities. In the event of any emergency or disaster, grantee shall, upon the request of the City Council, make its facilities available to the City for emergency use during the emergency or disaster.

SECTION 21 Inspection of Records. The City shall have the right, power and authority to inspect the relevant records of grantee providing grantee is given two week's notice.

SECTION 22 Supervision and Inspection. The City shall have the right to supervise any construction or installation work performed by Grantee in the City and make such inspections as it finds necessary to insure compliance with the terms of this cable television franchise, other Ordinances and resolutions of the City, applicable FCC rules and regulations as well as pertinent provisions of both state and federal laws.

SECTION 23 Discrimination Prohibited. Grantee shall not, as to rates, charges, services, service facilities, rules and regulations, or in any other respect, make or grant any undue preference or advantage to any person, nor subject any person to prejudice or disadvantage. Nothing in this section, however, shall be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled or to prohibit the charging of special rates so long as that rate is reasonable and lawful. Grantee shall not discriminate against any person on the basis of race, religion, creed, color, sex, national origin or ancestry.

SECTION 24 Hold Harmless. Grantee shall at all times defend, indemnify, protect and hold harmless the City from and against any and all liability, losses and damage to property or bodily injury or death to any person, including payments made under workmen's compensation laws, which may arise out of or be caused by the erection, construction, replacement, removal, maintenance or operation of grantee's cable television system and caused by any act or failure to act on the part of grantee, its agents, officers, servants or employees. Grantee shall hold the City harmless against any damages resulting from the legal action which may be brought against it in connection with the establishment or operation of grantee's cable television system in the City and shall defend at its own expense any action brought against the City by reason of the erection, construction, replacement, removal, maintenance, or operation of grantee's cable television system.

Grantee shall maintain throughout the term of this nonexclusive franchise liability insurance insuring the City and the Grantee and their officers, agents, and employees, whether elected or appointed, against any and all claims, injury, or damages to person or property, both real and personal, caused by the construction, erection, operating or maintenance of any aspect of the CATV System. The amount of such insurance shall not be less than the following:

General Liability Insurance

Bodily injury per person.....	\$250,000.00
Bodily injury per occurrence.....	250,000.00
Property damage per occurrence.....	300,000.00
Property damage, aggregate.....	300,000.00

Automobile Insurance

Bodily injury per person.....	\$250,000.00
Bodily injury per occurrence.....	500,000.00
Property damage per occurrence.....	300,000.00

Worker's Compensation Insurance shall also be provided as required by the laws of the State of Iowa, as amended.

All said insurance coverage shall provide a ten (10) day notice to the City Clerk in the event of material alteration or cancellation of any coverage afforded in said policies prior to the date said material alteration or cancelation shall become effective. Copies of all

policies required hereunder will be furnished to and filed with the City Clerk.

SECTION 25 Payment of Costs. The granting of this cable television franchise is subject to the applicable provisions of Chapter 364 of the Code of Iowa, 1981, or such other enactments of the General Assembly which might hereafter amend or supersede said chapter, and grantee agrees to pay the costs incurred in holding the required franchise election. This election fund (suggested amount \$750.00) will be put in escrow before any election is ordered by the City Council to the County Commissioner of Elections. Notice of this escrow amount shall be sent to the City Clerk including balance and bank where deposited. Election costs shall include funds for holding said election, any special council meetings which shall arise for holding said election, any special council meetings which shall arise out of said election before and after, and all publication costs pertaining to the ordinance and election.

SECTION 26 Transfer of Franchise. Grantee shall not sell, transfer or assign this franchise without prior notification of the City by ordinance.

SECTION 27 Forfeiture and Termination. If grantee shall fail to comply with any of the provisions of this franchise, or default in any of its obligations hereunder, except for causes beyond the reasonable control of grantee, and shall fail within thirty (30) days after written notice from the City to commence and, within a reasonable time, complete the correction of such default or noncompliance, the City pursuant to a public hearing affording due process, shall have the right to repeal this franchise and/or revoke this franchise and all rights or grantee hereunder. In the event grantee shall be adjudicated bankrupt, or placed in receivership, the City may declare the franchise herein granted forfeited and terminated.

SECTION 28 Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance shall be held invalid or unconstitutional, or in conflict with FCC Rules and Regulations, the remaining provisions shall remain in full force and effect unless any such change resulting therefrom would, in the opinion of the City, materially alter the terms of this Ordinance. In the event the City finds that such change materially alters the terms of this Ordinance, the City shall notify the grantee of its finding and shall set the matter for hearing and upon such hearing may vary the terms of this franchise to the extent possible to counter the effect of such holding.

SECTION 29 Acceptance. The grantee shall, within thirty (30) days after the publication of this Ordinance, signify in writing an acceptance of the grant herein, including the conditions, and restrictions herein, stating that the grantee unconditionally accepts the franchise and covenants to faithfully comply with and abide by all the provisions, terms and conditions of this Ordinance, and the franchise shall not be operative or binding until such acceptance is filed with the City Clerk. The Grantee shall pay the costs incurred in holding the election (as per Section 25) to submit this Ordinance to the legal electors for their approval as provided by law.

SECTION 30 Effective Date. This Ordinance shall take effect and be in full force and effect, subject to its approval by a majority of the legal electors of the City of Farmington, Iowa, voting thereon and upon its publication as provided by law, and subject to its acceptance by the Grantee as provided in Section 29 above.

Passed by the Farmington City Council this 14th day of June, 1982, and approved this 18th day of June, 1982.

Elmer Huff, Mayor
Karen Faulkner, City Clerk

1st reading: April 26, 1982
2nd reading: May 10, 1982
3rd reading: June 14, 1982
Election: July 6, 1982
Franchise Date Award: July 19, 1982

July 19, 1982-Section 6, Performance Bond, was repealed.