

ORDINANCE NO. 27

AN ORDINANCE of The Town of Mardela Springs, a municipal corporation of the State of Maryland, granting to Simmons Communications Company, L. P., its successors, assigns and designees, a non-exclusive franchise to erect, maintain and operate transmission and distribution facilities and additions thereto in, under, over, along, across and upon the streets, lanes, avenues, alleys, bridges, highways and other public places in The Town of Mardela Springs, a municipal corporation of the State of Maryland, and subsequent additions and annexations thereto, for the purpose of transmission by cable and distribution of television impulses and television energy for sale within said municipal corporation and other purposes.

WHEREAS, The Town of Mardela Springs, a municipal corporation of the State of Maryland, is empowered by its Charter to grant franchises to public utility companies; and

WHEREAS, Simmons Communications Company, L. P., is desirous of now furnishing cable television service within Wicomico County, Maryland, and, more specifically, within The Town of Mardela Springs; and

WHEREAS, the Commissioners of Mardela Springs are desirous of having such service available within the Town limits of Mardela Springs.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Commissioners of Mardela Springs, a municipal corporation of the State of Maryland, that:

Section 1. (a) In consideration of the faithful performance and observance of the conditions, restrictions and reservations hereinafter specified, a non-exclusive franchise is hereby granted to Simmons Communications Company, L. P., it

successors, assigns and designees, hereinafter called the "Grantee", to erect, maintain and operate for a period of twenty (20) years, beginning on the date of final passage of this Ordinance, an audio and television transmission and distribution system and its necessary facilities and additions thereto in, under, over, along, across and upon the streets, lanes, avenues, sidewalks, alleys, bridges and other public places in Mardela Springs, and subsequent additions and annexations thereto, for the purpose of transmission and distribution of audio and television impulses and energy in accordance with the laws and regulations of the United States of America, of the State of Maryland, and the Ordinances and regulations of Mardela Springs.

(b) In addition to any conditions which may be specified elsewhere in this Ordinance, the granting of this franchise is conditioned upon the Grantee, within a period of two and one-half (2½) years from the date that necessary pole agreements are signed with the holders of public licenses, and Grantee being advised by the holders of said public licenses that the poles are ready for occupancy by the company, having completed construction of its transmission and distribution system as defined in this Ordinance.

Section 2. Whenever used in this Ordinance, the words "audio" and "television" shall mean any system, (including any cable system), for the transmission of audio signals and/or visual images by means of electrical impulses.

Section 3. The poles and posts used for the Company's television distribution system shall be those erected by it or its successors or assigns and/or erected or maintained by such other persons, firms or corporations maintaining poles or posts within the franchise area, when and where practicable, under mutually satisfactory rental agreements with said persons, firms or corporations.

Section 4. The Grantee's transmission and distribution system, poles, wire and appurtenances shall be located, erected and maintained so that none of it shall endanger or interfere with the lives of persons, or interfere with any improvements Mardela Springs may deem proper to make, or hinder unnecessarily or obstruct the free use of the streets, alleys, bridges or other public property.

Construction and maintenance of the transmission-distribution system, including house connections, shall be in accordance with the provisions of the National Electrical Safety Code, prepared by the National Bureau of Standards, and such applicable Ordinances and regulations of Mardela Springs affecting electrical installations which may be presently in effect or may be enacted by the Commissioners of Mardela Springs.

All installation shall be done in accordance with good engineering practices and shall be of sufficient height to comply with all of Mardela Springs' regulations, ordinances and State laws so as not to interfere with the right of the public or individual property owners and once constructed shall not

interfere with the travel and use of public places by the public unless it is necessary in the installation of cable plant.

Section 5. In the maintenance and operation of its cable television transmission and distribution system in the streets, alleys and other public places; and in the course of any new construction or addition to its facilities, the Grantee shall proceed so as to cause the least possible inconvenience to the general public places, any opening or obstruction in the streets or other public places, made by the Grantee in the course of its operations, shall be guarded and protected at all times by the placement of adequate barriers, fences or boardings, the bounds of which during periods of dusk and darkness shall be clearly designated by warning lights of approved types.

Whenever the Grantee shall take up or disturb any pavement, sidewalk or other improvement of any street, avenue, alley or other public place, the same shall be replaced and the surface restored in as nearly as possible the same condition as before entry within forty-eight (48) hours after completion of the Grantee's work. Upon failure of the Grantee to make such restoration within such time, or to begin such restoration within such time, Mardela Springs may, after giving written notices, cause the proper restoration to be made, including the removal of excess dirt, and the reasonable expense of same shall be paid by the Grantee upon demand by Mardela Springs.

The Grantee shall at all times comply with any and all rules

and regulations which Mardela Springs has made or may make applying to the public generally with reference to the excavations in streets and other public places, not inconsistent with their use for the purposes contemplated by this franchise.

Section 6. If the Grantee shall maintain its attachments on poles that Mardela Springs now uses, or has been authorized by other franchises now in force or hereafter enacted to use, it will not unreasonably interfere with the use of such poles by Mardela Springs.

Section 7. The Grantee shall have the right to prescribe reasonable service rules and regulations for the conduct of its business not inconsistent with the provisions of this Ordinance, and a copy of such service rules and regulations shall be kept on file at all times with the Town Secretary. A toll-free telephone line shall be maintained at all times for prescriber use in placing calls for billing, services, installation, or other appropriate uses.

Section 8. The Grantee's signal quality and distribution system shall conform to the technical requirements of the Federal Communications Commission, particularly with respect to spurious radiation.

Section 9. The Grantee shall indemnify and hold Mardela Springs harmless at all times during the term of this grant from and against any losses and physical damage to property and bodily injuries or death to persons, including payments made under Workmen's Compensations Laws, which are caused by the

construction, maintenance, operation or removal of the Company's facilities within the Town of Mardela Springs or by any act of the Company, its agents or employees, for which the Company is the sole direct proximate cause.

The Grantee shall procure, keep and enforce insurance in such form as shall be reasonably approved by the Town Attorney of Mardela Springs to protect Mardela Springs and the Grantee from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of any such loss, injury or damage. The amounts of such insurance against liability due to physical damage to property shall not be less than One Hundred Fifty Thousand Dollars (\$150,000.00) as to any one accident and not less than Three Hundred Thousand Dollars (\$300,000.00) aggregate in any single policy year. The amounts of such insurance against liability for bodily injury or death shall not be less than One Hundred Thousand Dollars (\$100,000.00) as to any one person and not less than Three Hundred Thousand Dollars (\$300,000.00) as to any one accident.

The Grantee, upon receipt of due notice in writing from Mardela Springs, shall defend at its own expense any causes or proceedings against Mardela Springs in which it is claimed that the injury or damage arose from the Grantee's activities in the operation of its cable television system.

Section 10. If the Grantee shall fail to comply with any of the material provisions of this franchise, or default in any of its material obligations, except for causes beyond the reasonable control of the Grantee, and shall fail, within one hundred twenty (120) days after written notice from Mardela Springs to correct, such default or noncompliance the Commissioners shall have the right, after a hearing affording due process, to revoke this franchise and all rights of the Grantee hereunder.

Section 11. Should any section, clause or provision of this franchise be declared invalid by a Court of record, same shall not affect the validity of the franchise as a whole or any part thereof, other than the part so declared invalid.

Section 12. This franchise shall be non-exclusive between Mardela Springs, a municipal corporation of the State of Maryland, and the Grantee, and shall take effect and be in force for twenty (20) years from the date of final passage hereof, and following acceptance of its terms in writing by the Grantee or its assigns. The franchise hereby granted shall be assignable by Grantee to any reasonably qualified third party, upon thirty (30) days prior written notice of the Commissioners of Mardela Springs, at the expiration of the original term hereof, Grantee shall have the right and option to renew this franchise for an additional period of ten (10) years on the same terms and conditions herein set forth.

Section 13. The Grantee shall pay to Mardela Springs during the life of said franchise and at the times hereinafter specified, a sum equal to five percent (5%) of the gross annual receipts of Grantee arising from the sale of cable service to customers within the corporate limits of Mardela Springs, a municipal corporation; provided, however, that only regular periodic service charges, not including any state or federal taxes levied upon such service and any regulatory fee imposed by the Federal Communications Commission or others, will be considered in computing said sum and that original installation, repair, replacements or modification of installations shall not be considered in computing said sum.

The Grantee shall file with the Secretary of Mardela Springs, within ninety (90) days after expiration of any calendar year during which this franchise is in force, a verified statement showing in appropriate detail the total gross receipts as defined above of Grantee during the preceding calendar year derived from the sale of cable service to customers within the corporate limits of Mardela Springs. It shall be the duty of Grantee to pay to Mardela Springs, within thirty (30) days after the time for filing such statements, the specified sum for the calendar year covered by such statement. Any neglect, refusal or omission by Grantee to file such statement or to pay such sum at the times and in such amounts hereinabove provided shall be grounds for the declaration of a forfeiture of this franchise, and of all rights hereunder.

The above Ordinance was introduced and read to the Commissioners of the Town of Mardela Springs, a municipal corporation of the State of Maryland, at a meeting held on this 15th day of August, 1988, and finally passed at a meeting held on the 17th day of October, 1988, having been published as required by law in the meantime.

WITNESS:

Shirley M. Bailey
Secretary
The Commissioners of the
Town of Mardela Springs

William E. Cole
President
The Commissioners of the
Town of Mardela Springs