

CITY OF KOSCIUSKO, MISSISSIPPI

ORDINANCE NO. 495

AN ORDINANCE GRANTING A NONEXCLUSIVE FRANCHISE TO BCI MISSISSIPPI BROADBAND, LLC d/b/a MAXXSOUTH BROADBAND, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE SYSTEM IN THE CITY OF KOSCIUSKO, MISSISSIPPI; AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; AND PROVIDING FOR REGULATION AND USE OF THE CABLE SYSTEM.

BE IT ORDAINED, by the Mayor and Board of Aldermen of the City of Kosciusko, Mississippi:

Section 1. Definitions. For the purpose of this Ordinance, the following words and phrases shall have the meanings set forth in this section.

- (a) "Board of Aldermen" means the governing body of the City.
- (b) "Cable Act" means Title VI of the Communications Act of 1934, as amended, 47 U.S.C. Sections 521 et seq.
- (c) "Cable Service" means the one-way transmission to Subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, 'video programming' is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, 'other programming service' is information that a cable operator makes available to all subscribers generally.
- (d) "Cable System" means Company's facility located within the City, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community.
- (e) "Company" means BCI Mississippi Broadband, LLC d/b/a MaxxSouth Broadband, and its permitted successors.
- (f) "Effective Date" means the date of adoption of this Ordinance by the Board of Aldermen.

- (g) "Facilities" means any reception, processing, distribution or transmission component of the Cable System, including cables, conduits, converters, splice boxes, cabinets, manholes, vaults, poles, equipment, drains, surface location markers, appurtenances, fiber, and related facilities maintained by Company.
- (h) "FCC" means the Federal Communications Commission.
- (i) "Franchise" means the rights granted to Company under this Ordinance to construct and operate the Cable System and to provide Cable Services and other services as permitted under applicable law.
- (j) "Gross Revenues" means all revenue collected by Company derived from the operation of the Cable System to provide Cable Services in the City, less uncollected bad debt. Gross Revenues shall not include amounts collected by Company for franchise fees.
- (k) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.
- (l) "Street" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, or drive, or any easement or right-of-way now or later existing within the City.
- (m) "Subscriber" means any Person who lawfully receives Cable Service.
- (n) "Term" means the term of this Franchise as set forth in Section 3.
- (o) "City" means Kosciusko, Mississippi.

Section 2. Grant of authority.

- (a) Grant of nonexclusive authority. The City grants to Company the right and privilege to construct, erect, operate, and maintain, in, upon, along, across, above, over and under the Streets, all Facilities necessary or desirable for the construction, maintenance, and operation of the Cable System. This Franchise shall be nonexclusive, and the City may grant franchises to other Persons. Any additional franchises shall contain the same substantive terms and conditions as this Franchise and shall be competitively neutral and nondiscriminatory as compared to this or any other franchise granted by the City for the operation of a Cable System or other wireline multichannel video distribution system. Company may use the Cable System to deliver non-Cable Services as permitted by applicable law.

- (b) State Franchise. If the State of Mississippi adopts a state-issued cable franchise, Company may replace this Franchise with a state franchise as provided under the authorizing statute.
- (c) Rules of Company. Company may promulgate rules, regulations, terms and conditions governing its business and services as reasonably necessary to enable Company to exercise its rights and perform its obligation under this Ordinance.

Section 3. Franchise Term. The Term of the Franchise granted under this Ordinance commences upon the Effective Date and shall continue for a term of 10 years, unless renewed, revoked or terminated sooner. The parties agree that any proceedings undertaken by the City that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

Section 4. Conditions of street occupancy.

- (a) Location of Facilities. Company shall locate all Facilities so as to minimize interference with the use of the Streets and with the rights and reasonable convenience of adjacent property owners.
- (b) Construction codes and permits. Company shall obtain all necessary permits and shall comply with all ordinances of general applicability before commencing any construction, upgrade or extension of the Cable System, including the opening or disturbance of any Street.
- (c) Repair of Streets and property. Company, at its expense, shall promptly restore any Street or public property damaged by Company during the construction, repair, maintenance or reconstruction of the Cable System.
- (d) Public projects. After reasonable prior notice, Company, at its expense, shall relocate its Facilities as required by the City due to traffic conditions, public safety, street construction, or other public improvements by the City. In requiring Company to protect, support, temporarily disconnect, relocate or remove any portion of its property, the City shall treat Company the same as, and require no more of Company, than any other similarly situated utility. Company shall have the right to seek reimbursement from the City, under any applicable insurance or government program for reimbursement.
- (e) Building movement. Upon request of any Person holding a moving permit issued by the City and after reasonable prior notice, Company shall temporarily move its Facilities to permit the moving of buildings. Company may require the requesting Person to pay all costs related to the temporary relocation of Facilities, and may require payment in advance.

- (f) Tree trimming. Company may trim any trees in or overhanging the Streets, alleys, sidewalks, or public easements of the City as necessary to protect Company's Facilities.

Section 5. Cable System operations and safety.

- (a) Technical standards. Company shall operate the Cable System in compliance with all applicable technical standards promulgated by the FCC.
- (b) Safety requirements. Company shall employ ordinary care and shall maintain in use commonly accepted methods and devices to reduce failures and accidents. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.
- (c) System maps. Upon request by the City, Company shall make available to the City for review at Company's office up-to-date as-built maps showing locations of all Facilities in the Streets.
- (d) System maintenance. When feasible, Company shall schedule Cable System maintenance to minimize service interruptions.

Section 6. Service obligations and Cable System extension. Company shall provide Cable Services without discrimination to all Persons residing within 300 aerial feet or 150 underground feet of the Cable System who request Cable Services and who comply with Company's terms and conditions of service. Company shall extend the Cable System to contiguous areas of the City not currently served by the Cable System when any such area reaches a household density equal to or greater than 30 households per cable mile. Company is generally not obligated to extend service to residences beyond 300 aerial feet or 150 underground feet from Company's Facilities. Isolated residences requiring more than a standard 300 foot aerial drop or 150 foot underground line may be provided at a premium installation rate if such service has been requested by the resident. Company may request advanced payment for such installation.

Section 7. Service to public buildings. Company shall provide upon request and free of charge one service drop and basic Cable Service to the public schools and municipal buildings listed on Schedule A.

Section 8. Customer service and rates.

- (a) Subscriber Inquiries. Company shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests during normal business hours. Company shall investigate and promptly resolve customer complaints regarding quality of service or service outages.
- (b) Changes to Rates or Cable Services. Company shall provide Subscribers and the City with notice of changes to Cable Services or rates in accordance with FCC rules and regulations.

Section 9. Franchise fee. Beginning in the first full month after the Effective Date, Company shall pay to the City an annual Franchise Fee in an amount equal to 5% of Gross Revenues collected. For each year, Company shall deliver the payment to the City within 90 days after December 31. The Franchise Fee shall be prorated for any partial year. Following reasonable prior notice, the City may inspect Company's books, records, and reports to verify franchise fee calculations and payments.

Section 10. Insurance and Indemnification.

- (a) Insurance. Company shall maintain a comprehensive general liability insurance policy with the following minimum coverage limits:
 - (i) \$1,000,000 for personal injury or death;
 - (ii) \$1,000,000 for property damage; and
 - (iii) \$500,000 automobile insurance/combined bodily injury and property damage.

Each policy of insurance shall contain a statement that the insurer will not cancel the policy or fail to renew the policy for any reason not in accordance with the terms of the policy. In addition, in the event that the insurer does not provide such notice directly to the City, Company agrees to provide the City with as much advance written notice as is reasonably practicable in the event that any such insurer provides Company with notice that it intends to cancel the policy or fail to renew the policy for any reason.

- (b) Indemnification. During the Term, Company shall indemnify and hold harmless the City, its officers, agents and employees ("Indemnitees") from and against any claims, liabilities, damages, losses, and expenses (including, without limitation, reasonable attorney fees) ("Losses"), which may arise out of Company's construction, installation, operation or maintenance of the Cable System, unless such Losses arise from the negligence or intentional misconduct of the City, its officers, agents or employees.

Section 11. Transfer of Franchise. Company shall not transfer or assign its rights granted under this Ordinance without providing prior notice to the City. Prior notice shall not be required for the following: (i) the assignment of, or the granting of a security interest in, the Franchise or the Cable System for the purpose of securing indebtedness; or (ii) the assignment or transfer of the Franchise or the Cable System to an affiliate under common ownership or control with Company.

Section 12. Franchise extension. The City and Company may extend the Term by mutual agreement, and the existing terms and conditions of this Ordinance shall govern the extended term.

Section 13. Franchise termination. The City may terminate the Franchise granted under this Ordinance in case of material noncompliance by Company. Material noncompliance shall include:

- (a) A material violation by Company of any term, condition, or provision of this Ordinance that remains uncured within the applicable cure period;
- (b) Failure of Company to comply with any reasonable provision of any applicable Ordinance;
- (c) Company becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt, or there is a notice of prospective foreclosure or other judicial sale of all or a substantial part of the Cable System;
- (d) Company abandons the Cable System;
- (e) Company fails to operate the Cable System for a period of 30 days; or
- (f) Company is found to practice any fraud upon the City.

Section 14. Termination procedures. If the City seeks to terminate the Franchise under Section 13, the City shall follow the procedures in this Section.

- (a) Notice of complaint. The City shall provide Company with notice describing with reasonable specificity the alleged noncompliance.
- (b) Opportunity to cure. Company shall have 60 days from receipt of notice to cure the alleged noncompliance. If Company cures the alleged noncompliance within the 60-day period, the City shall provide Company with notice withdrawing the complaint.
- (c) Public hearing. If Company fails to cure the alleged noncompliance within the 60-day cure period, or if Company provides the City with notice disputing the complaint, and the parties fail to otherwise resolve the

matter, the City shall schedule a public hearing on the alleged noncompliance. At the public hearing, Company may present testimony, cross-examine witnesses and deliver to the City all evidence relevant to Company's defense. At the conclusion of the public hearing, the City may dismiss the complaint, defer action, order appropriate sanctions, or terminate the Franchise in accordance with this section.

- (d) Termination. The City may, after a duly noticed public hearing, terminate the Franchise for material and willful continuing noncompliance by Company. If Company contests the termination in a court of competent jurisdiction, Company may operate the Cable System in accordance with this Ordinance while the case is pending.
- (e) Removal of Facilities. Upon expiration or termination of the Franchise, Company shall be afforded a six-month period to sell or otherwise dispose of the Cable System. During the six-month period, Company shall operate the Cable System in accordance with this Ordinance. At the expiration of the six-month period, Company has the right to remove its Facilities within a reasonable time.

Section 15. Unauthorized reception of Cable Service; tampering with Facilities.

- (a) It shall be unlawful for any Person without Company's consent to willfully tamper with, remove or injure any of Company's Facilities.
- (b) It shall be unlawful for any Person to make or use any unauthorized connection to any part of Company's Cable System.
- (c) Any Person that violates this subsection regarding theft of service shall be guilty of a misdemeanor and punished by a fine not to exceed \$500.00 for each occurrence or imprisonment for a term not to exceed 90 days or both, such fine and imprisonment as may be imposed by a court of competent jurisdiction.

Section 16. Notices. Notices under this Ordinance shall be in writing and shall be deemed given upon delivery by hand delivery, certified mail return receipt requested, or overnight courier to the following addresses:

To City:

City of Kosciusko
222 E. Washington St.
Kosciusko, MS 39090
Attn: City Clerk Michelle Quesnot

To Company:

MaxxSouth Broadband
105 Allison Cove
Oxford, MS 38655
Attn: Vice President General Manager

With copy to:

MaxxSouth Broadband
2700 Oregon Road
Toledo, OH 43654
Attn: Vice President, Business & Legal Affairs

A party may designate other addresses for providing notice by providing notice in writing of such addresses.

Section 17. Miscellaneous.

- (a) Severability. If any provision of this Ordinance is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance. The invalidity of any portions of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required by Company under the remaining provisions of this Ordinance.
- (b) Complete Agreement. All ordinances and parts of ordinances in conflict with this Ordinance are repealed as of the effective date of this Ordinance.
- (c) Force Majeure. Company shall not be held in default under, or in noncompliance with, the provisions of this Ordinance, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Company to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor utility poles to which the Company's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary. Furthermore, the parties hereby agree that it is not the City's intention to subject the Company to penalties, fines, forfeitures or revocation of the Franchise for violations of the Agreement where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers, or where strict performance would result in practical difficulties and hardship to the Company which outweigh the benefit to be derived by the City.

- (d) Entire Agreement. This Agreement constitutes the entire agreement between the Company and the City. Amendments to this Agreement shall be mutually agreed to in writing by the parties, unless otherwise expressly provided herein.
- (e) Governing Law. This Agreement and the rights of the parties under it will be governed by and construed in all respects in accordance with the laws of the State of Mississippi without regard to principles of conflicts of law.

Section 18. Effectiveness and acceptance. This Ordinance shall become effective upon adoption by the City and acceptance by Company. Company shall notify City of Company's acceptance of this Ordinance within 30 days of receipt of notice of adoption by City. The City may revoke this Ordinance if Company fails to provide timely notice of acceptance by providing notice to Company within 30 days after such failure.

Passed and adopted this 16th day of July, 2024.

ATTEST:

CITY OF KOSCIUSKO, MISSISSIPPI

By: Michelle Quesnot

By: Tim Kyle

Name: Michelle Quesnot

Name: Tim Kyle

Title: City Clerk

Title: Mayor

SCHEDULE A
List of Designated Locations for
Free Drop, Outlet and Basic Cable Video Service

Attala County Courthouse
230 W. Washington St.
Kosciusko, MS 39090

Kosciusko Fire Dept.
509 N. Jackson St.
Kosciusko, MS 39090

Kosciusko City Hall
222 E. Washington St.
Kosciusko, MS 39090

Attala County Jail
112 W. Adams St.
Kosciusko, MS 39090

EOC Radio Room
216 W. Jefferson
Kosciusko, MS 39090

Kosciusko Water and Light
204 W. Jefferson St.
Kosciusko, MS 39090

Kosciusko Water and Light (Barn)
312 W. Jefferson St.
Kosciusko, MS 39090

Attala County Fire Dept.
216 West Jefferson
Kosciusko, MS 39090

Kosciusko Street Dept.
680 W. Jefferson St.
Kosciusko, MS 39090

Kosciusko Police Dept.
538 JM Ash Dr.
Kosciusko, MS 39090

Kosciusko Civil Defense
216 W. Jefferson St.
Kosciusko, MS 39090

Housing Authority
311 Gilliland St.
Kosciusko, MS 39090

Kosciusko Street Dept.
640 W. Jefferson St.
Kosciusko, MS 39090

Attala County Chancery Clerk
230 W. Washington St.
Kosciusko, MS 39090

Attala County Library
201 S. Hunington St.
Kosciusko, MS 39090

Kosciusko Junior High
206 S. Hunington St
Kosciusko, MS 39090

Kosciusko High School
206 S. Hunington St
Kosciusko, MS 39090

Kosciusko High Band Room
317 E. Jefferson St.
Kosciusko, MS 39090

Westside School
223 S. Wells St.
Kosciusko, MS 39090

Kosciusko Lower School
206 S. Hunnington
Kosciusko, MS 39090

Kosciusko Superintendents Office
229 W. Washington St.
Kosciusko, MS 39090

Headstart
600 Tipton St.
Kosciusko, MS 39090

Attala County School Superintendent
230 W. Washington St.
Kosciusko, MS 39090

Special Ed Program Office
206 S. Hunnington St.
Kosciusko, MS 39090

Boys & Girls Club
500 Knox Road
Kosciusko, MS 39090

Northside School
120 Fourth Ave.
Kosciusko, MS 39090