

Bill No. 2007-1
ORDINANCE #159

An ordinance renewing for the benefit of Christian Enterprises, Inc., D/B/A Rainbow Cable, a Nevada Corporation, it's successors and assigns, a franchise for the right and privilege to construct, maintain, and operate a cable communications system within the City of Caliente, County of Lincoln, State of Nevada, and to use property of the City of Caliente or that portion of the City's property dedicated to public use for the maintenance of cables or wires underground, on the surface, or on poles for the provision of cable communications service.

Sponsored by: Mayor Kevin J. Phillips

WHEREAS, the City has granted a cable communications franchise to Christian Enterprises, Inc. d/b/a Rainbow Cable by Ordinance No. 122 adopted by the City Council on April 6, 1987 (the "franchise");

NOW THEREFORE, THE CITY COUNCIL OF CALIENTE, NEVADA, DOES HERBY ORDAIN:

Section 1. Definitions

For purposes of this ordinance:

- (a) the term "cable system" means a facility consisting of a set of closed transition paths and associated signal generation, reception and control equipment that is designed to provide cable service that includes video programming for subscribers and which may provide other services to subscribers;
- (b) the term "cable service" means
 - (1) the one-way transmission to subscribers of any video programming or other programming service, and
 - (2) subscriber interaction, if any, which is required for the selection or use of such video programming or any other programming service;
- (c) the term "city" means the City of Caliente, Nevada, a municipal coporation of the State of Nevada, in its present incorporated form or in any later recognized, consolidated, enlarged, or reincorporated form;
- (d) the term "company" means Christian Enterprises, Inc. d/b/a Rainbow Cable, a Nevada corporation, and its successors and assigns;

- (e) the term “council” means the current governing body of the city and any future board constituting the legislative body of the city;
- (f) the term “district” means the Lincoln County Television District;
- (g) the term “other services” means services other than cable services provided by the company to subscribers through, or in connection with the company’s operation of, the cable system, but “other services” does not include any service offered in the city by a telephone company pursuant to rates or regulations of the Public Utilities Commission of Nevada;
- (h) the term “subscriber” means a household or business or public establishment within the city which subscribes to one or more cable services offered by the company;
- (i) the term “video programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and
- (j) the term “1984 Act” means the Cable Communications Policy Act of 1984, as amended or suspended, and all regulations promulgated thereunder by the Federal Communications Commission.

Section 2. Findings

The council specifically finds that:

- (a) The company is a suitable entity to operate a cable system for the residents of the city and businesses and public establishments within the city.
- (b) The company is financially responsible.
- (c) The company has the ability to perform efficiently in constructing, maintaining, and operating a cable system.
- (d) The company’s past performance and service under the franchise has substantially complied with its terms and applicable law, and has been reasonable in light of community needs, and the company’s abilities and proposed services are reasonable to meet community needs and interests;

Section 3. Franchise Extension

The franchise is hereby extended without interruption from the end of its original term, to continue in effect until December 31, 2027, or until otherwise terminated in accordance with the franchise terms as set forth in this ordinance or applicable law.

The franchise conveys to the company the authority to construct, maintain, and operate a cable system during the franchise's term and to use city property or that portion of the city's property dedicated to public use for the maintenance of cables or wires underground, on the surface, or on poles for cable system purposes.

Section 4. Use of Rights-of-Way and Easements

The company is authorized to construct its cable system over public rights-of-way, and through easements within the city which have been dedicated for compatible uses, except that in using such easements the company shall ensure that:

- (a) The safety, functioning, and appearance of the property and the convenience and safety of other persons not be adversely affected by its installation or construction of facilities for the cable system.
- (b) The cost of the installation, construction, operation, or removal of such facilities be borne by the company or subscriber, or a combination of both; and
- (c) The owner of the property be justly compensated by the company for any damages caused by the installation, operation, or removal of such facilities by the company.

Section 5. Provision of Cable Service

During the term of the franchise, the company shall offer cable service to a substantial percentage of all potential subscribers.

Section 6. Indemnification and Insurance

The company shall, at its sole cost and expense, fully indemnify, defend, and hold harmless the city, including the council and the city's officers and employees, against any and all claims, suits, actions, liabilities, and judgements for damages to persons or property, in any way arising out of or through the acts or omissions of the company, its servants, agents, or employees, in connection with the construction, maintenance, repair, and operations of the cable system. The company shall maintain throughout the term of the franchise comprehensive general liability insurance insuring the company with regard to all damages mentioned in this Section 6, in the minimum amount of One Million Dollars (\$1,000,000) combined single limit, personal injury, and property damage.

Section 7. Franchise Fee

For the duration of the company's franchise hereunder, the company shall pay to the city a yearly franchise fee equal to the sum of (a) two percent (2%) of the company's subscriber receipts for such year and

(b) Two Dollars (\$2) per city-owned utility pole attachment used by the company. As used in this section, the term "subscriber receipts" means the company's gross revenues from provision of cable service to subscribers less any costs, fees, expenses, charges, or annual assessments paid or incurred by the company for the use of video programming or other programming service.

The company shall submit to the city, within sixty (60) days after the close of each accounting year of the company during which the franchise hereunder is in force, a schedule related to the company's cable service operations certified as true and correct by an officer of the company showing in detail the company's subscriber receipts (as defined above) for the preceding accounting year and the city-owned pole attachments in use on the last day of such year, and the company shall pay the franchise fee for such year within fifteen (15) days after the time for filing such schedule. Nothing in this ordinance shall limit company's authority to recover from subscribers franchise fees paid to the city.

Section 8. 1984 Act Compliance

- (a) The company shall comply with the protection of subscriber privacy provisions of the 1984 Act as in effect from time to time.
- (b) The company shall ensure that no group of potential residential subscribers shall be denied access to cable service because of the income of the residents of the local area within the city in which such group resides and the company shall comply with the equal employment opportunity provisions of the 1984 Act.
- © The company shall, upon the request of a subscriber, provide (by sale or lease, at the company's option) a device or service by which the subscriber can prohibit viewing of a particular cable service during periods selected by that subscriber.

Section 9. Renewal

Any proposal by the company to renew the franchise granted under this ordinance shall be governed by the procedures and standards set forth in the 1984 Act, but the council may refuse to renew only if it finds that:

- (a) The ability of the company to provide services to its subscribers has substantially changed;
- (b) The company substantially failed to comply with a term or condition of the franchise;
- © The quality of the transmissions of the company have consistently failed to meet the standards for such transmissions adopted by the Federal Communications commission; or
- (d) The company refuses to accept a reasonable term or condition which the council proposes to add to the franchise.

Section 10. Severability

If any provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity or constitutionality or the remaining portions hereof.

Section 11. Effective Date

The franchise as so extended and renewed effective upon adoption of this ordinance, remains in force and effect upon the terms stated in this ordinance, provided the franchisee files with the City Council its written acceptance of the terms and conditions hereof.

PROPOSED on the 7th day of June, 2007, by Mayor Kevin J. Phillips.
PASSED on the 19th day of July, 2007.

VOTE:

AYES: Mayor Kevin J. Phillips, Councilman Tom Acklin, Councilman Ashley Moore, Councilman Keith Larson

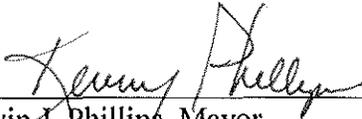
NAYS: None

ABSENT: Councilwoman Laura Tibbetts

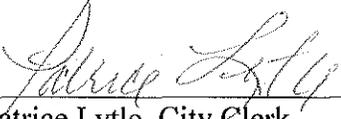
THIS ORDINANCE shall be in force and effect from and after the 9th day of August, 2007.

Approved by:

Attest:



Kevin J. Phillips, Mayor



Patrice Lytle, City Clerk