

ORDINANCE NO. 934

AN ORDINANCE GRANTING TO CARIBOU CABLE CORPORATION, A COLORADO CORPORATION, A NON-EXCLUSIVE PERMIT TO CONSTRUCT, MAINTAIN AND OPERATE A CABLE TELEVISION SYSTEM AND DISTRIBUTION FACILITIES WITHIN PORTIONS OF THE CITY OF GOLDEN, COLORADO

WHEREAS, the Council of the City of Golden, herein called the "City", finds that the construction, operation and maintenance of a cable television or community antenna television system serving portions of the City, and commonly known as a Satellite Master Antenna TV (SMATV) system, is consistent with the public interest and, specifically, with the establishment and healthy maintenance of television broadcast service within the City; and

WHEREAS, a proper application pursuant to Chapter 4.68 of the Golden Revised Ordinances has been filed, and the City has reviewed the legal, character, financial and technical qualifications of the applicant, Caribou Cable Corporation, in full public proceedings providing due process including all aspects of the adoption of this ordinance and after full discussion and due deliberation;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The City hereby grants to Caribou Cable Corporation, a Colorado corporation, herein called "Permittee", and its successors and assigns as may be permitted by Section 25 hereof, a non-exclusive permit to construct, maintain and operate a cable television system and transmission and distribution facilities incidental thereto within the following subdivisions of the City; herein called the Permit Area: Golden Ridge P.U.D. Condominiums, Hideaway Hills Mobile Home Park and Golden Terrace Mobile Home Park P.U.D.. The permit and all rights granted hereunder shall continue for a period of 15 years from the effective date hereof. Renewals of up to 15 years may be granted after a full public proceeding.

Section 2. Permittee is hereby granted the right, permission and authority to construct, operate and maintain all facilities necessary or appropriate for its cable system or the transmission of signals by wire in, under, above, along and upon the streets, avenues, alleys, sidewalks, bridges, viaducts, easements for the public or utilities and other like city owned property now or hereinafter existing within the Permit Area of the City or contiguous thereto.

Section 3. All construction of Permittee shall comply with all existing and future ordinances and regulations of the City including all applicable right-of-way usage regulation. The construction, operation and maintenance of Permittee's transmission

and distribution system shall be carried out in a manner which will not unnecessarily hinder or obstruct the free use of the streets or endanger persons or property. Permittee shall at its own expense modify its transmission and distribution system when necessary to avoid such hindrance, obstruction or danger.

Section 4. The operations and facilities of Permittee shall be conducted and maintained in a manner which will not interfere with the radio and television reception obtained through any method other than Permittee's facilities and will not in any manner interfere with the communications facilities owned and operated by the City of Golden.

Section 5. Permittee shall operate and maintain its cable television system in full compliance with the following standards:

A. The distribution system shall be capable of carrying at least fifty-four (54) channels of television breadth. Set top converters to receive the additional channel capacity shall be provided free of charge to each subscriber, however, a returnable deposit is allowed.

B. The system shall have a two-way capability.

C. As a minimum all cables shall be buried underground where other public utilities are underground.

D. The system shall provide at least 16 channels of television programming as described in Exhibit "A" hereto. Equivalent substitution of these channels from time to time will be allowed.

E. Operation and maintenance of the system shall be in full compliance with Federal Communications Commission (FCC) regulations.

F. The Permittee shall maintain a local office and/or a local representative for servicing of the system.

Section 6. Permittee shall commence construction of its system promptly after: this ordinance has become effective; the approval of the Federal Communications Commission has been obtained; appropriate pole attachment permits have been received and pole alterations have been made; the necessary microwave facilities including earth receive stations have been properly licensed and substantially completed; the necessary highway crossing permits have been obtained; and the system has been properly designed. It shall carry on such work diligently and without any unnecessary delays and it will commence service to the public immediately after completion of any substantial portion of the system, due allowance of time being made for delays, if any, caused by labor troubles,

governmental prohibitions, fire and other casualties, and all other causes beyond applicant's reasonable control, whether like or unlike the foregoing.

Section 7. The Permittee shall extend its energized trunk and feeder cable so that within 6 months from the effective date of this ordinance cable service is available to all residences within the Permit Area of the City.

Section 8. The facilities constructed or operated by Permittee in connection with its system may also be used to provide service to areas outside of the City.

Section 9. Permittee shall indemnify, protect, and hold harmless the City from and against liability for losses and physical damages to property, and bodily injury or death to persons, including payments made under any Workmen's Compensation Law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said facilities within the City, or by any act of Permittee, its agents, or employees. Permittee shall carry insurance, to protect the parties hereto from and against all claims, demands, actions, judgments, costs, expenses, and liabilities, which may arise or result, directly or indirectly, from or by reason of such loss, injury or damage. The amounts of such insurance against liability due to physical damages to property shall be not less than \$300,000.00 as to any one accident and not less than \$500,000.00 aggregate in any single policy year; and against liability due to bodily injury or to death or persons not less than \$300,000.00 as to any person and not less than \$500,000.00 as to any one incident. Permittee shall also carry such insurance as it considers necessary to protect it from all claims under any Workmen's Compensation Laws in effect that may be applicable to Permittee. All insurance required by the Ordinance shall be and remain in full force and effect for the entire life of this Ordinance, or as long as the Permittee is operating under its terms.

Section 10. The Permittee shall indemnify and hold harmless the City at all times during the term of the Ordinance granted hereby and specifically agrees that it will pay all damages and penalties which the City may be legally required to pay as a result of granting the permit herein. Such damages and penalties shall include, but not be limited to, damages arising out of copyright infringements, and other damages arising out of the installation, operation or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the ordinance. In the case suit shall be filed against the City either independently or jointly with the Permittee to recover for any claim or damages, the Permittee, upon notice to it by the City shall defend the City against the action, and, in the event of a final judgment being obtained against the City, either independently or jointly with Permittee solely by reason of the acts of the Permittee, the Permittee will pay said judgment and all costs and hold the City harmless therefrom.

Section 11. Any damage caused to the property of building owners or users or any other person by the Permittee's negligence shall be repaired fully by the Permittee.

Section 12. Under termination of service to any subscriber, the Permittee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his written request.

Section 13. If the Permittee has not acquired an extension or renewal of this permit or other authority to continue its operation, Permittee shall within one year of the expiration hereof remove its facilities from the city streets and cease operations therein.

Section 14. permittee shall, without monthly or initial charge, provide one outlet per complex to every public school; parochial school, college, university, police station, fire station, city hall, library and other appropriate public buildings within the Permit Area of the City.

Section 15. In consideration of the City's cost of regulating CATV and the Permittee's use of the City's rights-of-way, the Permittee shall pay to the City annually on or before each March 31st, a franchise fee of five percent (5%) of gross subscriber revenues derived by permittee within the Permit Area. The aforesaid franchise fee may be renegotiated at the discretion of the City at any time the Permittee institutes a subscriber rate change per Section 16 hereof. For the purposes of this Section the term "gross subscriber revenues" shall mean those gross revenues of the franchisee attributable to the subscribers within the Permit Area of the City, provided, however, that revenue resulting from installation and relocation charges or from sales of tangible personal property shall not be deemed "gross subscriber revenues". Should the gross subscriber revenue basis be declared illegal by a court of competent jurisdiction, an equivalent franchise fee based on a per subscriber charge shall be paid by Permittee.

Section 16. The rates for basic cable service, including connection charges, to subscribers within the Permit Area shall be as provided in Exhibit "B" appended hereto, and shall be in effect unless changed as hereinafter provided.

The Permittee shall maintain on file with the City a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City at least thirty days in advance of the effective date thereof, provided, however, the City may within said thirty day period cause a hearing to be held on said rate change and may veto the same where after said hearing it is found that good cause had not been shown by the Permittee to substantiate the rate change. Nothing herein contained, shall, however, be construed to grant the City any

authority to regulate the rates that the Permittee charges for "Pay TV" services so long as this is prohibited by the FCC. At no time shall the Permittee's rates in Golden be higher than those being charged in any of its other Jefferson County cable systems.

Section 17. To insure completion of the cable system within the time period spelled out in this ordinance, the Permittee shall maintain on file with the City a \$20,000 performance bond or an appropriate corporate guarantee in lieu of bond in form approved by the City Attorney. Said bond shall be posted within thirty (30) days of the passage of this ordinance and may be waived or substantially reduced after the satisfactory completion of the cable system.

Section 18. A local access channel will be made available by Permittee, at no charge, for community-oriented activities. Upon subscriber demand, the permittee shall provide one access studio in Golden, which studio shall be equipped to cable-cast or video-tape programs simultaneously for use in producing programs for access channels, and shall include cameras, slide and film chain, portable cameras and recorders, and other appropriate equipment. Cost of maintenance of the studio and equipment shall be borne by the permittee.

Section 19. The entire system of the Permittee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios, and other services to all citizens, businesses, public agencies, or other entities having a legitimate use for the system; and no one shall be arbitrarily excluded from its use; allocation of use of said facilities shall be made according to the rules or decisions of regulatory agencies affecting the same, and where such rules or decisions are not effective to resolve a dispute between conflicting users or potential users, the matter shall be submitted for resolution by the City Council.

Section 20. Copies of all petitions, applications and communications submitted by the Permittee to the Federal Communications Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to any matters affecting CATV operations authorized pursuant to this franchise, shall also be submitted simultaneously to the City.

Section 21. The Permittee shall diligently apply for all necessary permits and authorizations required in the conduct of its business, and shall diligently pursue the acquisition thereof, including necessary pole attachments contracts, and necessary authorization from the Federal Aviation Agency to construct such receiving antenna towers as may be required, and any necessary authorizations or waivers from the Federal Communications Commission, and when any such permit, authorization, contract or waiver is obtained, a copy thereof shall be promptly filed by the Permittee with the City.

Section 22. Permittee shall also file annually reports of gross subscriber revenues prepared in accordance with regulations of the Federal Communications Commission.

Section 23. Permittee shall also file annually with the City copies of all rules, regulations, terms and conditions which it has adopted for the conduct of its business.

Section 24. In addition to all other rights and powers of the City by virtue of this ordinance, the City may terminate and cancel the ordinance and all rights and privileges of the Permittee thereunder in the event that the Permittee either:

(a) Substantially violates any provision of this ordinance, or any rules, order, or determination of the City Council made pursuant thereto, where such violation shall remain uncured for a period of thirty (30) days subsequent to receipt by Permittee of written notice of said violation, except where such violation is not the fault of the Permittee or is due to excusable neglect; or

(b) Attempts to evade any of the provisions of this ordinance or practices any fraud or deceit upon the City.

Such termination and cancellation shall be made by resolution of the City Council duly adopted after sixty (60) days' notice to the Permittee and shall in no way affect any of the City's rights under this ordinance or any provisions of law, provided, however, that before the ordinance may be terminated and cancelled under this Section, the Permittee shall be provided with an opportunity to be heard at a public hearing before the City Council, upon ten (10) days' written notice to the Permittee of the time and place of the public hearing; provided further that said notice shall affirmatively cite the reasons alleged to constitute cause for revocation; and provided further that notice of said public hearing shall be published in a local newspaper of general circulation at least seven (7) days before the date of the hearing.

Section 25. The Permittee shall not sell or transfer its plant or system to another, other than a person controlling, controlled by or under common control with the Permittee, nor transfer any rights under this ordinance to another without Council approval. No sale or transfer of the Permittee's assets used in the performance of this ordinance shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk an instrument duly executed reciting the fact of such sale, assignment or lease, accepting the terms of the ordinance and agreeing to perform all the conditions thereof. Such Council approval shall not be unreasonably withheld and neither this Section nor other sections of this ordinance shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the Permittee for the purpose of financing.

Section 26. If any provision of this ordinance or the application thereof to any person or circumstance, is held invalid,

such invalidity shall not affect other provisions of this ordinance. The several provisions of this ordinance are severable.

Section 27. The Permittee shall bear the costs of publication of this ordinance.

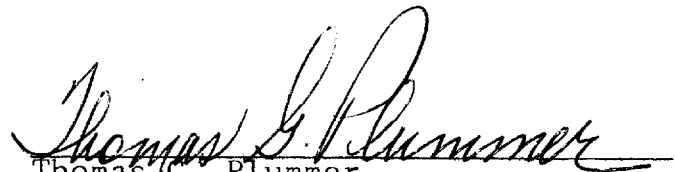
Section 28. STATE OF THE ART. (a) Permittee shall upgrade its facilities, equipment and services so that its system is as advanced as the current state of production technology will allow so that at all times, permittee cable system shall be no less advanced than any other system (excluding pilot of demonstration systems) operated by permittee or directly or indirectly by permittee parent organization in any community of comparable size and density, and with comparable demographic and competitive factors. The City Manager may order a permittee to comply with this section in case of specific violations, which he may investigate upon complaint or on his own motion.

(b) In the event of such order by the City Manager, permittee may appeal to the city council for a waiver of the requirement to go forward with installation of a similar system within the city. Said request for waiver shall be in writing and shall be considered at a public hearing of city council at which due process is afforded both permittee and the citizens of the City of Golden. After said hearing, if the council determines, giving due regard to limitations in technology and economic reasonableness, that any part or all of the cable system should be improved or upgraded, including without limitation the increasing of channel capacity, it may order such upgrading of the cable system by the permittee provided such upgrading does not deprive the permittee of a reasonable and positive rate of return on its investment during the remainder of the permit term.

(c) The city council may amend this chapter or the permit whenever necessary to enable the permittee to take advantage of any developments in the field of transmission of communication signals which will afford it an opportunity to more effectively, efficiently or economically serve its customers; provided, however, that this section shall not be construed to require the city to make any such amendment.

Introduced, read and ordered published this 12th day of May, 1983.

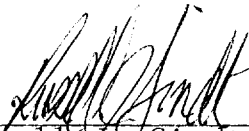
Adopted, approved and ordered published this 9th day of June, 1983.


Thomas G. Plummer
Mayor Pro-tem

ATTEST:

Sharon L. Bennetts
City Clerk

Approved as to form:



Russell J. Sindt
City Attorney

I, Sharon L. Bennetts, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read at a regular meeting of the City Council of said city, held on the 12th day of May 1983, and was published as a proposed ordinance in the Colorado Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held and on the 9th day of June, 1983, the said proposed ordinance was read on second reading and passed by the City Council and ordered published in the aforesaid newspaper as the law directs.

Witness my hand and official seal of the City of Golden, Colorado, this 10th day of June, 1983.

Sharon L. Bennetts, City Clerk
of the City of Golden, Colorado

EXHIBIT "A"

SECTION IV

PROPOSED CHANNEL LINE-UP

In order to provide satellite programming which has local appeal, Caribou Cable will provide a mixture of the favorite satellite programs for your community. Many types of programs, unique to the cable TV viewer, are offered as a balanced and comprehensive package.

Our suggested channel line-up for your community includes:

Channel 2	KWGN	Basic \$9.95/mo.
4	KOA	
6	PBS	
7	KMGH	
8	CNN (Satellite) Cable News Network	
9	KBTV	
10	ESPN (Satellite) 24 hr. sports & entertainment	
11	WTBS (Satellite) Atlanta Superstation 24 hrs.	
12	KRMA	
13	WGN (Satellite) Chicago Superstation 24 hrs.	
15	MTV (Satellite) The Music Channel	
16	CHN (Satellite) Cable Health Network	
17	SPN (Satellite) Satellite Program Network 24 hrs.	
Channel 3	Cinemax (Satellite)	Premium Each channel \$9.95/month
5	Showtime (Satellite)	
14	Playboy Channel (Satellite)	

EXHIBIT "B"

SECTION VI

SERVICE RATES TO SUBSCRIBERS

1. Basic Satellite Package	9.95/month
Home Box Office (HBO)	9.95/month
Cinemax	9.95/month
Additional Sets	5.00/month
Senior Citizens (62)	15% Discount
2. Hook-up Rates	
a. Residential	
(1) Overhead	\$25.00**
(2) Underground	\$35.00**
(3) Senior Citizens (62)	Free
(4) Long Drops (over 200')	Time & Materials
(5) Relocate Outlet	\$15.00
(6) Additional Outlet	\$7.50
(7) Disconnect	No Charge
(8) Reconnect (non-payment)	\$15.00
b. Hotel/Motel	Time & Materials
c. Municipal Buildings	No Charge*
d. Schools	No Charge*
3. Service Calls	No Charge
4. Parental Control Devices	No Charge
5. Converter	25.00 Deposit (Refundable)

*No charge for installation of first outlet. Additional outlets -- time & materials. Basic satellite package only.

**Free installation during time of construction.