

CHAPTER 15
CABLE TELEVISION

15-101	Franchise; granted and limitation
15-102	Duration
15-103	Rights subject to police powers
15-104	Franchise required; duration and exclusivity
15-105	Definitions
15-106	Acceptance of franchise
15-107	Procedure to consider franchise renewal
15-108	Poles
15-109	Transmission and distribution systems
15-110	Maintenance of system
15-111	Interference with existing reception prohibited
15-112	Transmission standards
15-113	Indemnification by franchise
15-114	County revenue
15-115	Records
15-116	Other regulations
15-117	Certificate of compliance
15-118	Minimum requirements
15-119	Enforcement
15-120	Subsequent regulation
15-121	Privacy
15-122	Antenna structure
15-123	Establishment of a regulatory entity
15-124	Radiation
15-125	Forfeiture of franchise
15-126	Damaging and interfering with franchise property
15-127	Further agreement and waiver by franchisee

Adopted: December 19, 1996

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**CHAPTER 15
CABLE TELEVISION**

15-101 Franchise; granted and limitations.

The franchise to be granted by the Bryan County Board of Commissioners pursuant to this ordinance shall grant the right, privilege, and franchise to erect, construct, operate 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 such extensions thereto and additions thereto in the county; and poles, wires, cables, conductors and fixtures necessary for the maintenance and operation of a CATV system for the interception, sale, transmission and distribution of television programs and other audiovisual electrical signals and the right to transmit the same to the inhabitants of the county on the terms and conditions hereinafter set forth. The County of Bryan expressly reserves the right to grant a similar use of said streets, alleys, public ways and places to any person at any time during the period of this franchise. It is further the intention of this ordinance to limit the activity of a grantee hereunder solely to the operation of cable television systems within the limits of Bryan County, Georgia.

15-102 Duration.

The term of the franchise to be granted to the County of Bryan pursuant to this ordinance shall be for a period of not more than thirty (30) years from and after the grant and acceptance date of this franchise to be awarded, subject to the conditions and restrictions as hereinafter provided, and further providing that the Bryan County Board of Commissioners, shall have the right to review such franchise periodically at such times as the commission may from time to time elect to do so and as hereinafter provided.

15-103 Rights subject to police powers.

In accepting this franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the county to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the county pursuant to such power.

15-104 Franchise required; duration and exclusivity.

The county shall grant a franchise for the use of the streets and roads within the county for the construction, operation and maintenance of a CATV system. No system shall be

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Donna M. Waters, Clerk

allowed to occupy or use the streets or roads of the county or be allowed to operate without a CATV franchise. This franchise shall be granted for a term of not more than thirty (30) years. The franchise to operate a cable television service shall be on a nonexclusive basis.

15-105 Definitions.

1. Cablecasting, origination and access.

(a) Cable casting. Programming (exclusive of broadcast signals) carried on a cable television system.

(b) OriginatioCable casting. Programming (exclusive of broadcast signals) carried on a cable television system over one or more channels, and subject to the exclusive control of the cable operator.

(c) AccesCable casting. Services provided by a cable television system on its public, education, local government or leased channels.

(1) Public access channel. A specifically designated noncommercial public access channel available on a first-come nondiscriminatory basis for which the system shall maintain and have available for public use at least the minimal equipment and facilities necessary for the production of programming for such a channel.

(2) Education access channel. A specially designated channel for use by educational authorities.

(3) Local government access channel. A specially designated channel for local government uses.

(4) Leased access channel. Portions of the system's non-broadcast bandwidth including unused portion of the specially designated channels for leased access services.

2. Cable communication system, cable system, CATV or system. A system of coaxial cables or other electrical conductors and equipment used or to be used to originate or receive television or radio signals directly or indirectly off the air and to transmit them via cable to subscribers for a fixed or variable fee, including the origination, receipt,

Adopted: December 19, 1996 Signed: _____

Donna M. Waters, Clerk

transmission, and distribution of voices, sound signals, pictures, visual images, digital signals, telemetry, and any other type of closed circuit transmission by means of electrical impulses, whether or not directed or originating signals or receiving signals off the air.

3. (a) County. The County of Bryan, Georgia and all the territory within its existing and future territorial limits.

(b) County officer(s) or employee(s). The person or persons elected to or appointed to such position.

4. Converter. An electronic device, which converts signals to a frequency not susceptible to interference within the television receiver of a subscriber, or by an appropriate channel selector also permits a subscriber to view all signals delivered at designated dial locations.

5. Franchise. Includes this franchise and all rights, powers, and privileges thereunder.

6. Franchise agreement. The agreement between the county and the franchisee made pursuant to this ordinance, as amended are part of the franchise agreement.

7. Franchisee. The entity to whom the CATV franchise is awarded and shall include all persons having any rights, powers, privileges, duties, liabilities or obligations under a franchise agreement, and also all persons having or claiming any title or interest in or to the system, whether by reason of the franchise itself or any subcontract, transfer, assignment, mortgage, pledge, hypothecation, security agreement, management or operating agreement, or otherwise arising or created.

8. Gross subscriber revenues. Those revenues derived directly from the supplying of regular subscriber service within the county, including monthly service charges and fees for regular cable benefits including the transmission of broadcast signals and access or origination channels if any; it also includes installation fees or reconnect charges, revenues derived from per-program or per-channel charges, leased channel revenues, advertising revenues, or any other revenue derived from the system, except any revenue derived from investment or other income producing revenue of net profits from the system.

9. Pay TV. An arrangement under which a charge is made to a subscriber for receiving a particular television program or series of programs.

Adopted: December 19, 1996 Signed: _____

Donna M. Waters, Clerk

10. Programmer. Any person, firm, corporation or entity who produces or otherwise provides program material for transmission by video, audio, digital, or other signals, either live or from recorded tapes, to subscribers, by means of the cable communications system.

11. Public Agency. An agency which is supported wholly, or substantially, by public funds.

12. Service, basic, and additional. Basic subscriber service means a total of all the following:

- (a) The transmission of all broadcast video channel signals provided for herein.
- (b) The transmission of the public, educational, or local government access channel signals.
- (c) The transmission of the local origination channel signals.
- (d) The transmission of such other cable cast channel signals as are required by the FCC to match the number of broadcast channel signals being transmitted.
- (e) The installation and re-connection of subscriber outlets.

Additional services. Such video services as the transmission of all leased access channel signals not included in basic subscriber service, as well as the transmission of cable cast video advertising messages and pay television signals.

13. Streets and highways. Streets, roads, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, docks, bulkheads, wharves, piers, alleys and all other public right of way and public grounds or waters within or belonging to the county.

14. Subscriber. A person or organization whose premises are physically wired to receive, and/or who is receiving by any manner, any transmission from the system.

15. Subscriber service drop. Such extension wiring from the franchisees distribution lines to a subscriber's building or ultimate usage terminal.

Adopted: December 19, 1996 Signed: _____

Donna M. Waters, Clerk

16. User. A person utilizing a system channel as a producer, for purposes of production or transmission or material, or as a subscriber, for purposes of receipt of material.

15-106 Acceptance of franchise.

1. This franchise and the rights, privileges and authority hereby granted shall take effect and be in force from and after acceptance by franchisee of the franchise offered by Bryan County Board of Commissioners, subject to the terms of this ordinance and the rules and regulations of the Federal Communications Commission and/or its successor agency. Franchisee must within sixty (60) days after being offered this franchise by the Bryan County Board of Commissioners accept such provisions of this ordinance, as amended. Such acceptance and agreement shall be in writing, duly executed and sworn to, by or on behalf of the grantee before a Notary Public or other officer authorized by law to administer oaths. This franchise contract is made part of this section as though fully set forth therein.

2. Should the grantee fail to comply with subsection (1) above, it shall acquire no rights, privileges or authority under this franchise whatever..

15-107 Procedure to consider franchise renewal.

1. At least thirty (30) days public notice shall be given of a meeting of the Commissioners to proceed to determine whether the operator has satisfactorily performed his obligations under his franchise. To determine satisfactory performance, commissioners shall look at the technical developments and performance of the system, programming, services offered, cost of service, and any other particular requirement set forth in this ordinance such as the availability of programming equipment and personnel to aid access channel users; also, the commissioners shall consider the franchisee's annual reports made to the county or to the FCC; provisions shall be made for community comment; and industry performance on a national basis shall be considered.

2. The commissioner will have four (4) months after notification to determine the franchisee's eligibility for renewal.

3. If the commissioners find the franchisee's performance satisfactory, a new franchise may be granted pursuant to the ordinance as amended.

4. In the event the current franchisee is determined to have performed unsatisfactorily, the company shall have sixty (60) days from the date of determination in which to cure

Adopted: December 19, 1996 Signed: _____
Donna M. Waters, Clerk

any discrepancies, to the satisfaction of the commission. In the event such cure is not accomplished within the time allotted, the commission shall have the right to terminate the franchise without penalty or other recourse by the franchisee.

15-108 Poles.

The poles used for the franchisee's distribution system shall be those erected and maintained by an electric, telephone, or other public utility company, when and where practicable, provided mutually satisfactory rental agreements can be entered into with said companies. Where the use of poles owned by an electric, telephone, or other public utility is not practicable or mutually satisfactory rental agreements cannot be entered into with said companies following a good faith effort on the part of the franchisee to obtain such agreements, the franchisee may request the board of commissioners to authorize franchisee to erect and maintain its own poles, as may be necessary for the proper system. The location and physical characteristics of the poles must be approved by the board of commissioners.

15-109 Transmission and distribution systems.

The franchisee's transmission and distribution system poles, wires and appurtenances shall be located, erected and maintained so as not to endanger or interfere with the lives of the persons or the use of county roads, or to interfere with existing and/or new improvements this county may deem proper to make or unnecessarily hinder or obstruct the free use of streets, alleys, bridges, of other public property of the county or its citizens. The franchisee will at the request of the county move and relocate, if necessary, any of the franchisee's installations, including removal of poles to avoid such interference at the franchisee's expense. The board of commissioners shall be the sole judge as to what constitutes interference. However, the commission shall not act arbitrarily in determining what constitutes interference. Approval of the commissioners prior to erection of any transmission or distribution facilities. Any change in location of these facilities shall also be subject to prior approval by the board of commissioners. Construction and maintenance of the transmission or distribution system including house connections, shall be in accordance with the provisions of the National Electric Safety Code, as amended, prepared by the National Bureau of Standards, the National Electric Code, of the National Board of fire Underwriters, as amended, and such applicable ordinances, and regulations of the county affecting electrical installations, which may be presently in effect, or changes by future ordinances.

The franchisee shall, on the request of any private party holding an appropriate permit issued by the county, temporarily raise or lower its lines to permit the moving of any building or

Adopted: December 19, 1996 Signed: _____
Donna M. Waters, Clerk

other structure, and the actual expense of the same shall be paid by the party requesting the same. In those areas where telephone and electric service lines are underground, the franchisee shall place its cables and service lines underground unless approval to place the cables and service lines on poles is secured from the commissioners. Franchisee is authorized to place all cables and service lines underground in areas where poles are located.

15-110 Maintenance of system. In the maintenance and operation of its television transmission and distribution system in the streets, alleys and other public places, and in the course of any new construction or addition to its facilities, the franchisee shall proceed so as to cause the least possible inconvenience to the general public; any opening or obstruction in the streets or other public places made by franchisee in the course of its operations shall be made only after having obtained prior written permission to do so from the chairman of the board of commissioner or his representative, and the proper state and/or federal highway officials if a state and or federal highway is involved. All such work shall be guarded and protected at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during and between periods of thirty (30) minutes prior to sunset and for thirty (30) minutes after sunrise, shall be clearly designated by appropriate warning lights.

All work in any way necessitated by the business of the franchisee which may involve the opening, breaking up or tearing up of a portion of the street, sidewalk or other part of any county owned or county controlled property, shall be done and repaired in a manner approved by the county, and may be done by the county at the expense of the franchisee if mutually agreed upon by the board of commissioners and the franchisee or by the board of commissioners and charged to the franchisee if the franchisee refuses to repair the streets, sidewalks or county property promptly and/or fails to repair such in a satisfactory manner.

15-111 Interference with existing reception prohibited. Installations by the franchisee shall be maintained so as not to interfere with TV reception already in existence.

15-112 Transmission standards. Installation and maintenance of equipment shall be such that standard color signals shall be transmitted to any subscriber receiver. During the terms of this franchise, the franchisee shall (subject to approved construction schedules) furnish to all persons desiring the service offered (subject only to the specifications of this ordinance and paying for the same) a service capable of producing as good a quality of television picture or reception as may be practicable from time to time, and essentially, of the same quality as received at the antenna site. The franchisee shall make all reasonable and practicable efforts to improve the quality of services as the state of the art develops.

Adopted: December 19, 1996 Signed: _____
Donna M. Waters, Clerk

15-113 Indemnification by franchise. The franchisee shall indemnify, protect and save harmless the county at all times during the franchise period and any renewal thereof as a result of the grant of a franchise and from and against losses and physical damages to property, and bodily injury or death to persons, including payments under workmen's compensation law, which may arise out of or be caused by the erection, maintenance, presence, use or removal of said attachments on poles within the county, or by an act of the franchisee, its agents or employees arising out of operations of the franchisee. The franchisee shall carry insurance with company authorized to do business in Georgia to protect the parties hereto from and against all claims, demands, judgments, costs, expenses and liabilities which may arise or result directly or indirectly from or by reason of such loss, injury or damage. The amounts of such general liability insurance against liability due to physical damage to property shall no be less than fifty thousand dollars (\$50,000.00) per occurrence for property damage and not less than one hundred thousand dollars (\$100,000.00) per aggregate for property damage, and not less than three hundred thousand dollars (\$300,000.00) per person for personal injury to or the death of one person and not less than five hundred thousand dollars (\$500,000.00) per occurrence. The company shall also carry such insurance on its vehicles in an amount no less than one hundred thousand dollars (\$100,000.00) for each person. Not less than three hundred thousand dollars (\$300,00.00) per occurrence and property damage insurance of three hundred thousand dollars (\$300,000.00) per occurrence. Workmen's Compensation shall be maintained as required by the laws of the State of Georgia. All insurance required by this agreement shall be and remain in full force and effect for the entire life of the franchise. Said policy of policies of insurance or a certified copy or copies thereof shall be approved by the county attorney and then deposited with and kept of file by the county clerk. A certificate showing that such coverage has been obtained and is currently in force and effect shall be filed with the county clerk prior to the commencement of construction by the franchisee and within thirty (30) days of the anniversary date of the policy in each and every year as long as this franchise and any extension thereof is in force. The certificate will state that the insurance carrier will give the board of commissioners sixty (60) days advance notice of termination of any policy furnished hereunder. Further franchisee will save harmless and defend the county against copyright and patent infringement matters which arise out of the construction, repair, maintenance, and operation of this franchise.

15-114 County revenue. In further consideration of the granting of this franchise to the franchisee, the franchisee shall pay to the county annually, no later than ninety (90) days after end of franchisees fiscal year an amount equal to five percent (5%) of gross (present Federal Communications Commission standard rate) of all cable revenues, including, but not limited to, subscriber revenues, advertising, pay cable and leased channel revenues of the franchisee derived from cable television operations within the unincorporated limits of Bryan County, Georgia during the previous year. Provided further, if the standard percentage rate is increased by the Federal Communications Commission or its successor, then the fee

Adopted: December 19, 1996 Signed: _____
 Donna M. Waters, Clerk

authorized hereunder may be amended by the Commissioners of Bryan County to the highest standard fee authorized by the Federal Communications Commission or its successor the regulatory matters, effective as of the date such higher standard fee is approved by such regulatory agency. The Commissioners of Bryan County shall have reasonable time for the purpose of ascertaining accurately what the actual gross receipts of the franchisee may have been for cable television for past month, months, year and/or for the present year.

15-115 Records. The franchisee shall, during each year of the franchise, provide to the county copies of his federal and state income tax returns showing gross revenue received from the franchise area by the franchisee. In addition, the franchisee shall supply copies of any and all reports concerning revenue required to be filed with the Federal Communications Commission and the Public Service Commission of the State of Georgia and any other regulatory agencies. In addition, the franchisee agrees to prepare and maintain his records, books and accounts in such a manner as to accurately reflect the gross income from any franchise area granted to franchisee by the county. These records, books and accounts shall be available for inspection by the county at any reasonable time during normal working hours. Any such records required by the county and any reports shall be submitted to the county within ninety (90) days of the close of franchisees fiscal year. The franchisee further agrees that within ninety (90) days of the end of its fiscal year it shall submit to the county a report of all gross revenue derived from any area under which the county has granted a franchise.

15-116 Other regulations. The franchisee shall, at all times, be in full compliance with all FCC regulations, as amended, pertaining to cable television systems. The franchisee shall furthermore at all times be in full compliance withal existing federal, state and local laws, ordinances and statutes as are applicable to the operation of a cable television system. No part of this ordinance shall be construed as a waiver of any local, state or federal law, or as a limit of liability.

15-117 Certificate of compliance. The franchisee shall file with the Federal Communications Commission an application for a Certificate of Compliance and/or any and all reports required by said agency or its successor.

15-118 Minimum requirements. To the extent required by the present rules of the Federal Communications Commission or any other rules or regulations or amendments thereto and until such time as that rule is changed or specific relief therefrom is granted by the FCC, the franchisee shall provide services, system performance, channel capacity, one or two-way communications, operational policies, etc., in strict conformance with said rules.

Adopted: December 19, 1996 Signed: _____
Donna M. Waters, Clerk

In any case where the proposal shall provide for, or promise services, system performances, etc., which exceed the minimum requirements of the Federal Communications Commission, the proposal of the applicant shall be binding and shall be made a part thereof.

Section 76.31 of the rules of the Federal Communications Commission, and any amendments thereto set out certain requirements and provisions that must be contained in the franchise in order for the franchisee to obtain a certificate of compliance from the FCC. It is the knowledge and belief of the county and the franchisee that all the present requirements of those rules are contained herein. Any changes in said rules that may be authorized and ordered by the FCC from time to time shall be incorporated into this agreement within the period of time stipulated by the FCC.

15-119 Enforcement. Failure to enforce or insist upon compliance with any of the terms of this franchise shall not operate as or constitute a general waiver of relinquishment of any of such terms of conditions, but the same shall be and remain at all times in full force and effect.

15-120 Subsequent regulation. The right is hereby reserved by the county, by ordinance, to adopt in addition to the provisions herein contained and in addition to the provisions herein contained and in addition to other existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power. In the event the Federal Communications Commission elects not to regulate cable television partially or abandons regulation of cable television, all of the rules and regulations set forth by the FCC at the time this ordinance was enacted shall remain in effect until changed by another regulatory agency, state or federal, and/or changed by the action of board of commissioners.

15-121 Privacy.

1. Use of data for subscriber. A franchisee shall not initiate or use any form, procedure or device for procuring information or data from cable subscriber's premises by use of the cable system without prior valid written authorization from each subscriber so affected. Valid authorization shall mean written approval from the subscriber for a period of time not to exceed one year, and said authorization shall not have been obtained from the subscriber as a condition of service. Further it shall be unlawful for the grantee, without such authorization, to activate and/or utilize any "Class IV Cable Television Channel" in any manner from the subscriber's premises. In any case, the subscriber shall have the right and opportunity to deactivate the return path from his or her premises.

Adopted: December 19, 1996 Signed: _____
Donna M. Waters, Clerk

2. Identifying subscribers. The county or a franchisee shall not, without prior valid written authorization from each subscriber so affected, provide any data identifying subscribers names or addresses to any other party.

3. Procurement of information. It shall be unlawful for any firm, person, group, company, corporation, governmental body or agency to procure information or data from cable subscribers premises by use of the cable system without prior written authorization from each subscriber so affected.

4. Specific authorization. No authorization for procurement or dissemination of subscriber identifiable information or data shall be valid unless it (a) specified the type or types of information or data covered, and (2) the parties are authorized to collect, receive, store, record, transmit, or otherwise convey this information or data. Further all authorization shall specify the maximum period of time that any subscriber identifiable information or data shall be preserved in any manner or form.

15-122 Antenna structure. Any antenna structure used in the county's cable television system shall comply with Construction Marking and Lighting of Antenna Structure, 47 C.F.R. 17.1 et seq., September 1967.

All working facilities and conditions used during construction, installation, maintenance of the county's cable television system shall comply with the standards of the Occupational Safety and Health Administration.

15-123 Establishment of a regulatory entity. The county shall have continuing regulatory jurisdiction and supervision over the operation of any franchise granted hereunder and may from time to time adopt such reasonable rules and regulations as they may deem necessary for the conduct of the business contemplated thereunder.

15-124 Radiation. Stray radiation (RF leakage) shall be checked at reception locations for emergency radio services to prove no interference signal combinations are possible. Stray radiation shall be measured adjacent to any proposed aeronautical navigation radio sites to prove no interference to airborne navigational reception in the normal flight patterns.

15-125 Forfeiture of franchise.

1. In addition to all other rights and powers pertaining to the county by virtue of this franchise or otherwise, the county reserves the right to terminate and cancel this franchise and all the rights and privileges to the grantee hereunder in the event that the grantee:

Adopted: December 19, 1996 Signed: _____

Donna M. Waters, Clerk

- (a) Violates any provisions of this ordinance as may be amended from time to time or any rules, order of determination of the Board of Commissioners of Bryan county, Georgia made pursuant to this franchise, except where such violation is made without fault, or through excusable neglect.
- (b) Becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.
- (c) Attempts to evade any of the provisions of this ordinance or the franchise or practices any fraud or deceit upon the county.
- (d) Fails to secure a certificate of compliance from the FCC or any other necessary license or permit within four (4) months of the acceptance of this franchise.
- (e) Fails to exhibit substantial progress toward the completion of the construction of the system for a period of three (3) consecutive calendar months.
- (f) Fails to complete construction schedule approved by the county under this franchise within the time set forth in the construction schedule accepted by the county.
- (g) Franchisee leases, subleases, sells or transfers the franchise without written consent of the Commissioner of Bryan County, A sale of more than fifty-one (51%) percent of the stock of the corporation to any entity or entities and/or person or persons, and/or more than fifty-one percent (51%) interest in the franchise and/or fifty-one (51%) percent of the working control of the franchise is considered a transfer under this section of the ordinance.

2. Such termination and cancellation shall be by action of the Commissioners of Bryan County, adopted after thirty (30) days notice of the grantee, and the granting of a period of sixty (60) days in which the company shall correct any such discrepancies. This shall in no way affect the county's rights under the franchise agreement or any provision of law. In the event that such termination or such cancellation depends upon a finding of fact as made by the Commissioners of Bryan County and/or its representative, such findings of fact shall be conclusive on all parties. Provided, however, that before this franchise may be given an opportunity to be heard before the Commissioners of Bryan County. The county, in making such findings shall not act in an arbitrary manner.

15-126 Damaging and interfering with franchise property. It shall be unlawful for any person intentionally and without authority to injure or destroy cables, pipes, conduit, wire, lines, posts, lamps or other apparatus belonging to the franchisee or intentionally

Adopted: December 19, 1996 Signed: _____
 Donna M. Waters, Clerk

and without authority to secure television cable service in any manner or interfere with the operations of the franchisee in providing television cable service to other subscribers on the television cable system owned by the franchisee. Where there is no evidence to the contrary, the person performing any of the illegal acts set forth herein and/or the person who with knowledge of such violation receives the benefit of such service without proper charge as a result of such improper action shall be presumed to be responsible for such acts of tampering or diversion. Any person concealing a violation or harboring, assisting or protecting a person charged with or convicted of a violation of this action shall be fined not to exceed two hundred fifty dollars (\$250.00) and/or by sentence of imprisonment not to exceed ninety (90) days, either or both, fine or imprisonment for such violation, is at the discretion of the appropriate judicial authority.

15-127 Further agreement and waiver by franchisee. The franchisee agrees to abide by all provisions of this ordinance and the franchise agreement, and further agrees that it will not at any future time set up against the county the claim that the provisions of this ordinance and/or franchise are unreasonable, void or arbitrary.

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