

ORDINANCE 15-05

AN ORDINANCE GRANTING A FRANCHISE TO VYVE BROADBAND A, LLC TO MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF KREBS, OK; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF THE FRANCHISE; PROVIDING FOR REGULATION AND USE OF THE SYSTEM; AND PRESCRIBING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS

The City of Krebs ordains:

FINDINGS

In the review of Vyve Broadband A, LLC ("Grantee"), the City of Krebs makes the following findings:

- 1.) The Grantee's technical ability, financial condition, legal qualifications, and character were considered and approved in a full public proceeding after due notice and a reasonable opportunity to be heard;
- 2.) Grantee's plans for operating the System were considered and found adequate and feasible in a full public proceeding after due notice and a reasonable opportunity to be heard; and
- 3.) The Franchise granted to Grantee by Grantor complies with the existing applicable laws and regulations.

SECTION 1.

SHORT TITLE AND DEFINITIONS

- 1.) Short Title. This Franchise Ordinance shall be known and cited as the Cable Communications Ordinance.
- 2.) Definitions. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. The word "may" is directory and discretionary and not mandatory.
 - (a) "Basic Cable Service" means any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational, and governmental access programming required by the franchise to be carried on the basic tier in analog and/or digital format. Basic Cable Service as defined herein shall not be inconsistent with 47 U.S.C. §543(b)(7).
 - (b) "Cable Programming Service" means any Video Programming provided over a Cable System, regardless of service tier, including installation or rental of equipment used for the receipt of such Video Programming, other than:

- (1) Video Programming carried on the Basic Service Tier;
- (2) Video Programming offered on a pay-per-channel or pay-per-program basis; or
- (3) A combination of multiple channels of pay-per-channel or pay-per-program Video Programming offered on a multiplexed or time-shifted basis so long as the combined service:
 - a. consists of commonly-identified Video Programming; and
 - b. is not bundled with any regulated tier of service.

Cable Programming Service as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C. §543(l)(2) and 47 C.F.R. 76.901(b) (1993).

(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 of such Video Programming or other programming service.

(d) "Cable System" or "System" means a facility, 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, but such term does not include:

- (1) a facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (2) a facility that serves Subscribers without using any public right-of-way;
- (3) a facility of a common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. §§201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. §541 (c) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (4) an open video system that complies with 47 U.S.C. §653; or

- (5) any facilities of any electric utility used solely for operating its electric utility systems.
- (e) "City" means City of Krebs, acting by and through its City Council.
- (f) "Drop" means the cable that connects the ground block on the Subscriber's residence to the nearest tap of the System.
- (g) "FCC" means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.
- (h) "Franchise" means an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to 47 USC §546 issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a Cable System.
- (i) "Franchise Area" means the area within the legal boundaries of City.
- (j) "Grantee" is Vyve Broadband A, LLC.
- (k) "Grantor" is the City of Krebs.
- (l) "Gross Revenue" means all monthly revenue received from Basic Cable Service, Cable Programming Service, and Pay Television directly by Grantee from the operation of its System within Franchise Area. The term "Gross Revenues" shall not include Installation fees, disconnection fees, upgrade and downgrade of service fees, fees for telecommunications or information services, if any, fees for the sale, leasing, or servicing of equipment, franchise fees, advertising revenues, late fees, insufficient funds checking fees, FCC regulatory fees, tower rent, network capacity and facilities rent for the provision of non-cable services (voice or data services), investment income, any fees itemized and passed through as a result of Franchise imposed requirements, or any taxes or fees on services furnished by Grantee imposed directly on any Subscriber or user by any municipality, state, or other governmental unit and collected by Grantee for such governmental unit.
- (m) "Installation" means the connection of the System from feeder cable to the point of connection, including Standard Installations and custom installations.
- (n) "Lockout Device" means an optional mechanical or electrical accessory to a Subscriber's terminal which inhibits the viewing of a certain program, certain channel, or certain channels provided by way of the Cable System.
- (o) "Multichannel Video Program Distributor" or "MVPD" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite

program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

(p) "Open Video Services" or "OVS" means any Video Programming Services provided to any person in the Franchise Area by a Person certified by the FCC to operate an Open Video System pursuant to Section 47 USC §573, as may be amended, regardless of the facilities used.

(q) "Pay Television" means the delivery over the System of pay-per-channel or pay-per-program audio-visual signals to Subscribers for a fee or charge, in addition to the charge for Basic Cable Service or Cable Programming Services.

(r) "Person" is any person, firm, partnership, association, corporation, company, or other legal entity.

(s) "Standard Installation" means any residential installation which can be completed using a Drop of one hundred twenty five (125) feet or less.

(t) "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 hereafter held by Grantor.

(u) "Subscriber" means any Person who lawfully receives Cable Service.

(v) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

SECTION 2.

GRANT OF AUTHORITY AND GENERAL PROVISIONS

1.) Franchise Required. It shall be unlawful for any Person to construct, operate or maintain a Cable System or to provide Cable Service or other competing MVPD services, including OVS, in the Franchise Area without a Franchise in the form of a Franchise Agreement as required by Section 2.3.(c) herein.

2.) Grant of Franchise. This Franchise is granted pursuant to the terms and conditions contained herein.

- 3.) Grant of Nonexclusive Authority.
- (a) Grantee shall have the right and privilege to construct, erect, operate, repair and maintain, in, upon, along, across, above, over and under the Streets, alleys, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in the Franchise Area, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the Franchise Area of a Cable System as herein defined.
- (b) Grantee shall have the right to conduct direct selling in the Franchise Area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.
- (c) This Franchise shall be nonexclusive, and Grantor reserves the right to grant a similar use of said Streets to any MVPD at any time during the period of this Franchise, provided, however, that any additional Franchise shall contain the same substantive terms and conditions as this Franchise in order that one MVPD is not granted a competitive advantage over another. In the event a MVPD commences operation without a Franchise or is granted a Franchise or permit to operate by Grantor, the terms and conditions of which do not comply with this Ordinance, Grantee shall have the right either (i) to accept the material terms of the competitor's Franchise by providing ten (10) days prior written notice to Grantor, which shall then act to amend this Franchise within thirty (30) days; or (ii) to petition Grantor for modifications to this Franchise, in which case Grantor shall work in good faith with Grantee to review and adopt the modifications which Grantee deems necessary, and such review and approval by Grantor shall not be unreasonably denied or withheld. A MVPD is not an entity that provides direct broadcast satellite services for purposes of this Section. Notwithstanding any provisions of this Section to the contrary, if Grantor does not possess authority under applicable laws to require a Franchise of a Person, the provisions of this Section shall not apply.
- 4.) Franchise Term. This Franchise shall be in effect for a period of fifteen (15) years from the date of acceptance by Grantee, unless renewed, revoked, or terminated sooner as herein provided.
- 5.) Previous Franchises. Upon acceptance by Grantee as required by Section 9 herein, this Franchise shall supersede and replace any previous Ordinance or Agreement granting a Franchise to Grantee to own, operate and maintain a Cable System within the Franchise Area.
- 6.) Rules of Grantee. Grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be

reasonably necessary to enable said Grantee to exercise its rights and perform its obligation under this Franchise.

7.) Territorial Area Involved. This Franchise is granted for the corporate boundaries of Grantor, as it exists from time to time. In the event of annexation by Grantor, or as development occurs, any new territory shall become part of the area covered, provided, however, that Grantee shall not be required to extend service beyond its present System boundaries unless there is a minimum of forty (40) homes per cable mile as measured from the tap from which Grantee would extend service. Grantee shall be given a reasonable period of time to construct and activate cable plant to service annexed or newly developed areas.

8.) Written Notice. All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given (i) when delivered personally to any officer of Grantee or Grantor, (ii) forty-eight (48) hours after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid thereon, addressed to the party to whom notice, report or demand is being given, or (iii) on the next business day if sent by express mail or nationally recognized overnight air courier addressed to the party to whom notice, report or demand is being given, in each case, as follows:

If to Grantor: CITY OF KREBS
Post Office Box 156
Krebs, OK 74554-0156

If to Grantee: VYVE BROADBAND A, LLC
Four International Dr.
Suite 330
Rye Brook, NY 10573
Attn: General Counsel

Such addresses may be changed by either party upon notice to the other party given as provided in this Section.

9.) Complimentary Basic Cable Service To Public Buildings. Subject to Grantee's receipt of all required easements, permits or authorizations, Grantee shall provide a Standard Installation of one (1) cable Drop, one (1) cable outlet, and monthly Basic Cable Service ("Complimentary Service") without charge to up to six (6) of the following public buildings or locations:

Krebs City Hall – 5 NE. Washington
Krebs Fire Dept. – 10 NE. Ash
Krebs Police Dept. – 1 E. Washington
Krebs Senior Citizens – 85 S. Main
Krebs School – 20 SW. 5th
City of Krebs – 7 E. Washington

No redistribution of such Complimentary Service provided pursuant to this Section shall be allowed. Additional Drops and/or outlets in any of the above locations will be provided by Grantee upon request and upon payment by the institution for the cost of such installation, which shall be billed at the cost of Grantee's time and materials. Nothing herein shall be construed as requiring Grantee to extend the System to serve additional institutions as may be designated by Grantor. Additional public buildings may receive Complimentary Service with the mutual consent of Grantor and Grantee.

SECTION 3.

CONSTRUCTION STANDARDS

- 1.) Construction Codes and Permits.
 - (a) Grantee shall obtain all required permits from Grantor before commencing any construction upgrade or extension of the System, including the opening or disturbance of any Street, or private or public property within Franchise Area.
 - (b) Grantor shall impose no permit fees upon Grantee.
 - (c) Grantor shall have the right to inspect all construction or installation work performed pursuant to the provisions of the Franchise and to make such tests at its own expense as it shall find necessary to ensure compliance with the terms of the Franchise and applicable provisions of local, state and federal law; provided any such testing must be coordinated with Grantee to avoid service disruption to Subscribers.
- 2.) Repair of Streets and Property. Any and all Streets or public property which are disturbed or damaged during the construction, repair, replacement, relocation, operation, maintenance or reconstruction of the System shall be promptly restored by Grantee, at its expense, to a condition as good as that prevailing prior to Grantee's work.
- 3.) Conditions on Street Use.
 - (a) If at any time during the period of this Franchise Grantor shall elect to alter, or change the grade or location of any Street, alley or other public way, Grantee shall, at its own expense, upon reasonable notice by Grantor, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the System, and in each instance comply with the standards and specifications of Grantor. Grantor shall reimburse Grantee for the actual cost of any such relocation. Grantee shall not be required to relocate for any telecommunications system or Cable System.
 - (b) Grantee shall, on request of any Person holding a moving permit issued by Grantor, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the Person requesting

the same, and Grantee shall be given not less than thirty (30) days advance notice to arrange for such temporary changes.

(c) Grantee shall have the authority to trim any trees upon and overhanging the Streets, alleys, sidewalks, or public easements of Grantor so as to prevent the branches of such trees from coming in contact with the wires and cables of Grantee.

(d) Nothing in this Franchise relieves a Person from liability arising out of the failure to exercise reasonable care to avoid injuring Grantee's System or facilities while performing work in, on, under or over a Street or public place.

4.) Undergrounding of Cable.

(a) In areas where all other utility lines are placed underground, Grantee shall construct and install its cables underground.

(b) In any area where one or more public utilities are aerial, Grantee may construct and install its cables, wires and other facilities aerially or above ground.

SECTION 4.

SYSTEM PROVISIONS

1.) Technical Standards. The System shall comply, at minimum, with the technical standards promulgated by the FCC found in Title 47, Section 76.601 to 76.617, as may be amended or modified from time to time.

2.) Lockout Device. Upon the request of a Subscriber, Grantee shall provide by sale or lease a Lockout Device.

SECTION 5.

SERVICES PROVISIONS

1.) Subscriber Inquiry and Complaint Procedures. Grantee shall have a publicly listed toll-free telephone number and be operated so as to receive Subscriber complaints and requests on a twenty-four (24) hour-a-day, seven (7) days-a-week basis.

2.) Refund Policy. In the event a Subscriber establishes or terminates service and receives less than a full month's service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which service was rendered to the number of days in the billing.

SECTION 6.

OPERATION AND ADMINISTRATION PROVISIONS

1.) Indemnification of Grantor. Grantee shall indemnify, defend, and hold harmless Grantor from and against all liability, damages, and penalties which it may be legally required to pay as a result of the exercise of this Franchise, except for (i) claims covered by worker's compensation insurance or other insurance coverage, (ii) claims arising directly or indirectly from, or related to, the negligence or misconduct of Grantor or its employees, contractors, representatives or agents, and (iii) claims arising directly or indirectly from, or related to, the programming, programming content, administration, operation or other use of the PEG Channel(s).

2.) Indemnification of Grantee. Grantor shall indemnify, defend and hold harmless Grantee from and against any liability, damages and penalties which it may be legally required to pay as a result of the programming, programming content, administration, operation or other use of the PEG Channel(s), except for any claims arising directly or indirectly from the negligence or misconduct of Grantee or its employees, contractors, representatives or agents.

3.) Notice and Process for Indemnification. In order for either party to assert its rights to be indemnified, defended, and held harmless, the party seeking indemnification must with respect to each claim:

(1) Promptly notify the indemnifying party in writing of any claim or legal proceeding which gives rise to such right; the failure to provide timely notice shall not affect the rights to indemnification hereunder, except to the extent that the indemnifying party is prejudiced or demonstrates actual damage caused by such failure;

(2) Afford the indemnifying party the opportunity to fully control any compromise, settlement or other resolution or disposition of any claim or proceeding. If a settlement will result in any continuing obligations of the party seeking indemnification hereunder, then the indemnifying party shall not be entitled to settle any claim without the indemnified party's consent, which shall not be unreasonably withheld, delayed or conditioned; and

(3) Fully cooperate with reasonable requests of the indemnifying party in its control, compromise, settlement or resolution or other disposition of such claim or proceeding.

4.) Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES ARISING IN CONNECTION WITH THIS FRANCHISE OR THE PROVISION OF SERVICES HEREUNDER, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

5.) Insurance. Grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage. The policies of insurance shall be in the sum of not less than Three Hundred Thousand Dollars (\$300,000) for personal injury or death of any one Person, and One Million Dollars (\$1,000,000) for personal injury or death of two or more Persons in any one occurrence, Three Hundred Thousand Dollars (\$300,000) for property damage to any one Person and One Million Dollars (\$1,000,000) for property damage resulting from any one act or occurrence.

6.) Franchise Fee.

(a) Grantee will pay Grantor an annual franchise fee (as defined in 47 USC §542(g)) in the amount of five (5%) percent of Grantee's annual Gross Revenues.

(b) The franchise fee shall be payable quarterly. The payment shall be made within thirty (30) days of the end of each of Grantee's fiscal quarters, together with a brief report showing the basis for the computation.

(c) Upon thirty (30) days prior written notice, Grantor or its authorized representative, shall have the right to conduct an independent audit of Grantee's records solely to determine Grantee's compliance with the franchise fee payment obligation imposed by this Franchise. Grantor's right to audit and Grantee's obligation to retain records related to franchise fee payments shall expire three (3) years after each franchise fee payment has been made to Grantor.

SECTION 7.

REVOCATION, ABANDONMENT, AND SALE OR TRANSFER

1.) Grantor's Right to Revoke. In addition to all other rights which Grantor has pursuant to law or equity, Grantor reserves the right to revoke, terminate or cancel this Franchise, and all rights and privileges pertaining thereto, if after strictly following the procedures required by Section 7.2 herein, it is determined that Grantee has violated any material provision of this Franchise and has failed to substantially cure said violation.

2.) Procedures for Revocation.

(a) Grantor shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee sixty (60) days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, Grantor shall provide Grantee with written findings of fact which are the basis of the revocation.

(b) Grantee shall be provided the right to a public hearing affording due process before the Grantor elected body prior to revocation, which public hearing shall follow the sixty (60) day notice provided in paragraph (a) above. Grantor shall provide Grantee with written notice of its decision together with written findings of fact supplementing said decision.

(c) After the public hearing and upon written determination by Grantor to revoke the Franchise, Grantee may appeal said decision with an appropriate state or federal court or agency.

(d) During the appeal period, the Franchise shall remain in full force and effect; provided, however, Grantee may elect to discontinue offering Cable Service or terminate the franchise in its sole discretion at any time during the appeal period.

(e) Upon satisfactory correction by Grantee of the violation upon which said notice was given, the initial notice shall become void.

3.) Sale or Transfer of Franchise. No sale or transfer of this Franchise shall take place without the written approval of Grantor, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties, and liabilities created by this Franchise shall pass to and be binding upon the successor or assign of Grantee. Notwithstanding the foregoing, no approval shall be required for (i) a transfer or assignment of any right, title or interest of Grantee in this Franchise or the System to secure indebtedness, or (ii) a transfer or assignment of this Franchise or the System to an entity that through one or more intermediaries, owns or controls, or is owned or controlled by, or under common ownership or control with, Grantee.

4.) Grantee Termination of Franchise. In the event Grantee elects to terminate this Franchise and discontinue providing Cable Service, Grantee shall provide ninety (90) days prior written notice to Grantor. Upon the expiration of the ninety (90) day notice period, this Franchise shall be deemed to be rescinded and Grantee shall be deemed to be released from any further obligations to Grantor with no further action required by Grantee or Grantor.

SECTION 8.

MISCELLANEOUS PROVISIONS

1.) Franchise Renewal. Any renewal of this Franchise shall be done in accordance with applicable federal, state and local laws and regulations.

2.) Amendment of Franchise Ordinance. Grantee and Grantor may agree, from time to time, to amend this Franchise. Such written amendments may be made at any time if Grantor and Grantee agree that such an amendment will be in the public interest or if such

an amendment is required due to changes in federal, state or local laws. Grantor shall act pursuant to local law pertaining to the ordinance amendment process.

3.) Subscriber Privacy. Grantee shall comply with the terms of 47 USC §551 relating to the protection of Subscriber privacy.

4.) Force Majeure. Grantee shall not be held in default under, or in noncompliance with, the provisions of this Franchise, nor suffer any enforcement or penalty relating to noncompliance or default (including termination, cancellation or revocation of this Franchise), where such noncompliance or alleged faults occurred or were caused by riot, war, earthquake, flood, tidal wave, unusually severe rain or snow storm, hurricane, tornado or other catastrophic act of nature or judicial order or regulation or fiber cut or other damage to the Cable System or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which Grantee's cable and/or equipment is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary and delays caused by limited access to easements, poles or Streets.

5.) Integration. This Franchise Agreement constitutes the sole and entire understanding and agreement of Grantor and Grantee with respect to the subject matter contained herein and supersedes all prior or contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

6.) Severability. If any provision of this Franchise is for any reason held illegal or invalid, or is preempted by any Federal law, rule or regulation, such provision shall be deemed to be separate and distinct and such holding or preemption shall not affect the validity of the remaining provisions of this Franchise.

SECTION 9.

PUBLICATION, EFFECTIVE DATE AND ACCEPTANCE

1.) Publication; Effective Date. If applicable, this Franchise shall be published in accordance with law. The effective date of this Franchise shall be the date of acceptance by Grantee in accordance with the provisions of Section 9.2.

2.) Acceptance.

(a) Grantee shall accept this Franchise by executing same. Such acceptance by the Grantee shall be deemed the grant of this Franchise for all purposes. With its acceptance, Grantee shall also deliver any insurance certificates required herein that have not been previously delivered.

(b) Upon acceptance of this Franchise, Grantee shall be bound by all the terms and conditions contained herein.

Passed and adopted this 20th day of January, 2015.

GRANTOR City of Krebs

By: Bobby Watkins

Its: Mayor

GRANTEE ACCEPTANCE

This Franchise is accepted and we agree to be bound by its terms and conditions.

VYVE BROADBAND A, LLC

By: Dave Harwood

Its: General Manager

Dated: 2/13/2015