

ORDINANCE NO. 234

AN ORDINANCE GRANTING TO TEL-VUE SYSTEMS, INC., A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT OPERATE AND MAINTAIN A COAXIAL CABLE SUBSCRIBER SYSTEM FOR TELEVISION SIGNAL DISTRIBUTION THROUGHOUT THE TOWN OF GRANITE FALLS, WASHINGTON, AND IMPOSING PROVISIONS AND CONDITIONS THEREON.

BE IT ORDAINED by the Town Council of the Town of Granite Falls as follows:

Section 1: (a) The Town of Granite Falls in Snohomish County Washington, herein called the Grantor, hereby grants to Tel-Vue Systems, Inc., a Washington Corporation, herein called the Grantee, its successors and assigns for the full term of twenty years from the date of acceptance hereof by said Grantee the right, privilege and authority or franchise to construct or otherwise acquire and to own, maintain, equip and operate plants, works, aerials and towers, and all necessary or desirable appurtenances thereto, for the purchase, reception, transmission and distribution of television signals and closed television circuit broadcasts for nonradiating programs, including but not limited to the right to construct, lay extend, maintain, renew, remove, replace, repair, use and operate a coaxial cable subscription system for television signal distribution, either upon poles or under the ground and all appurtenances and appendages thereto in, under, on or across the present and future public streets, avenues, alleys, highways, bridges, easements and other public places within the present or any future corporate limits of the Grantor or its successors, for the purpose of distributing, supplying and selling television signals to the Grantor or its successors, and to persons or corporations inhabitant thereof, as well as to persons or corporations beyond the present or future corporate limits thereof.

(b) It is contemplated in granting this franchise that all construction along streets and alleyways will be made by attachment to the then existing poles and crossarms of Public Utility District No. 1 of Snohomish County, or General Telephone Co., or other authorized power and light or telephone company which may then be serving the area, and that no separate construction or installation of poles and crossarms shall be made upon the public streets and alleys or other public property of the Town unless a special permit shall be granted therefore after application

to any hearing by the Town Council of the Town of Granite Falls. No such permit shall be granted by the Town Council unless it shall first determine after a hearing that the erection and maintenance of any such new poles or crossarms is necessary, and is in the public interest, and will not create a nuisance or hazard to the Town of Granite Falls, or to the public.

Section 2: (a) Grantee facilities shall be so located or relocated and so erected as to interfere as little as possible with traffic over said streets, avenues, alleys, highways, bridges, easements, and other public places, and that reasonable egress from and ingress to abutting property, provided, however, that grantee shall not break up or block any street, alley, or public thoroughfare except in emergencies without permission from the Town Supervisor. When any portion of a street is excavated by grantee in the location, relocation, replacement or repair of any of its facilities, including underground conduits or poles to carry said coaxial cables, the portion of the street so excavated shall, within a reasonable time, and as early as practicable after said excavation, be replaced by the grantee at its expense and in as good condition as it was at the time of such excavation, all being in accordance with the applicable rules and regulations of the Engineering Department of the Town of Granite Falls.

Section 2: (b) Whenever grantee shall contemplate laying underground said coaxial cable or erecting poles for the carrying thereof above the ground in any street, avenue, alley, highway, or other public place within the present or future corporate limits of the grantor, grantee shall file with the Town supervisor a map showing the proposed location thereof in such street, avenue, alley, highway or other public place by surveyed measurements, and shall further file, within a reasonable time thereafter, a map showing by surveyed measurements the present location of now existing coaxial cable. If the location does not interfere with existing or contemplated sewers, water pipes, or other public utilities, said supervisor shall approve said map, and the same shall thereafter be considered the official location of said coaxial cable or conduits, but if said proposed location would interfere with said existing or contemplated sewers, water pipes, or other public utilities, said supervisor shall, within fifteen (15) days after the filing of said map, furnish the grantee with data by which a map of location of such coaxial cable may be filed.

(c) Whenever the prosecution of any public work by the grantor shall involve the establishment or change of any grade, (established or otherwise), sewer, waterpipe, or other municipal public facility or utility and the same shall cross and/or require change of any conduit, cable or apparatus located in any street, avenue, alley, highway, or other public

place under and by virtue of any ordinance, the same shall be changed by the grantee at its own expense after reasonable notice in writing (of not less than fifteen (15) days) to make the changes, from the Town supervisor. Provided that in an emergency the Town may make immediate demand for the removal or relocation of any conduit, cable or apparatus as above mentioned, and if same are not removed in the light of the time required by such emergency, the Town shall have authority to remove or relocate the same.

Section 3: At all times during the term of this franchise grantee shall promptly and without discrimination furnish to grantor and its successors and persons and corporations inhabitant thereof who request the same and agree to abide by grantee's reasonable rules and regulations, television reception commensurate with that which is available under any obtainable coaxial cable system, and shall acquire, construct, maintain, equip and operate all necessary facilities for the reception, transmission and distribution and sale of television signals for the benefit and convenience of grantor and its inhabitants, and shall make prompt extensions to existing facilities as may be required by one or more customers or prospective customers, provided that if the revenues to be derived from such extensions shall not afford a fair and reasonable return on the costs of providing and rendering the required service, then grantee is permitted to and is hereby authorized to exact from such customer or customers such cash advances, minimum guarantees, service guarantees, or other arrangements as will enable grantee to earn a fair and reasonable return on the cost of providing and rendering the required service.

Section 4: Grantor shall, in no way, be liable or responsible for any accident or damage that may occur in the construction, operations or maintenance by grantee of its facilities hereunder, and grantee shall indemnify and defend grantor and hold it harmless from and against any and all liability, loss, cost, damage or expense which may accrue to grantor by reason of the negligence, default or misconduct of grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5: This franchise is granted upon the express condition that the grantee, within sixty (60) days after the adoption of this ordinance, shall file with the Clerk or the grantor a written acceptance of the same, and when so accepted by the grantee, shall constitute a contract between the grantor and the grantee for all the uses, services, and purposes herein set forth, and the term of this franchise shall, upon said acceptance being so filed, commence to run.

Section 6: In any area which has been or shall hereafter be by ordinance designated as a district in which telephone, telegraph and electric wires and cables shall be laid underground, grantee's coaxial cable must in said areas or districts likewise be run underground, and grantee shall likewise place underground its existing cables in those districts whenever designated by ordinance as a district requiring other utilities to place their wires and cables underground. And provided further that if at any time hereafter, the said telephone, telegraph, or electric wires are voluntarily placed underground without the necessity of ordinance, then grantee agrees likewise to remove its overhead lines, plant and equipment from poles and to place all of such lines, cables, wires or associated equipment underground in those same areas.

Section 7: Grantee shall pay the Town two percent (2%) of the gross revenue received per annum by grantee from its customers within the corporate limits of the Town of Granite Falls as now or hereafter constituted, for service rendered customers through the coaxial cable, said payments to be made on or before the first day of January of each year. In computing the gross received from the operation of said grantee, charges made and paid for the installation or connection work to customers shall not be considered gross income. This provision shall not be so construed as to exempt the grantee from any lawful taxation upon its property or charges or impositions thereon, not levied on account of the use contemplated by this franchise and the franchise granted herein. Grantor, or its authorized agents, shall have the right to inspect the books and records of the grantee at reasonable times for the purpose of ascertaining accurately what the actual gross receipts of grantee may be per annum. Franchise fee to take effect twelve (12) months after service is actually commenced to subscribers.

Section 8: The rights and privileges hereby granted shall cease and terminate and this ordinance shall be of no further force and effect unless grantee starts actual construction in accordance with said plan within twelve (12) months from the effective date of this ordinance. And provided that if at any time more than one year after the effective date hereof, the Town Council shall find that there is some area in the Town not served by the grantee, but which Town Council finds is desirous and in need of service by the grantee, then the Town Council shall give notice of its intent to require service in such additional area, and after such hearing and finding by the Town Council that service therein would be feasible, that the grantee does not extend or furnish such service to such new area within six months thereafter, then this franchise shall terminate as to any areas not then served by grantee.

Section 9: Grantee shall forfeit all rights and privileges conferred by this ordinance, and this ordinance shall be null and void and of no force and effect unless grantee shall before construction file with the Town Clerk proper evidence that it has in full force and effect public liability insurance with coverage of not less than \$100,000.00 per person and \$300,000.00 per accident, and property damage liability of not less than \$50,000.00. Grantee shall continue to keep such insurance in full force and effect during the entire life of this franchise and to furnish proper evidence thereof, and this franchise shall terminate if at any time in the future it does not fulfill the requirements of this section.

Section 10: Grantee by its acceptance hereof agrees to observe, perform and keep all the agreements, undertakings and conditions hereof to be observed, performed and kept by grantee. All of the terms, provisions and conditions hereof shall inure to and be binding upon the respective successors and assigns of both the grantor and grantee.

Section 11: The privileges hereby granted shall not be assigned without the prior consent in writing of a majority of the Council of the Town of Granite Falls, Washington.

Section 12: The Town Council or grantor shall have the right under this franchise to require reasonable examinations of the coaxial cable subscription system for television signal distributions referred to herein, subject to the right of the grantee to make a reasonable charge therefor as provided in Section 7 hereof, and for its services after the installation of additional facilities. In addition and subject to the foregoing, such Town Council shall also have the right to make such rules and regulations as may be required to secure adequate and proper service under this franchise to itself and its inhabitants and to provide sufficient accommodations for the public generally.

Section 13: Should the grantee believe that any order of said Town Council promulgated pursuant to the provisions of Section 1 through 12 hereinbefore set forth is unjust and unreasonable, it shall be allowed to test the reasonableness of the same by proper action in any court having jurisdiction provided said action is commenced within thirty (30) days after service of such order upon the grantee and in such action such order may be entered in the premises as shall be warranted by the facts developed upon the trial and the law applicable hereto.

Section 14: In the event the grantee erects any pole or poles for the carrying of coaxial cables, wires and appurtenances necessary thereto as granted in this franchise in any street, avenue,

alley, highway or other public place within the present or future corporate limits of the grantor, the grantee shall provide space on said pole or poles for one crossarm position for the Town of Granite Falls communications and signaling system, and it is further agreed, when the grantee occupies one end only of the grantee's cable support crossarms, the Town of Granite Falls shall have the right to use the other end of all cable support crossarms for the Town of Granite Falls communication and signaling system.

Section 15: This ordinance shall be in full force and effect after its passage by the Town Council, approval by the Mayor, and publication in the EVERETT DAILY HERALD, the official newspaper of the Town of Granite Falls, and the Town Clerk is hereby authorized and directed to cause said ordinance to be published.

Approved: JACK WEBB, Mayor

ATTEST:

ILENE LARSON,
Town Clerk

Introduced: December 11, 1968

Passed: January 8, 1969

Published: January 23, 1969

CERTIFICATION

I, ILENE LARSON, hereby certify the forgoing to be a true and correct copy of Ordinance No. 234.

ILENE LARSON, Town Clerk