

AN ORDINANCE GRANTING TO TEXAS CABLE SYSTEMS, INC., ITS SUCCESSORS AND ASSIGNS, AN EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM IN THE CITY OF BAYSIDE FOR A TERM OF TWENTY (20) YEARS AND SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF SUCH FRANCHISE; MAKING IT UNLAWFUL FOR THE MAKING OF CERTAIN UNAUTHORIZED CONNECTIONS TO SUCH SYSTEM, AND FOR TAMPERING WITH, REMOVAL OF, AND PROVIDING FOR SEVERABILITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BAYSIDE, TEXAS:

SECTION I: Definitions. As used in this ordinance, the following words and phrases shall have the meanings as set down herein. The word "shall" is mandatory and not merely directory.

(a) "Council" is the governing body of the City of BAYSIDE;

(b) "Cable Television System," hereinafter referred to as "system, means a system for transmission of audio and/or video signals by coaxial cables or other electrical conductors and equipment used to transmit information and intelligence, including but not limited to, the relay of television and associated audio signals received off-the-air. These services include, but are not limited to, "Basic Service" or "Premium Service";

(c) "City" is City of BAYSIDE;

(d) "Channel" means a band of standard and non-standard frequencies in the electromagnetic spectrum which are capable of carrying an audio-digital and/or an audio-visual television signal or signals;

(e) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind;

(f) "Streets" means streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, and parkways within or belonging to the City;

(g) "Subscriber" is the receiver of any service delivered over the system;

(h) "Television signals" means any electromagnetic signal broadcast by a television station licensed by the Federal Communication Commission;

(i) "Grantee" is Texas Cable Systems, Inc., its successors and assigns, as may be in accordance with the provisions of the Franchise. Texas Cable Systems, Inc. is a corporation organized and existing under the laws of the State of Texas, with its principal office and place of business located in Round Rock, Texas;

(j) "Basic Service" shall consist of these television broadcast station signals required to be carried by Grantee pursuant to Rules and Regulations of the Federal Communication Commission. Basic Service generally includes each of the three major networks (ABC, CBS and NBC), and most educational and independent stations that are receivable in the City directly from the television broadcast station. Additional program services may be included in Basic Service as may be required by XIX of this Franchise.

(k) "Premium Service" is comprised of any communications or programs not included within the definition of Basic Service such as, but not limited to, movie services, sporting events, and other satellite delivered programming, as well as advertising, leased channels, shopping services, and the transmission of other programming and electronic information for which a per program or per channel charge is made;

(l) "Gross Revenue" is the revenue collected by grantee from subscribers for the provision of Basic Services and Premium Services;

(m) "Franchise" is the term applied to this Ordinance following adoption by the City Council and acceptance by the Grantee.

SECTION II: Grant of Authority.

A. The City hereby grants to the Grantee, the right, privilege, and franchise to construct, erect, operate, and maintain in, upon, along, across, above, over, and under the streets, alleys, public ways, and other public places now laid out or dedicated, and all extensions thereof, and additions thereto, any poles, wires, cables, underground conduits, manholes, amplifiers, and associated equipment and other electronic conductors and fixtures necessary for the construction, maintenance, and operation of a system.

B. The right to use and occupy said streets for the purpose herein set forth shall be exclusive.

SECTION III: Compliance with Applicable Laws and Ordinances. The Grantee shall, during the life of this Franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulations as the City shall hereafter adopt in the exercise of its police power; provided, however, that such additional ordinances

shall be reasonable and lawful and shall not conflict with, or alter in any manner, the rights granted herein.

SECTION IV: Operation and Maintenance.

A. The Grantee shall put, keep, and maintain all parts of the system in good condition throughout the franchise term.

B. The Grantee shall endeavor to respond to all service calls within twenty-four (24) hours and correct malfunctions as promptly as possible.

C. Except where there exists an emergency situation necessitating a more expedient procedure, the Grantee may interrupt Service for the purpose of repair or upgrading of the system only during periods of minimum use and only after twenty-four (24) hours minimum notice to its subscribers.

SECTION V: Construction and Maintenance.

A. All transactions and distribution structures, lines, and equipment erected by the Grantee within the city shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets or public buildings.

B. In case of disturbance of any street or paved area, the Grantee shall, at its own cost and expense and in manner approved by the City Council, replace and restore such street, paved area, or public building in as good a condition as before the work involving such disturbance was done. No work shall be done on any such street unless at least five (5) working days prior to beginning, a notice of the proposed work, detailing and locating the type of work proposed, has been filed with the City.

C. Any poles or other fixtures placed in any street or public building by the licensee shall be placed in such a manner as not to interfere with the usual travel on such public way.

D. The Grantee shall, on the request of any person holding a permit to move a building or other structure or vehicle issued by the City, temporarily raise or lower its wires to permit the moving of said structure or vehicle. The expenses of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than forty-eight (48) hours notice to arrange for such temporary wire changes.

E. The Grantee shall have the authority to trim trees upon and overhanging streets in the City so as to prevent the branches of such trees from coming in contact with the wires and cables of the Grantee.

SECTION VI: Service Area and Line Extensions.

A. This franchise is related to the present extraterritorial limits of the City and to any area henceforth added thereto during the term of this Franchise.

B. Grantee shall make service available to all the areas designated on the map and plan of construction, which is attached as Exhibit "A," and made a part of this Franchise, which areas shall be termed initial service areas. Grantee shall not be obligated to extend its service lines beyond the initial service areas designated in Exhibit "A," but Grantee may, at its option, make any such line and service areas upon payment of a reasonable one-time construction assessment by potential subscribers, in particular the line extension area to be served.

C. Above notwithstanding, line extension shall be available to areas within the city limits of the City under either of the following provisions at the choice of the applicant:

Option A. Upon request for service, Grantee shall extend its lines and service within the City beyond the initial service area to any location in which there are at least forty-five (45) homes per mile of cable required to extend service from the initial service area.

Option B. Grantee shall, whenever it shall receive request for service from at least eight (8) potential subscribers within one thousand (1,000) feet from its existing system, extend such system to said subscribers at no cost to the subscriber for the system extension other than usual connect fees for all subscribers. The one thousand (1,000) feet shall be measured in extension length of Grantee's cable required for service located within the public way or easements and shall not include length of the necessary service drop to the subscriber's home or premises. In addition, the City Council may, on complaint from any potential subscriber residing in the city, order the extension of the system to such subscriber after opportunity for hearing and notice to Grantee, provided costs of the extension are paid by such subscriber.

SECTION VII: Removal of Facilities. Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

SECTION VIII: Payment to the City.

A. As a consideration for this grant, the Grantee agrees to pay to the treasurer of the City four (4%) percent of the gross revenue per annum derived by the Grantee from monthly basic service charges received by the Grantee from subscribers to its services within the City within sixty (60) days after the first day of January; and each calendar year thereafter during the term of this ordinance, the Grantee shall file with the treasurer of the City a report of such revenue as described in this section for the next preceding year, which report shall include a computation of the amount due. The amount of the tax so earned and calculated shall be paid on or before thirty (30) days after the filing of said report.

The payments described in this section shall be in lieu of any and all other franchise, privilege, license, pole, wire, instrument, excise, revenue, or any other taxes except ad valorem property taxes, non-selective occupation taxes, sale taxes, and special improvement assessments lawfully levied.

SECTION IX: Rights Reserved to City.

A. The right is hereby reserved to the City to adopt, in addition to the provisions contained herein and in existing applicable ordinances, such additional regulations as it shall find necessary in the exercise of its police power; provided that such regulations, by ordinance or otherwise, shall be reasonable, are not in conflict with the rights herein granted, and are not superseded by other authorities.

B. Upon notification of the Grantee, the City shall have the right to inspect the books, records, maps, plans, income tax returns, and other like material of the Grantee.

C. The City Council may hold hearings on any matter pertaining to this Franchise, and Grantee shall make available its representatives or agents for such hearing.

SECTION X: Duration and Acceptance of Franchise.

A. This Franchise and the rights, privileges, and authority hereby granted shall take effect and be in force from and after final passage hereof, as provided by law, and shall continue in force and effect for a term of twenty (20) years; provided, that within forty five (45) days after the date of the passage of this ordinance, the Grantee shall file with the Council its unconditional acceptance of this Franchise and promise to comply with and abide by all its provisions, terms, and conditions. The original terms of

this Franchise shall be automatically extended for successive additional five (5) year periods unless one of the parties hereto shall give twelve (12) months written notice to the other party of its intention not to extend this Franchise on these terms and conditions. Notwithstanding such notice, the City and Grantee agree to negotiate in good faith changes proposed by either party which would apply to a renewal or extension of this Franchise so as to insure continuity of service to the public.

B. Should the Grantee fail to comply with subsections (A) above, it shall acquire no rights, privileges, or authority under this Franchise whatsoever.

SECTION XI: Forfeiture.

A. In addition to all other rights and powers pertaining to the City by virtue of this Franchise or otherwise, the City reserves the right to terminate and cancel this Franchise and all rights in the event that the Grantee:

1. Is adjudged bankrupt;
2. Practices any fraud or deceit upon the City;
3. Fails to perform any terms, conditions, or covenant of this Franchise; or
4. Fails to correct, after notice, any deficiency in service.

B. If the City deems Grantee to be in noncompliance with the franchise or if one or more of the proceeding events set forth in paragraph A transpire, the City shall send to Grantee notice of such problem. The Grantee shall be provided an opportunity to clear up such problem. If the problem is not cleared up within Forty-five (45) days of receiving notice, the City may proceed with the cancellation or termination of the Franchise.

SECTION XII: Transfers. All of the rights and privileges and all of the obligations, duties, and liabilities created by this Franchise shall be binding upon the successors of the City and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the Grantee giving written notification to the City of BAYSIDE: and provided further, that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty (50%) percent of the beneficial ownership is held by the same person, persons, or entities shall be permitted without the prior notification of the City Council, provided that prompt notice thereof be given to the City in writing.

SECTION XIII: Liability, Indemnification, and Insurance.

A. The Grantee shall pay all damages and penalties which the City may legally be required to pay as a result of granting this Franchise. These damages or penalties shall include damages arising out of the installation, operation, or maintenance of the system authorized herein.

B. The Grantee shall maintain throughout the term of this Franchise liability insurance insuring the City and the Grantee with regard to all damages mentioned in subsection (A) above in the minimum amounts of:

1. Workman's Compensation insurance covering all employees of the Grantee who shall perform any of the obligations of the Grantee hereunder, whether or not such insurance is required by the laws of the State governing the employment of any such employee. If any employee is not subject to the workman's compensation laws of such State, such insurance shall extend to such employee voluntary coverage to the same extent as though such employee were subject to such laws.

2. Public liability and property damage liability insurance covering all operations under this Agreement for bodily injury or death not less than \$1,000,000 for one person and \$1,000,000 for each accident: for property damage, not less than \$1,000,000 for each accident and \$1,000,000 aggregate for accidents during the policy period.

3. Automobile liability insurance on all self-propelled vehicles used in connection with this Agreement whether owned, non-owned, or hired: public liability limits of not less than \$1,000,000 for one person and 1,000,000 for each accident: property damage limit of \$1,000,000 for each accident.

C. The insurance policy obtained by the Grantee in compliance with this section must be approved by the legal advisor of the City, and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City Secretary during the term of the Franchise.

SECTION XIV: Unlawful Acts.

A. It shall be unlawful for any person to make any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of Grantee's cable television system for the purpose of enabling himself or others to receive any television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system

without payment to Grantee or its lessee.

B. It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove, or injure any cable, wires, or other equipment used for the distribution of television signals, radio signals, pictures, programs, sounds, or any other information or intelligence transmitted over Grantee's cable system.

C. It is a Federal Offense punishable by a fine of not more than ONE THOUSAND (\$1,000.00) DOLLARS, for any person to violate any of the provisions of this Section.

SECTION XV: Severability. If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of this ordinance shall not be affected thereby, it being the intent of the City Council in adopting this ordinance that no portion thereof, or provisions or regulation contained herein, shall become inoperative or fail by reason of any unconstitutionality of any other portion hereof, and all provisions of this ordinance are declared to be severable for that purpose.

SECTION XVI: Construction Schedule. The Grantee agrees to perform necessary preconstruction work in a timely manner; and that the cable system will be activated and available to all city residents in the initial service area no later than nine (9) months following the date of unconditional acceptance of this document.

SECTION XVII: Rate Schedule.

A. Initial rates for cable service to subscribers shall be as follows:

1. For basic service, FOURTEEN AND 95/100 (\$14.95) DOLLARS a month for the first outlet; THREE AND NO/100 (\$3.00) DOLLARS a month for each additional outlet;
2. For Premium Service such as HBO or Cinemax, add NINE AND 95/100 (\$9.95) DOLLARS a month to the basic service charges;
3. For initial installation and reconnection at a premises, FIFTEEN AND NO/100 (\$15.00) DOLLARS, and for each additional outlet at such premises, TEN AND NO/100 (\$10.00) DOLLARS;

B. All rates, charges, and terms or conditions relating thereto shall be non-discriminatory.

C. The initial installation charge set forth in subsection A, 5, above, is waived with respect to each installation ordered within one (1) month after service is available to such subscriber, except for the charge for inside wall installation which shall be levied during such one (1) month period.

SECTION XIII: Services. Grantee agrees to provide the following services subject to availability, market demand, and regulation from the Federal Communications Commission or any other regulatory body:

A. BASIC SERVICE. A total of Eighteen (18) channels of service including but not a limited to: ESPN, MTV, SIN, NICKELODEON, WTBS, CNN. The remaining channels will be selected based upon a survey of the residents of the City of BAYSIDE.

B. PREMIUM SERVICE. Of the twenty-one channels, at least two (2) channels of service, such as HOME BOX OFFICE (HBO) and CINEMAX, showing twenty-four (24) hours of uninterrupted movies and sports.

PASSED by the City Council of the City of BAYSIDE, Texas on the 14th day of February, 1989, at which a quorum was present and for which due notice was given pursuant to TEX. REV. CIV. STAT. ANN. art 6252-7 (1970, Supp. 1982).

APPROVED this 14th day of February 1989.

Rene Meier
Mayor

ATTEST:

Wanda Masel
City Secretary

ACCEPTED FOR TEXAS CABLE SYSTEMS, INC.

Timothy Timmerman
By: Timothy Timmerman
President

STATE OF TEXAS *

COUNTY OF TRAVIS *

SWORN TO AND SUBSCRIBED before me this 17th day of February, 1989.

(SEAL)

Judy Pfluger
Notary Public in and for the
State of Texas

JUDY PFLUGER
PRINT NAME

My Commission Expires:

11-4-91