

ORDINANCE NO. 2020-20

THIS IS AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO ALLO COMMUNICATIONS LLC, A NEBRASKA LIMITED LIABILITY COMPANY, ITS SUCCESSORS AND ASSIGNS TO OPERATE, AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF WAYNE, NEBRASKA, SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE PROVIDING FOR CITY REGULATION AND USE OF THE CABLE TELEVISION SYSTEM, REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH, AND PROVIDING WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF WAYNE, NEBRASKA:

SECTION 1. DEFINITIONS. For the purpose of this ordinance, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- (a) “Municipality” shall mean the City of Wayne.
- (b) “Council” shall mean the governing body of the Municipality.
- (c) “Company” shall mean ALLO Communications LLC and its successors and assigns.
- (d) “Person” shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.
- (e) “Franchise Area” shall mean that area within the corporate limits of the Municipality.
- (f) “Street” shall mean the surface of and the space above and below any public street, right of way, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications or utility easement, now or hereafter existing as such within the Franchise Area.
- (g) “Property of Company” shall mean all property owned, installed or used by Company in the conduct of a CATV business in the Municipality.
- (h) “Cable Television System” (referred to as “CATV”) shall have the same definition of that included in the Telecommunications Act and includes, without limitation, antenna, cable wires, lines, towers, wave guides, or any other conductors, converters,

equipment or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by fiber optic and/or coaxial cable audio and/or visual radio, television, electronics or electrical signals to and from persons, subscribers, and locations in the franchise area.

- (i) “Basic Television Services” shall mean the simultaneous delivery by the Company to television receivers of all subscribers in the Franchise Area of all signals of over the air television broadcasters and public, educational, or governmental television access facilities required by the Federal Communications Commission to be carried by CATV.
- (j) “Additional Service” shall mean any communications service other than basic service provided over its CATV by the Company directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in communications services including but not limited to satellite distributed programming, security alarm monitoring, data transmission, or any other electronic intelligence transmission, facsimile reproduction, meter reading, and home shopping.
- (k) “Pay Television Service” shall mean the simultaneous delivery by the Company to television receivers over the CATV of television programming to subscribers for a fee or charge (over and above the charge for Basic Television Service) on a per program, per channel, or other subscription basis.
- (l) “Subscriber” shall mean any person or entity receiving Basic Television Service.
- (m) “Gross Annual Subscriber Revenues” shall mean the compensation and other consideration received by the Company directly from subscribers in payment for regularly furnished Basic CATV and Pay Television Service. Gross annual Subscriber Revenue shall not include: (1) any taxes, fees or assessments collected by the Company from Subscribers for pass-through to a government agency to a government agency, including any sales or utility taxes; (2) unrecovered bad debt; (3) credits, refunds and deposits paid to Subscribers; (4) any exclusions available under applicable State law.
- (n) “Drop” shall mean a wire or cable that connects each building to the main (trunk) cable.
- (o) “Telecommunications Act” shall mean the Telecommunications Act of 1996, as amended from time to time and located in Title 47, Chapter I, Part 76 of the Code of Federal Regulations.

SECTION 2. GRANT OF AUTHORITY. Whereas, the Municipality has approved the qualifications of Company and the adequacy and feasibility of the Company’s construction arrangements as part of a full public proceeding affording due process, there is hereby granted by

the Municipality to the Company the nonexclusive right and privilege to engage in the business of operating and providing a CATV in the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms, or corporations including but not limited to any public utility or other Company franchised or permitted to do business in the City.

SECTION 3. TERM OF FRANCHISE. The franchise and rights herein granted shall continue in force and effect for a term of fifteen (15) years beginning on the effective date of this franchise. This franchise shall automatically renew for an additional fifteen (15) year period unless either Municipality or Company provide the other party written notice of termination at least one hundred eighty (180) days prior to the last day of the initial term.

SECTION 4. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, lines, and equipment erected by Company within the franchise area shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of such streets or other public ways and places. The CATV shall be constructed, repaired, and operated in compliance with the National Electric Safety Code. Company shall install and maintain its wires, cables, fixtures, and other equipment in such manner that they will minimize any interference with any installations of the Municipality or of a public utility serving the Municipality.

(b) Company shall not unnecessarily interfere with the use of any alley, street, sidewalk, driveway or public place and, where the paving or surface of any alley, street, sidewalk, driveway or public place is disturbed, Company, at its own expense and in a manner satisfactory to the

authorized representatives of the Municipality, shall replace such paving or surface in as good condition as before such work was commenced.

(c) Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of Company when required by the Municipality by reason of traffic conditions, public safety, street vacation, street construction, change of establishment of street grade, installation of sewer, drains, water pipes, Municipality owned power or signal lights or any other type of structure or improvement by Municipality.

(d) All wires, conduits, cables and other property and facilities of Company shall be so located, constructed, installed and maintained as not to endanger or unnecessarily interfere with the usual and customary trade, traffic and travel upon the alleys, streets or public places of the Municipality. Company shall keep accurate maps and records of all its facilities and furnish copies of such maps and records as requested by the Municipality. Company shall not place poles or other equipment where they will interfere with the rights or reasonable convenience of adjoining property owners, or with any then existing gas, electric, or telephone fixtures, or with any water hydrants or mains.

(e) All wires, cables, amplifiers and other property shall be constructed and installed in an orderly and workmanlike manner. All cables and wires shall be installed parallel with existing telephone and electric wires whenever possible. Multiple cable configurations shall be arranged in parallel and bundled, with due respect for engineering and safety consideration. All installations shall be underground in those areas of the City where public utilities providing telephone or electric service are underground. In areas where either telephone or electric utility facilities are above ground at the time of installation, the Company may install its service above ground with the understanding that, at such time as those facilities are required to be placed underground by the City, the Company shall likewise place its services underground without additional cost to the residents of the City other than as may be granted under the provisions of this ordinance.

(f) The Municipality shall give Company reasonable notice of plans for street improvement where paving or resurfacing of a permanent nature is involved. The notice shall give Company sufficient time to make any additions, alterations, or repairs to its facilities as it deems necessary in advance of the actual commencement of the work, so as to permit Company to maintain continuity of service.

(g) In case of disturbance of any street, public way, or paved area by Municipality, the Company shall, at its own cost and expense and in a manner approved by Municipality, replace and restore such street, public way or paved area in as good a condition as before the work involving such disturbance was done.

(h) The Company shall have the authority to trim trees overhanging upon streets, alleys, sidewalks and other public places of the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company. The Company shall make every effort to preserve the esthetic beauty and viability of any trees trimmed.

(j) Any poles or other fixtures placed in any public way by the Company shall be placed in such manner as not to interfere with the usual travel on such public way.

(k) The Company shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Company when required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change of establishment of street grade, installation of sewers, drains, water pipes, water lines, signal lines, and tracks or any other type of structures or improvements by the city, provided, however, that the Company shall in all such cases have the rights and obligations of abandonment of property of the Company subject to City Ordinances.

SECTION 5. SAFETY REQUIREMENTS.

(a) Company shall at all times employ ordinary care use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.

(b) All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys, and public ways or places of the franchise area, wherever situated or located shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

SECTION 6. PUBLIC BUILDING CONNECTION/LOCAL ORIGINATION PROGRAMMING.

(a) Company shall provide one free Drop at the following public buildings:

- (1) City Hall located at 306 N. Pearl;
- (2) Fire Hall located at 510 Tomar Dr.;
- (3) Public Library Building located at 410 Pearl;
- (4) Community Activity Center Located at 901 W. 7th Street;
- (5) Line Shop located at 211 S. Pearl;
- (6) Power Plant located at 208 S. Main; and
- (7) Public Works located at 207 Fairgrounds Avenue

(b) No monthly charges shall be made to Municipality for providing basic CATV service to the buildings listed above.

(c) During the term of the franchise, the Company shall dedicate, at no charge, at least two local origination channels, one for City government access and one for educational access for public school/college use.

SECTION 7. SYSTEM CONSTRUCTION AND EXTENSION.

(a) Company, whenever it shall receive a request for service from at least ten (10) subscribers within 1,000 feet of its trunk cable, shall extend its CATV to such Subscribers at no cost to the Subscribers for CATV extension other than the usual connection fees for all subscribers, provided that such extension is technically and physically feasible at a commercially reasonable cost. The 1,000 feet shall be measured in extension length of Company's cable required for service

located within the public way and shall not include length of necessary service drop to the Subscriber's home or premises.

(b) No person, firm, or corporation in Company's Franchise Area shall be arbitrarily refused service. However, in recognition of the capital costs involved for unusual circumstances and in order to prevent inequitable burdens on potential cable subscribers in more densely populated areas, service may be made available on the basis of cost of materials, labor, and easements. Unusual circumstances shall include but not be limited to: a requirement for underground cable, a distance of more than 150 feet from the distribution cable to the connection of service to a Subscriber, or a density of less than ten (10) Subscribers per 1,000 feet of the CATV.

(c) In the event additional adjacent territory is incorporated within the Municipality's limits by annexation or otherwise, Company's rights and duties under this Ordinance shall be deemed to include such additional territory.

(d) Company shall maintain a minimum capability of not less than thirty-five (35) channels for of the CATV in Municipality.

SECTION 8. OPERATIONAL STANDARDS.

(a) Company shall operate and maintain its CATV in full compliance with the standards set forth by the Federal Communications Commission.

(b) Company shall construct, operate and maintain the CATV in a safe manner and shall comply with all applicable building codes, electrical codes and, at a minimum, all of the safety and other regulations set forth in the Telecommunications Act.

(c) Company shall abide by any and all applicable subscriber privacy rules and regulations of the federal and state governments.

SECTION 9. LOCAL OFFICE; COMPLAINTS.

(a) Company shall maintain a business office or agent which Subscribers may telephone twenty-four (24) hours per day, seven days per week, without incurring added message or toll charges.

(b) Company shall promptly respond after receipt of a complaint.

(c) Company shall maintain written logs or electronic data listing the day and time of subscriber complaints, identifying the subscriber, and describing the nature of the complaint and when and what action was taken by Company. This information shall be maintained for three (3) years, and Company shall provide it to Municipality upon request.

SECTION 10. RATES. Company has on file with the Municipality a schedule of tariffs which shall include all fees, charges, and rates to be charged to subscribers. If any of the fees, charges, or rates are changed, Company shall notify the Municipality of such changes in writing at least thirty (30) days before the changes take effect.

SECTION 11. PREFERENTIAL OR DISCRIMINATION PRACTICES PROHIBITED. Company shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage, provided that nothing in this franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled and provided further that connection and service charges may be waived or modified during promotional campaigns of Company.

SECTION 12. FRANCHISE PAYMENTS.

(a) Company shall pay to Municipality a franchise fee equal to five percent (5%) of the Gross Annual Television Subscriber Revenue received for the CATV in the Franchise Area. The fee shall be paid on or before May 1 of each calendar year for CATV in the Franchise Area for the

preceding year. Except as provided in any related Pole Attachment Agreement or Head End Lease, no other fee, charge or consideration shall be imposed. Company shall provide an annual summary report showing Gross Annual Television Subscriber Revenue received during the twelve months preceding the due date of each annual franchise fee payment.

(b) Company shall keep complete and accurate books of accounts and records of the business and operations under and in connection with the CATV. The duly authorized representative or agent of the Council shall have the right to review all records pertaining to Gross Annual Television Subscriber Revenue. Non-revenue financial records will only be requested in the aggregate on a summary prepared by Company. Municipality acknowledges the sensitivity of these records and will request this information only on an “as needed” basis and will treat this information as confidential and proprietary to the fullest extent as allowed by law. The Council shall have the right to hire, at its own expense, an independent certified public accountant or other business or financial expert to review the books and records of Company. If after a financial audit it is determined that Company has underpaid amounts owed to the Municipality by more than three percent (3%) annually, then Company shall pay Municipality the additional amount due plus interest at the rate of six percent (6%) per annum and shall reimburse Municipality for the actual cost of the audit. A false entry into the books and/or records of Company made by Company of a material and substantial fact shall constitute a material violation of this Ordinance. Erroneous entries shall not constitute a material violation if made in good faith.

SECTION 13. INDEMNIFICATION OF MUNICIPALITY. Company shall at all times protect and hold harmless the Municipality from all claims, actions, suits, liability, loss, expense, or damages of every kind and description, including investigation costs, court costs, and attorney’s fees, which may accrue to or be suffered or claims by any person or persons arising out of the negligence of Company in the ownership, construction, repair, replacement, maintenance, and operation of the CATV and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of such CATV. The obligation of Company to

indemnify and hold Municipality harmless under this Section shall be contingent upon Municipality providing Company: (i) prompt notice of any such claim, action, suit, liability, loss, expense or damage; (ii) the right to defend and settle such claim; and (iii) reasonable assistance, including access to all relevant information regarding such claim.

SECTION 14. INSURANCE. For so long as it owns and operates a CATV within the Municipality, Company shall secure and maintain public liability, property damage insurance and umbrella coverage in at least the following amounts:

1. Public liability and property damage insurance in the amount of Two Million Dollars (\$2,000,000.00) per event/per occurrence.
2. Umbrella liability shall be in the amount of Two Million Dollars with no more than a Fifty Thousand Dollar (\$50,000.00) deductible and/or base insurance. Company's provider of public and personal liability and property damage insurance shall specifically include the Municipality, the Mayor, the Council, their officials, agents, employees or representatives as additional insureds. Furthermore, the public and personal liability and property damage insurance policy shall be issued by an agent or representative of an insurance company licensed to do business in the State of Nebraska and which has one of the three highest and best ratings from the AM Best Company.
3. The public liability and property damage insurance policy shall contain an endorsement obligating the insurance company to furnish the City Administrator for Municipality with at least thirty (30) days written notice in advance of cancellation of the insurance.
4. Renewal or replacement policies or certificates shall be delivered to the Municipality upon request. Company shall provide with a certificate of insurance on upon request.

SECTION 15. EMERGENCY AND DISASTER WARNINGS. In the case of an emergency o a disaster, the Company shall, upon request of the City, make available its facilities to the City for emergency use during the emergency or disaster period. The Company will also

provide a means of interrupting all channels on the CATV to present emergency audio messages by local law enforcement and public officials. Equipment for such purposes shall be installed in the head-end and shall be accessed by telephone to be installed at a location designated by the City at the company's expense. This may require a dedicated phone line which shall be the City's expense. The equipment shall be purchased and owned by the City, and all maintenance and repair thereon shall be at the City's expense.

SECTION 16. ASSIGNMENT OR TRANSFER OF FRANCHISE. The Franchise granted hereunder shall not be assigned, other than by operation of law or to an entity controlling, controlled by, or under common control with the Company, without the prior consent of the City, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Company in this franchise or the CATV to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Municipality shall notify the Company in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee.

SECTION 17. VIOLATIONS; TERMINATION AND REVOCATION.

1. The Company shall have thirty (30) days from receipt of a notice from Municipality that it is in material breach of this franchise to (i) respond to the Municipality, contesting the assertion of noncompliance, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Municipality of the steps being taken and the projected date that they will be completed.
2. Prior to revocation or termination of the franchise, the Municipality shall give written notice to the Company of its intent to revoke the franchise on the basis of a pattern of

noncompliance by the Company, including one or more instances of substantial noncompliance with a material provision of the franchise. The notice shall set forth the exact nature of the noncompliance. The Company shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the Municipality has not received a satisfactory response from Company, it may then seek to revoke the Franchise at a public hearing. The Company shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Franchise.

3. At the hearing, the Council shall give the Company an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Company within ten (10) business days. The decision of the Council shall be made in writing and shall be delivered to the Company. The Company may appeal such determination to an appropriate court, which shall have the power to review the decision of the Council.
4. Notwithstanding the above provisions, the Company does not waive any of its rights under federal law or regulation.
5. Upon revocation of the Franchise, Company may remove the CATV from the Streets of the Municipality, or abandon the CATV in place.

SECTION 18. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this franchise shall for any reason be held invalid or unconstitutional by any court of competent jurisdiction or by any regulating authority with competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the

validity of the remaining portions hereof; provided, however, that the rates as set forth herein are dependent upon each other and, in the event that any of such rates are determined by a court of competent jurisdiction to be invalid, then all rates established hereunder shall be subject to renegotiations.

SECTION 19. CONFLICTS. All ordinances or portions of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 20. PUBLICATION. This Ordinance shall be published in pamphlet form as provided by the Statutes of the State of Nebraska and shall be in full force and effect from and after its passage, approval and publication as provided by law.

SECTION 21. POLE ATTACHMENT. This Ordinance shall include and incorporate by this reference the Pole Attachment Agreement, if any, attached as Exhibit A hereto.

SECTION 22. HEAD END LEASE. This Ordinance shall include and incorporate by this reference the Head End Lease, if any, attached as Exhibit B hereto.

SECTION 23. FORCE MAJEURE. The Company shall not be held in default under, or in noncompliance with the provisions of the franchise, 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, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, pandemics, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Company's CATV is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

SECTION 24. MINOR VIOLATIONS. The parties hereby agree that it is not the Municipality's intention to subject the Company to penalties, fines, forfeitures or revocation of the franchise for violations of the franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Franchise Area, or where strict performance would result in practical difficulties and hardship to the Company which outweighs the benefit to be derived by the Municipality and/or Subscribers.

SECTION 25. NOTICES. Unless otherwise provided by federal, State or local law, all notices, reports or demands pursuant to this franchise shall be in writing and shall be deemed to be sufficiently given upon delivery at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. As set forth above, notice served upon the Company shall be delivered or sent to:

Grantor: City of Wayne
P.O. Box 8
Wayne, NE 68787

Company: ALLO Communications LLC
Attn: President
330 S. 21st Street
Lincoln, NE 68510

Copy to:

ALLO Communications LLC
Attn: Legal Department
121 S. 13th Street, Suite 100
Lincoln, NE 68508

SECTION 26. ENTIRE AGREEMENT. This franchise and any Exhibits hereto constitute the entire agreement between Municipality and the Company and they supersede all

prior or contemporaneous agreements, representations or understandings (whether written or oral) of the parties regarding the subject matter hereof.

SECTION 27. AMENDMENT. This franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this franchise must be made in writing, signed by the Municipality and Company.

[Signature Page follows]

PASSED AND APPROVED THIS _____ day of _____, 2020.

CITY OF WAYNE, NEBRASKA

By _____
Cale Giese, Mayor

ATTEST:

Betty A. McGuire, City Clerk

STATE OF NEBRASKA)
) ss.
WAYNE COUNTY)

Betty A. McGuire hereby certifies that she is the duly appointed, qualified, acting Clerk of the City of Wayne, Nebraska, and that the above and foregoing Ordinance was duly passed and approved at a regular meeting of the Council of Wayne, Nebraska, held on _____, 2020.

(SEAL)

Betty A. McGuire, CLERK.

EXHIBIT A

POLE ATTACHMENT AGREEMENT

EXHIBIT B

HEAD END LEASE