ORDINANCE NO.: 941.0

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO TELESCRIPPS CABLE CO. TO OPERATE AND MAINTAIN A CABLE SYSTEM IN GRAYSON COUNTY, KENTUCKY, AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE.

Be it Ordained by Grayson County:

SECTION 1. STATEMENT OF INTENT AND PURPOSE; AUTHORITY

1.01 Statement of Intent and Purpose. County intends, by the adoption of this Franchise, to authorize Grantee's operation of a System within the Cable Service territory. The adoption of this Franchise will contribute significantly to the communication needs and interests of the County and many individuals, associations and institutions.

1.02 Authority. Insofar as the State of Kentucky has delegated to the county the authority to grant a franchise for operation of a System within the Cable Service Territory, the County hereby exercises its authority to grant this non-exclusive Franchise permitting the operation of a cable system within the Cable Service Territory by Grantee.

SECTION 2. SHORT TITLE

This Ordinance shall be known and cited as the "Grayson County Franchise Ordinance." Within this document the Ordinance shall be referred to as this "Franchise."

SECTION 3. DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words and their derivations shall have the meanings given in this Section 3. Words not defined in this Section 3 or elsewhere in this Franchise shall be given their common and ordinary meaning.

3.01 "Cable Service Territory" shall mean the area within the territorial boundaries of Grayson County, Kentucky, and any area henceforth added thereto during the term of this Franchise or any renewal or extension thereof.

3.02 "Channel" shall mean a frequency band which is capable of carrying either one video signal, a number of audio, digital or other non-video signals, or some combination of such signals.

3.03 "County" shall mean Grayson County, Kentucky; and "Fiscal Court" shall mean the governing body of the County.

3.04 "FCC" shall mean the Federal Communications Commission.

3.05 "Grantee" shall mean TeleScripps Cable Co. and its successors, transferees or assignees.

3.06 "Gross Revenues" shall mean subscriber monthly fee, and installation and reconnection fees derived by Grantee from the operation of Grantee's System, excluding taxes, fees, or other assessments collected by Grantee on behalf of and for the benefit of governmental authorities, bad debt expense, subscribed deposits, and programming fees paid by Grantee for non-broadcast program services.

3.07 "Owner" shall mean a Person with a legal or equitable interest in ownership of real property.

3.08 "Person" shall mean any corporation, partnership, proprietorship, individual or organization, governmental organization, or any natural person.

3.09 "Public Property" shall mean any real property or rights therein owned by the County other than a Street.

3.10 "Street" shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way, alley, court, sidewalk, boulevard, parkway, drive or any easement of right-of-way now or hereafter owned or held by the County, or dedicated for use by the County or the general public or for any use compatible with cable system operations.

3.11 "System" shall mean a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities, used for distributing video programming to Subscribers, and/or producing, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electrical signals to Subscribers.

3.12 "Subscriber" shall mean any person or entity who subscribes to a service provided by Grantee by means of the System.

SECTION 4. GRANT OF AUTHORITY

4.01 Grant of Franchise. For the purpose of construction, operating and maintaining a System in the Cable Service Territory, the County hereby grants unto Grantee the non-exclusive right, power and authority to erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across, and along the Streets and Public Property such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appropriate to the operation of the system.

4.02 Franchise Term. The term of this Franchise shall commence upon April 14, 1992, and shall expire twenty (20) years from that date, unless renewed as herein provided.

4.03 Condition of Franchise. The rights afforded to Grantee by Sections 4.01 and 4.02 are granted subject to the conditions hereinafter provided.

SECTION 5. DESIGN AND SERVICE PROVISIONS

5.01 System Design. Grantee's System has been constructed to include a residential network with a capacity for 54 channels.

5.02 Technical Requirements. Grantee shall maintain a System that complies in all material respects with applicable technical standards promulgated by the FCC, as may be in effect from time to time. Procedures for testing the technical capacity of the System shall conform with applicable technical and testing standards for cable systems as promulgated by the FCC.

5.03 Level of Service. Grantee shall provide a basic service consisting of video programming or other programming services. Grantee's current basic program services are set forth in Exhibit A, but Grantee retains the right to add, delete, replace and/or rearrange such programming services during the Franchise term.

SECTION 6. CONSTRUCTION PROVISIONS

6.01 Service Area. Selected residential areas within the Cable Service Territory will be provided with access to service from the System, provided that all such permission as may be required from the Owner of the property is reasonably available and provided, further, that service to multiple dwelling units need be provided only on terms acceptable to Grantee. In new housing districts, areas with occupancy densities of more than thirty-five (35) homes per mile which are contiguous to the system will be provided with access to service to the extent the service is economically feasible and technically possible. In areas within new housing districts with fewer than thirty-five (35) homes per mile, service shall be offered in conformance with Grantee's service extension polices.

6.02 Construction Requirements. Grantee shall make use of existing poles and other facilities available to Grantee. Grantee may erect its own poles and install its own conduit, with approval of the County, which approval shall not be unreasonably withheld or delayed. All poles and conduit installed within the Cable Service Territory shall be made available for attachment or use by Grantee, at just and reasonable rates applied to public utilities under the formula presently established in 47 U. S. C. 224.

In case of new construction or property development where utilities are to be placed underground, the developer or property owner shall give Grantee reasonable notice of not less than thirty (30) days prior to such construction or development, and of the particular date on which open trenching will be available for Grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at Grantee's expense. Grantee shall also provide specifications as needed for trenching. Costs of trenching and easements required to the property shall be borne by the developer or property owner.

6.03 <u>Construction Codes and Permits.</u> Grantee shall obtain any required permits from the County before commencing construction involving the opening or disturbance of any Street or Public Property. The County shall cooperate with Grantee and use its best efforts in granting any permits required. Grantee shall arrange its lines, cables and other appurtenances on any Street or Public Property in such a manner as to cause no unreasonable interference with the usual and customary use of said Street or Public Property by any Person.

6.04 <u>Repair of Street and Public Property.</u> Any and all Street or Public Property which are disturbed or damaged during the construction, operation or maintenance of the System shall be promptly repaired by Grantee at its expense and to a condition substantially equivalent to the condition prior to the disturbance or damage.

6.05 <u>Trimming of Trees.</u> Grantee may cut or trim trees and vegetation located on or about any public property, in order to comply with applicable provisions of the National Electric Safety Code and other clearance requirements.

6.06 <u>Movement of Facilities.</u> In the event it is necessary temporarily to move or remove any of the wires, cables, poles or other facilities that are part of Grantee's System in order lawfully to move a large object, vehicle, building or other structure over any Streets, upon thirty (30) days prior notice by the County to

Grantee, Grantee shall move or remove at the expense of the Person requesting the temporary movement or removal such parts of the System as may be required to facilitate such movements. Grantee shall have authority to require payment in advance.

SECTION 7.

7.01 Maintenance and Complaints.

A. Grantee shall maintain an office responsible for servicing the Cable Service Territory which shall be open during all usual business hours, and shall have a publicly listed, toll-free telephone number, so as to receive subscriber complaints and requests for repairs or adjustments. It is not required that the office be located in the County.

B. Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause.

7.02 Inspection. Upon specific request therefor made in writing at least seventy-two (72) hours in advance, the County shall have the right to inspect the records of Grantee specifically relating to Grantee's compliance with the requirements of the Franchise within the Cable Service Territory; provided that, in order to protect the privacy of Subscribers, inspection of complaint records shall not include records of individual complaints.

7.03 Safety.

A. Grantee shall at all times take reasonable precautions for preventing reasonably foreseeable failures and accidents which are likely to cause damage or injury to the public, to employees of Grantee, to public property, or to any private property.

B. All Grantee's lines, equipment, and facilities within the Cable Service Territory shall at all times be kept and maintained in a safe and suitable condition and in good order and repair.

7.04 Subscriber Practices.

A. If any Subscriber fails to pay a properly due monthly Subscriber fee, or any other properly due fee or charge, Grantee may disconnect the Subscriber's service outlet; provided, however, that such disconnection shall not be effectuated until (i) ten (10) days after the date of said delinquent fee or charge or (ii) delivery to the Subscriber of Grantee's intent to disconnect. After the first disconnection, upon the Subscriber's payment in full of the delinquent fee or charge and the payment of a reconnection charge, Grantee shall reinstate the Subscriber's cable service.

B. Grantee shall not deny service, deny access, or otherwise discriminate against any Subscriber on the basis of race, color, religion, national origin, sex or age.

C. Grantee may conduct extended promotional campaigns in which Subscriber rate and fees are discounted or waived.

D. Grantee may make special contracts for non-profit charitable, educational, governmental, and religious organizations.

E. Grantee may offer bulk rate discounts for multiple unit dwellings, hotels, motels, and similar institutions.

F. Grantee may promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be necessary or appropriate to enable Grantee to operate under this Franchise.

SECTION 8. FRANCHISE FEE

8.01 Franchise Fee. Grantee shall pay to the County an annual franchise fee in the amount of three percent (3%) of its Gross Revenues. Franchise fees may be passed through to Subscribers as a line item on Subscriber invoices, and otherwise.

8.02 Payment Period. Payments due the County under this provision shall be submitted annually for the preceding year.

SECTION 9. INSURANCE, INDEMNITY

9.01 Indemnity. Grantee shall indemnify and hold harmless the County at all times during the term of this Franchise from and against all claims for injury or damages to persons or property, both real and personal, caused by the construction, erection, operation, and maintenance of the System.

9.02 Insurance. Grantee shall maintain throughout the term of the Franchise a policy of liability insurance covering 9
Grantee, which shall name the county as an additional insured, in amounts no less than the following, and with such deductibles as are ordinary and reasonable in keeping with industry standards:

A. Comprehensive General Liability: combined single limit of not less than One Million dollars ($1,000,000).

B. Comprehensive Automobile Liability: combined single limit of not less than one million dollars ($1,000,000).

SECTION 10. REMEDIES

10.01 Notice of Violation. The County shall provide Grantee with a detailed written notice of any violation of this Franchise upon which it proposes to take action, and Grantee shall have ninety (90) days within which to demonstrate that a violation does not exist or to cure an alleged violation, or, if the violation cannot be corrected in 90 days, to submit a plan to the County to correct the violation.

10.02 Default. If Grantee fails to disprove or correct the violation within ninety (90) days or, in the case of a violation which cannot be corrected in 90 days and Grantee has timely submitted a corrective plan, if Grantee fails to implement the plan, then County may declare the Grantee in default, which declaration must be in writing. In the event that the county declares Grantee in default, the County shall have the right to institute legal proceedings to collect damages from the date of declaration of default, or to exercise any other rights and remedies afforded to the County in law or equity; provided, however, that the County may institute revocation proceedings against Grantee pursuant to Section 10.06 and Section 10.07 only after declaration of default on the grounds set forth in Section 10.06.

10.03 Hearing Available to Grantee. Within fifteen (15) days after receipt of a written declaration of default from the County, Grantee may request, in writing, a hearing before the County or its agent, in a full public proceedings affording due process. Such hearing shall be held within thirty (30) days of the receipt of the request and a decision rendered within ten (10) days after the conclusion of the hearing. Any decision shall be in writing and shall be based upon written findings of fact.

10.04 <u>Appeal of Default.</u> Grantee may appeal a declaration of default to arbitration pursuant to Section 10.05.

10.05 <u>Procedures applicable to Arbitration.</u> Any arbitration held pursuant to this Franchise shall be conducted as follows:

A. Grantee and the County (or such substitute party to the arbitration) each shall, within fifteen (15) days of the decision to proceed to arbitration, appoint one (1) arbitrator experienced in the cable television business, which arbitrators shall mutually select a third arbitrator of similar qualifications.

B. Within thirty (30) days after appointment of all arbitrators and upon fifteen (15) days written notice to the parties to the arbitration shall commence a hearing on the dispute.

C. The hearing shall be recorded and may be transcribed at the request of either the County or Grantee.

D. At the close of the hearings and within thirty (30) days thereafter, the arbitrators shall prepare written findings and serve such decision upon the County and Grantee.

E. The decision of a majority of the arbitrators shall be binding upon the parties to the arbitration.

F. Either party may seek judicial relief from a decision of the arbitrators under the following circumstances:

(1) Either party fails to select an arbitrator;

(2) The arbitrators fail to select a third arbitrator;

(3) One (1) or more arbitrator is unqualified;

(4) Designated time limits have been exceeded;

(5) The arbitrators have not proceeded expeditiously; or

(6) Based upon the record, the arbitrators' decision is arbitrary, capricious, unsupported by substantial evidence, an abuse of discretion, or based upon a mistake of law.

G. All costs of arbitration shall be borne equally by the parties to the arbitration unless otherwise ordered by a majority of the arbitrators.

10.06 <u>Revocation.</u> The County may initiate revocation procedures only pursuant to Section 10.07 and may revoke the Franchise only for defaults by Grantee arising from the following circumstances:

A. Material misrepresentation by Grantee to the County in information to be provided under the Franchise.

B. Grantee becomes insolvent or is adjudged a bankrupt.

C. Grantee willfully violates any material final order or ruling of a court having jurisdiction over the terms of this Franchise or of a panel of arbitrators under Section 10.05.

D. Grantee willfully fails to acquire the insurance required by the Franchise.

10.07 Procedures Governing Revocation.

A. The County shall give written notice to the Grantee of its intent to revoke the Franchise and the lawful grounds therefor. Grantee shall have ninety (90) days from such notice to object, in writing, and to state its reasons for such objection. In the event the County has not received a response satisfactory to it, it may then proceed to place its request for revocation of the Franchise at a meeting of the Fiscal Court. The County shall cause to be served upon Grantee, at least ten (10) days prior to the time and place of such a meeting, a written notice of this intent to request such revocation, and the time and place of the meeting, notice of which shall be published by the County at least once, ten (10) days before such meeting in two (2) newspapers of general circulation within the County.

B. At the designated meeting, the Fiscal Court shall give Grantee an opportunity to state its position on the matter, after which it shall determine whether the Franchise shall be revoked, or whether any other lawful action shall be taken which it deems appropriate to enforce the County's rights under this Franchise in lieu of revocation of the Franchise.

C. Grantee may appeal such determination to the Circuit Court of Grayson County, which shall have the power to review the decision of the Council de novo and to modify or reverse such decision, in its sole discretion. Such appeal to the Circuit Court must be taken within thirty (30) days of the issuance of the determination of the Council. Appeals from the decision of the

Circuit Court shall be in accordance with Kentucky law and rules of procedure.

10.08 Unauthorized Operations. It shall be unlawful for any Person other than Grantee to establish, operate or to carry on the business of distributing to any Person in the Cable Service Territory any television signals or radio signals by means of a System unless a franchise therefor has first been obtained from the County, and unless such franchise is in full force and effect.

10.09 Unauthorized Use.

A. No Person shall intercept, descramble, decode, or receive or assist in intercepting, descrambling, decoding or receiving any signals from Grantee's System unless specifically authorized to do so by Grantee. "Assist in intercepting, descrambling, decoding, or receiving" includes the manufacture or distribution of equipment intended by the manufacturer or distributor (as the case may be) for unauthorized reception of signals over a System.

B. No Person shall tamper with, remove or injure any cable, wires, or other devices used within Grantee's System unless specifically authorized to do so by Grantee.

C. No Person shall intentionally deprive Grantee of a lawful charge for cable service.

D. No Person shall resell Grantee's cable service without Grantee's express, written consent.

E. Grantee may bring an action to restrain or enjoin a violation or threatened violation of this Section 10.09 and for damages resulting from the violation. Grantee shall be entitled to issuance of such an injunction upon showing that a violation has occurred or will occur, without the need for demonstrating irreparable injury, inadequacy of legal remedies or probability of recovery.

F. A knowing violation of this Section 10.09 shall be punishable by a fine not to exceed five hundred dollars ($500) for each day of infraction.

G. If an unauthorized device designated to intercept, descramble, or decode a cable television signal is present on the premises or property occupied and used by a Person, it is presumed that the Person knowingly used the device to intercept, descramble or decode cable signals. If an unauthorized cable connection is present on the premises of the property occupied and used by a Person, it is presumed that the Person knowingly used the connection to intercept cable signals. If equipment of Grantee which has been tampered with, changed, or modified is present on the premises or property occupied by a Person, it is presumed that the Person knowingly used the equipment to intercept, descramble, or decode cable signals.

H. Grantee is expressly reserved its applicable rights and remedies available in law or in equity.

10.10 Conditions of Access. In addition to the provisions of Section 4.01, no Person who owns or controls any residential multiple dwelling unit, trailer park, condominium or apartment complex, or subdivision (a "Project Owner") shall interfere with right of any tenant or lawful resident thereof to receive service from Grantee, nor demand or accept payment of any fee, charge, or thing of value from Grantee or any tenant or resident in exchange for giving such tenant or resident access to service from Grantee; provided, however, that a Project Owner shall be entitled to receive reasonable reimbursement for direct adverse economic impact of such access, if any based on evidence of diminution of investment-backed expectations, economic impairment of the premises' usefulness, the amount of space occupied by the facilities of the System, the prior use, if any, of the space, the continued physical availability of space on the premises for installation of alternative modes of television program reception or delivery, the differences in fair market value of the premises resulting from the installation of System facilities and other reasonable, nonspeculative factors excluding the hold-up vale resulting from a Project Owner's monopoly control of such access. The aforesaid economic impact shall be rebuttably presumed to be a one-time charge of One Dollar ($1) per dwelling unit. Any controversy or dispute over the reasonableness of reimbursement shall be submitted for resolution to arbitration between Grantee and the Project Owner consistent with the procedures of Section 10.05.

SECTION 11. VARIANCE AND RENEWAL

11.01 Variance. Applications for a variance to this Franchise, to accommodate a significant change in circumstances, to prevent unreasonable hardship to Grantee, or to permit technical variations which will satisfy the purpose of this Franchise, may be made by Grantee to the County. The County shall review the application after the receipt thereof within the latter to occur of fourteen (14) calendar days or the next meeting of the Fiscal Court. The Fiscal Court shall issue a report of the findings of the County and shall act on a request within thirty (30) days. If Grantee cannot reach agreement with the County on the Variance with such time, it may resort to the procedure of Section 10.05 for resolution of the dispute.

11.02 <u>Franchise Renewal.</u>

A. This Franchise may be renewed for an additional fifteen (15) years if the following conditions are met:

(1) Grantee is in substantial compliance with the material terms of the Franchise;

(2) The quality of the Grantee's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix, quality, or level of cable services or other services provided over the System has been reasonable in light of community needs;

(3) Grantee has the financial, legal, and technical ability to provide the services, facilities, and equipment set forth in Grantee's renewal proposal; and

(4) Grantee's renewal proposal is reasonable to meet the future cable-related community needs and

interests, taking into account the cost of meeting such needs and interests. The County may not declare Grantee's proposal unreasonable and deny renewal, nor may community needs be established, on the basis of facilities, equipment, or services which another party has indicated it is willing to provide.

B. In any renewal proceeding, Grantee shall be afforded adequate notice and Grantee and the County, or its designee, shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, and to question witnesses. A transcript shall be made of any such proceeding.

C. A proceeding under this Section 11.02 shall be completed within Twelve (12) months of its commencement, within which time the County shall issue a written decision granting or denying the proposal for renewal based upon the record of such proceeding, and transmit a copy of such decision to the Grantee. Such decision shall state the reasons therefor.

D. A denial of a proposal for renewal shall be based on one or more materially adverse findings made with respect to the factors described in subsection A, pursuant to the record of the proceeding under subsection B. The County may not base a denial of renewal on a failure to substantially comply with the material terms of the Franchise under subsection A or on events considered under subsection A unless the County has provided Grantee notice and opportunity to cure, or in any case in which County has waived it right to object, or has effectively acquiesced.

E. Grantee is expressly reserved its rights of appeal under federal and state law. In addition to such rights, this Franchise shall remain in effect at all time during which a renewal proceeding or appeal remains pending.

F. Notwithstanding the provisions of subsections A through E of this Section 11.02, Grantee may submit a proposal for the renewal of this Franchise, and the County may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings pursuant to this Section 11.02 have commenced). The denial of a renewal pursuant to this subsection shall not affect action on a renewal proposal that is submitted in accordance with subsection A through E.

G. The County may not, upon the expiration of this Franchise, or otherwise, acquire an ownership interest in the System or any portion thereof, or require a sale of the System to any other Person, unless County or such Person acquires the ownership interest at not less than fair market value for the System (or portion thereof) as a going concern.

SECTION 12. MISCELLANEOUS

12.01 Severability. If any law, ordinance, regulation or court decision shall render any provision of this Franchise invalid, the remaining provisions of the Franchise shall remain in full force and effect; provided, that if the scope of any of the provisions contained in this Franchise is too broad to prevent enforcement thereof as written, then such provision shall be enforced to the maximum extent permitted by law, and the County and Grantee hereby expressly consent and agree that such scope may be judicially modified accordingly in any proceeding before a court of competent jurisdiction.

12.02 Force Majeure. Any and all obligations of Grantee hereunder shall be waived or delayed to the extent that Grantee is unable to carry out the same due to labor troubles, fires, ice, floods, explosion or other casualties or accidents, or to inability to obtain necessary supplies or materials or satisfactory substitutes by principal manufacturer of quality equipment used in installation and/or construction of the System, or to Acts of God or national defense of this country, or to the delay by the utility companies of clearance of space for the Grantee's cable, or to any other cause, happening, event or occurrence (whether or not of the same general character as those specifically enumerated) beyond Grantee's reasonable control.

12.03 Nonexclusive. This Franchise is nonexclusive. The County reserves the right to award additional System franchises in the Cable Service Territory; provided, however, that the County shall not authorize or permit a System to operate within the County on terms or conditions more favorable or less burdensome to such operator than those applied to Grantee pursuant to this Franchise; and provided, that if the County authorizes or permits another cable television system to operate within the Cable Service Territory, it shall do so on the express condition that the operator of such System indemnify and hold Grantee harmless from and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, and all other costs including those of Grantee, the County, and utilities companies, incident to inspections, make ready, and construction of an additional System in the Cable Service Territory; and provided further that Grantee shall be designated a third party beneficiary of such conditions as are incorporated into the authorization(s) granted to the operator of any other System in the Cable Service Territory.

12.04 Entire Agreement. This Franchise and all attachments hereto represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified or changed only by an agreement in writing which makes reference to this Franchise or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modifications or change is sought.

12.05 Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

12.06 Laws Governing. This Franchise shall be governed by and construed in accordance with the laws of the State of Kentucky, and applicable federal law.

12.07 Effective Date. This Franchise shall be effective when adopted for the term set forth in Section 4.02.

Passed and adopted this 14th day of April, 1992.

Glenn Tilford

GLENN TILFORD, JUDGE/EXECUTIVE
GRAYSON COUNTY, KENTUCKY

ATTEST:

MARGARET WOOSELY, CLERK
GRAYSON COUNTY, KENTUCKY

by: Faye Stewart, D.C.