

ORDINANCE NO. 209

AN ORDINANCE GRANTING A NON-EXCLUSIVE  
FRANCHISE TO TRANSWESTERN VIDEO, INC.  
IN THE CITY OF BARLING, ARKANSAS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE  
CITY OF BARLING, ARKANSAS, THAT:

SECTION 1: There is hereby granted to Transwestern Video, Inc. (hereinafter "TVI") for a period of 20 years from the effective date of this Ordinance, the non-exclusive right, privilege and authority to construct, maintain and operate a plant and system for the distribution and transmission of television signals and operation of a community antenna system and lines of television co-axial cables, including poles, wires, and fixtures ("the cable system") where necessary upon, along, through, over and under the streets, easements and other public places and thoroughfares of the City of Barling, Arkansas subject to the conditions contained in this Ordinance.

SECTION 2: The franchise granted to TVI shall be construed to authorize the construction of the cable system over public rights-of-way, and through easements, within the area to be served by the cable system and which have been dedicated for compatible uses, except that in using such easements TVI shall insure:

- (A) That the safety, functioning and the appearance of the property and the convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for the cable system;
- (B) That the cost of the installation, construction, operation, or removal of such facilities comprising the cable system be borne by TVI;
- (C) That the owner of the property be justly compensated by TVI for any damages caused by the installation, construction, operation, or removal of such facilities comprising the cable system; and
- (D) That TVI shall hold the City of Barling harmless from any action, claim or demand for personal injuries or injuries to property as a result of the installation, construction, operation or removal of the cable system by TVI and TVI shall additionally reimburse the City of Barling for any cost of defense incurred as a result of such a claim.



SECTION 3: In the event TVI, or its successors or assigns, shall fail or refuse to provide the services anticipated to be provided by it through its operation of the cable system for a period of more than 90 consecutive days, for any reason or cause other than an act of God, damage to or destruction of the cable system through fire, windstorm, tornado or other casualty loss (provided TVI shall repair or replace any such damage or destruction without delay), TVI's inability to obtain required materials or services, usurpation of the cable system by governmental authority during periods of insurrection or war, or other cause beyond its reasonable control, then in such event, the City shall have the right, at its option, to terminate this franchise upon its adoption of an ordinance for such purpose, after reasonable notice thereof shall have been given to TVI.

SECTION 4: TVI shall be required to increase the cable system capacity to 450 megahertz in order to be able to receive, distribute and transmit a maximum of 60 channels of television programming to its subscribers (hereinafter referred to as "the rebuild"). In order to accomplish this requirement and to otherwise improve and enhance the cable system, the rebuild shall include, but not be limited to, the following:

- (1) The rebuilding, restoration, replacement, improvement and enhancement of the System, including the construction of a new "headend building", new distribution cable lines and related appropriate electronics to provide initially for the distribution and transmission of up to 28 channels of television signals to those citizens and inhabitants of the City who shall subscribe for and pay for same as "basic services", plus the distribution and transmission of up to six (6) channels of optional "premium pay" service to those citizens and inhabitants of the City who shall subscribe for and agree to pay the additional charge for same.
- (2) All receiving/transmission/distribution equipment and facilities, including distribution cable lines and electronics, necessary or appropriate to add a minimum of six (6) new television channels to the existing "basic cable service" presently provided by the System.

SECTION 5: TVI shall complete the rebuild of the existing cable system on or before March 31, 1993. The physical rewiring or reconnection of subscribers to the upgraded system shall be complete on or before June 30, 1993. In the event the rebuild and the rewiring or reconnection of subscribers is not completed, in full, by the required times, TVI shall provide the City of Barling with a performance bond equal to ten percent (10%) of the total



estimated cost of the rebuild and rewiring or reconnection of subscribers allowing the City of Barling to draw against said bond for the purpose of completing the rebuild and rewiring or reconnection of subscribers.

SECTION 6: During the time of the rebuild and the rewiring or reconnection of subscribers, that is from the effective date of this Ordinance until the completion of the entire work, TVI shall report in writing to the City Administrator of the City of Barling not less often than every 60 days as to: (1) the status of the work that has been completed, (2) the remainder of the work in process to be completed, and (3) whether TVI anticipates being completed on or before the required times.

SECTION 7: TVI shall be required to extend the cable system to any present or future resident of the City of Barling wheresoever said resident resides within the city limits of the City of Barling.

SECTION 8: Commencing March 15, 1992, and thereafter for so long as this Ordinance shall be in effect, TVI shall pay to the City of Barling, as a franchise fee and as compensation to the City of Barling for the rights and privileges provided to it under this franchise, an amount equal to three percent (3%) of the aggregate gross revenues derived by TVI through its operation of the cable system, which amount shall be paid by TVI to the City of Barling, without demand, deduction or set-off, quarter-annually in arrears, for each quarter-annual period ending March 31, June 30, September 30 and December 31. Said franchise fees shall be prorated for the period March 15, 1992 through March 31, 1992, and shall be payable on or before the last day of the month next following each such quarter-annual period. This franchise fee is imposed on TVI solely because of its status as a franchisee and does not include any tax, fee or assessment of general applicability which TVI is otherwise subject to pay and the obligation of TVI to pay the franchise fee provided herein is not intended to be in lieu of any other tax, fee, or assessment of general applicability.

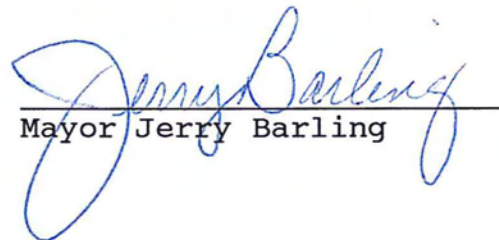
SECTION 9: TVI shall equip and provide cable services to the police department of the City of Barling and the Barling Elementary School. Said service shall consist of one outlet for basic cable services each for the police department and the Barling Elementary School and shall be provided free of installation and monthly charges. TVI shall also provide a channel devoted to the Arkansas Educational Television Network (AETN).

SECTION 10: TVI shall be required to execute an Agreement whereby it binds itself to the terms and conditions contained herein, and to such other terms and conditions as may be deemed reasonably necessary or appropriate, in the determination of the City Administrator to carry out the intent of this Ordinance. The City Administrator is specifically authorized to execute said Agreement on behalf of the City of Barling.

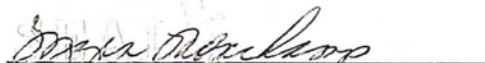
SECTION 11: The franchise granted to TVI pursuant to this Ordinance shall not be assigned or transferred by TVI except upon the prior written consent of the City of Barling, acting by and through its Board of Directors, provided however, such consent shall not be arbitrarily or unreasonably withheld or delayed upon written request therefore by TVI. Any permitted assignee or transferee of the franchise granted by this Ordinance shall be deemed to have acquired, obtained and assumed all rights, benefits, burdens and obligations of TVI hereunder.

SECTION 12: All Ordinances in conflict with this Ordinance are hereby repealed. Ordinance No. 51 is hereby specifically repealed.

PASSED AND APPROVED this 11<sup>th</sup> day of FEBRUARY, 1992.

  
\_\_\_\_\_  
Mayor Jerry Barling

Attest:

  
\_\_\_\_\_  
City Clerk



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JERRY L. ZIMMERMAN  
MARK S. RAINS  
FREDERICK J. HEGENBART

January \_\_, 1992

City of Barling  
Barling, Arkansas

Re: Ordinance No. \_\_\_\_ (AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO TRANSWESTERN VIDEO, INC. IN THE CITY OF BARLING, ARKANSAS)

Gentlemen:

This firm is counsel for Transwestern Video, Inc., an Oklahoma corporation ("TVI") and, in such capacity, we have consulted with TVI in connection with its execution and delivery of that certain Franchise Agreement dated under even date herewith, under which TVI agreed to be bound by the terms and conditions contained in the above Ordinance as adopted by the City of Barling, Arkansas (the "City"). In connection with the foregoing, we are familiar with and consulted with TVI in the negotiations and procedures occurring prior to execution of the above Franchise Agreement, and with respect to the terms of the above Ordinance.

Based on the foregoing, and upon representations and statements made to us by certain of the officers and employees of TVI concerning such matters, which we have assumed as accurate and relied upon for purposes of this letter, and advise you that in our opinion:

1. TVI is an Oklahoma corporation, with all requisite authority to enter into the above Franchise Agreement, and to perform all obligations imposed upon it thereunder.

2. The corporate officers of TVI who have executed the Franchise Agreement on its behalf were duly authorized to do so, and said Franchise Agreement constitutes the legally binding and enforceable agreement of TVI, in accordance with its terms.

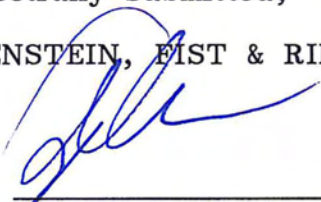
3. To the best of our knowledge, upon diligent inquiry, all negotiations and procedures occurring between TVI and the City, at or prior to the execution of the Franchise Agreement, together with the terms and conditions contained in the Agreement and the terms of the above Ordinance, do not constitute a violation of any federal or state statute or regulation.

This letter has been issued to you in accordance with and pursuant to the above Franchise Agreement, for your benefit, and may be relied upon by you accordingly. However, no person or entity other than the City of Barling shall be authorized to rely upon this letter for any purpose whatsoever, except upon the express prior written consent of the undersigned.

Respectfully submitted,

ROSENSTEIN, FIST & RINGOLD

By:

  
\_\_\_\_\_  
Coleman L. Robison

CLR/neb

cc: Transwestern Video, Inc.  
Attn: Bob Hale

**FRANCHISE AGREEMENT**

This Agreement, entered into by and between Transwestern Video, Inc. (hereinafter "TVI"), an Oklahoma corporation and the City of Barling (hereinafter "City"), this 27<sup>th</sup> day of February, 1992, as follows:

WHEREAS, TVI desires to operate a cable system in the City pursuant to the Ordinances and other requirements of the City;

WHEREAS, TVI is the successor of the Barling Cable TV Company and presently operates a cable system in the City pursuant to a franchise created by Ordinance No. 51, passed on November 7, 1967, which is due to expire in November 1992;

WHEREAS, TVI and the City have agreed upon the terms and conditions for the continuation of said franchise which terms and conditions are more fully set forth in Ordinance No. 209 of the City.

Now, therefore, for and in consideration of the foregoing recitals and the following mutual covenants and conditions, the parties do hereby agree as follows:

(1) TVI agrees to be bound by the terms and conditions contained in Ordinance No. 209 of the City.

(2) TVI agrees and affirmatively states that the City has not attempted to establish requirements for video programming or other information services except that which is specifically permitted by the Cable Communications Policy Act of 1984, 47 U.S.C. §521 et seq. and that all matters contained in Ordinance No. 209 are in compliance with said law. TVI agrees to provide to the City a




statement by its counsel that the negotiations and procedures occurring prior to this Agreement, the terms of this Agreement, and the terms of Ordinance No. 209 do not constitute a violation of any federal or state statute or regulation. Said statement is attached hereto and incorporated herein as Exhibit A.

In witness whereof, the parties have hereunto set their hands and seals this 27<sup>th</sup> day of February, 1992.

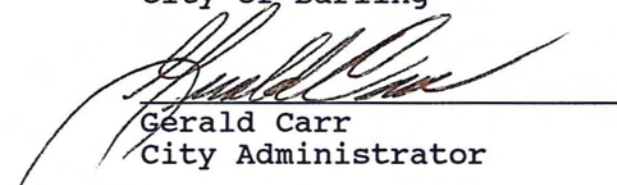
Transwestern Video, Inc.

  
\_\_\_\_\_  
William H. Davis, Vice-President

ATTEST:

  
\_\_\_\_\_  
Assistant Secretary

City of Barling

  
\_\_\_\_\_  
Gerald Carr  
City Administrator

**ACKNOWLEDGMENT**

STATE OF OKLAHOMA                    )  
  )SS  
COUNTY OF TULSA                    )

On this 28th day of February, 1992, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for the County and State aforesaid, appeared the within named William H. Davis and Coleman Robison to me personally known, who stated that they were the Vice-President and Assistant Secretary, respectively, of Transwestern Video, Inc., an Oklahoma corporation, and stated that they were authorized to execute the foregoing Franchise Agreement and had executed the same for and on behalf of said corporation for the purposes and considerations therein mentioned and set forth.



IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

Nancy E. Burner  
Notary Public

My Commission Expires:

10-14-94

**ACKNOWLEDGMENT**

STATE OF ARKANSAS            )  
  )SS  
COUNTY OF SEBASTIAN        )

On this 3d day of March, 1992, before me, the undersigned, a Notary Public, duly commissioned, qualified and acting within and for the County and State aforesaid, appeared the within named Gerald Carr to me personally known, who stated that he is the City Administrator of the City of Barling, Arkansas, and stated that he was authorized to execute the foregoing Franchise Agreement and had executed the same for and on behalf of the City of Barling for the purposes and considerations therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

[Signature]  
Notary Public

My Commission Expires:

3-7-94