

STATE OF GEORGIA
COUNTY OF JACKSON

AN ORDINANCE GRANTING A FRANCHISE TO CABLE USA INC. ITS SUCCESSORS AND ASSIGNS, TO OPERATE AND MAINTAIN COMMUNITY ANTENNA TELEVISION SYSTEM IN THE CITY; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT AND REGULATION OF THE COMMUNITY ANTENNA TELEVISION SYSTEM AND PRESCRIBING PENALTIES FOR VIOLATION OF THE
FRANCHISE PROVISION

WHEREAS, THE CITY OF MAYSVILLE INTENDS TO GRANT IN THE MODE PRESCRIBED BY LAW TO CABLE USA INC., THE FRANCHISE, RIGHT AND PRIVILEGE TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE CITY OF MAYSVILLE WITHIN ITS CORPORATE LIMITS AS THE SAME EXISTS OR MAY BE. HEREAFTER EXTENDED OR ALTERED, AS CONTAINED AND SET OUT IN THE FOLLOWING FRANCHISE ORDINANCE FOR THE TERM AND UPON AND SUBJECT TO THE TERMS, PROVISIONS AND LIMITATION THEREIN STATED.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
MAYSVILLE :

Section 1. Short title.

This Ordinance shall be known and may be cited as the "City of MAYSVILLE Cable Television Ordinance."

Section 2. Definitions.

For the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and include the plural number. The word "shall" is always mandatory and not merely directory.

(a) "City" is the City of MAYSVILLE.

(b) "Council" is the City Council of MAYSVILLE

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

(d) "Grantee" is CABLE USA INC. or anyone who succeeds CABLE USA INC. in accordance with the provisions of this franchise.

(e) "Cable Television System" or "CATV System" shall mean a facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television stations and distributes these signals by wire or cable to subscribing members of the public who pay for the service; and the same shall also mean a system of antennas, cables, wires, lines, towers, waveguides or other conductors, converters, equipment or facilities, designed and constructed for the purpose or originating, producing, receiving, reproducing, transmitting, amplifying and distributing voices, sound signals, pictures, visual images, digital signals, telemetry, or any other type of closed circuit transmission by means of electrical impulses, audio, video, or other forms of electronic or electrical signals, located in the City, whether or not directed to originating signals or receiving signals off the air.

(f) "Franchise" shall mean and include any authorization granted hereunder in terms of a franchise, right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over and under the streets, alleys, lanes, public ways and public places now laid out or dedicated and all extensions thereof and additions thereto in the city, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary to maintain and operate a CATV system the City.

(g) "Gross Receipts" shall mean the grantee's gross subscriber revenue from Cable Television operations in the City and shall include all revenue derived from those subscriber service charges applicable to and arising from carrying of broadcast signals and nonbroadcast services including installation, reconnection and relocation charges. Revenues derived from auxiliary services, such as advertising revenues, leased channel revenues, converter charges and pay cable revenues are specifically excluded from gross revenues.

(h) "Two-way Capacity" shall mean that such system shall maintain a plant having technical capacity for audio and video return communications.

Section 3. Grant of Nonexclusive Authority.

(a) There is hereby granted by the City to the Grantee the right and privilege to construct, erect, 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 extensions thereof, and additions thereto, in the City, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in the City of a CATV system for the interception, sale and distribution of television, radio and nonbroadcast signals.

(b) The right to use and occupy said streets, alleys, public ways and places for the purposes herein set forth shall not be exclusive, and the City reserves the right to grant a similar use of said street, alleys, public ways, and places, to any person at any time during the period of this franchise.

Section 4. Compliance With Applicable Laws and Ordinances.

The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of the police power by the City and to such reasonable regulation as the City shall hereafter provide.

Section 5. Franchise Territory and Extension of Service.

(a) The franchise is operative within the present limits of the City and any new areas annexed during the franchise term. When annexed, all facilities owned by Grantee shall be subject to the terms of the franchise.

(b) The Grantee, whenever it shall receive a request for service from seventeen (17) subscribers per 2200 feet of its cable television system, shall extend such service at no cost other than its usual subscriber connection fees.

(c) Upon receipt of a complaint from a group of potential subscribers less in number and/or greater in distance from the cable television system than (b) above, the City may direct provision of service by the Grantee upon appropriate sharing of the costs (by subscribers) of extending.

(d) The Grantee shall construct the system so as to provide service to all parts of the City having a density of at least twenty (20) potential subscribers per contiguous miles of cable length from existing lines with the length of the drop from the cable being 150 feet or less. Extensions serving the most homes will be built first.

Section 6. Liability and Indemnification.

(a) The Grantee shall pay, and by its acceptance of this franchise the Grantee specifically agrees that it will 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, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the installation, operation, or maintenance of the CATV system authorized herein, whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.

(b) The Grantee shall maintain, and by its acceptance of this franchise specifically agrees that it will maintain throughout the terms of this franchise liability insurance insuring the City and the Grantee with regard to all damages mentioned in subparagraph (a) above in the minimum amounts of:

- (1) \$300,00 for bodily injury or death resulting from any one accident.
- (2) \$50,000 from property damage resulting from any one accident.
- (3) \$1,000,000 for all other types of liability.

(c) The insurance policy obtained by the Grantee in compliance with this section must be filed with the City; and such insurance policy, along with written evidence of payment of required premiums, shall be filed and maintained with the City during the term of this franchise.

Section 7. Service Quality Requirements.

The Grantee shall:

(a) Produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television sets in good repair, and as good as the state-of-the-art allows;

(b) Transmit signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(c) Limit failures to a minimum by locating and correcting malfunctions promptly, but in no event longer than 24 hours after notice;

(d) Demonstrate upon request by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered;

(e) Maintain a written record listing full details of all customer complaints and resolution of said complaints, disconnections and new subscribers. Such records shall be available for inspection by the City.

Section 8. Operation and Maintenance of System.

(a) The Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and shall occur during periods of minimum use of the system.

(b) The Grantee shall maintain an office or business agent within the toll free telephone area of the City, which shall be available during all usual business hours, have a listed telephone, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

Section 9. Service to Public Buildings.

The Grantee shall, without charge for installation, maintenance, or service, make single installations of its basic CATV service facilities to public schools located adjacent to the CATV lines. Such installations shall be made at reasonable locations. Any charge for relocation of such installations shall, however, be charged at actual cost. Additional installations at the same locations may be made at normal charge. No monthly service charges shall be made for distribution of the Grantee's signals within such publicly owned buildings.

Section 10. Emergency Use of Facilities.

In the case of an emergency or disaster, the Grantee shall, upon request of the City make available its facilities to the City for emergency use during the emergency or disaster period. The Grantee shall be held harmless from any liability or damage occurring during the City's emergency use of the Grantee's system as provided in this paragraph which arises as a result of the negligence of officers, agents, or employees of the City.

Section 11. Other Business Activities.

(a) The Grantee shall not engage in the business of selling, repairing or installing television receivers, radio receivers, or accessories for such receivers within the City during the term of this franchise.

(b) This franchise authorizes the operation of a CATV system as provided for herein, and takes the place of any other franchise, license or permit which might be required by law of the Grantee to operate such a business within the City.

Section 12. Safety Requirements.

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

(b) The Grantee shall install and maintain its wires, cables and fixtures and other equipment in accordance with the requirements of the NATIONAL ELECTRIC SAFETY CODE.

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

(d) The Grantee shall maintain a force of one or more agents or employees at all times and shall have sufficient employees to provide safe, adequate and prompt service for its facilities.

Section 13. New Developments.

It shall be the policy of the City liberally to amend this franchise, upon application of the Grantee, when necessary to enable the Grantee to take advantage of any developments in the field of transmission of television and radio signals which will afford it an opportunity more effectively, efficiently or economically to service its customers; provided, however, that this Section shall not be construed to require the City to make any amendment or to prohibit it from unilaterally changing its policy stated herein.

Section 14. Conditions on Street Occupancy.

(a) All transmission and distribution structures, lines and equipment erected by the Grantee within

the City shall be so located as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of property owners who join any of the said streets, alleys or other public ways and places.

(b) In the event the relocation construction, reconstruction, maintenance or repair by the City of any street, alley, lanes or other public places, or any of its sewers or gas or water mains, or electric, fire alarm, police communication, or traffic control facilities, or any part thereof, or in the event access to any street alley, lane or other public place to or from any property of the City is required, and it is necessary to move, alter or relocate, either permanently or temporarily, any of the Grantee's poles, wires, electrical conductors, conduits, subways, manholes, fixtures, appliances and appurtenances, or any part thereof, in order for the City to relocate, construct, reconstruct, maintain, or repair any such street, alley, or other public place or any such sewer or gas or water main, or electric, fire alarm, police communications or traffic control facility, or any part thereof or to obtain access to or from such property, upon notice from the City the Grantee will move; alter or relocate such poles, wires electrical conductor, conduit, subway, manhole, fixture, appliance or appurtenance, or part thereof, may be removed, altered or relocated by the City at the cost of the Grantee, and the City shall not be liable to the Grantee for damages resulting from such removal, alteration or relocation, though it agrees to exercise reasonable care to prevent any damage to such facilities.

(c) The Grantee shall place its cables, wires or other like facilities underground as may be required by the provisions of law of the State of GEORGIA, the Ordinances and resolutions of the City of MAYSVILLE, and as they may be amended, any pertinent subdivision restriction, and the applicable section of the NATIONAL ELECTRIC SAFETY CODE. It shall be the policy of the City that the Grantee will install its plant on existing pole lines, after obtaining proper authorization from the owner thereof; install its plant underground where all other utilities are underground.

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

(e) The Grantee shall, on the request of any person holding a building moving permit issued by the City temporarily raise or lower its wires to permit the moving of buildings. The expense 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 advance notice to arrange for such temporary wire changes.

Section 15. Preferential or Discriminatory Practices Prohibited.

The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, or in any other respect, make or grant any undue preference or advantage to any person nor subject any person to prejudice or disadvantage.

Section 16. Removal of Facilities Upon Request.

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 17. Transfer or Encumbrance of Franchise.

(a) Grantee shall not transfer ownership of this franchise to any other person without prior approval of the City Council by resolution.

(b) Grantee may hypothecate its interest in this franchise for the purpose of obtaining financing. Any change of ownership resulting from any such hypothecation shall not become absolute until the new owners acceptance of this franchise and all of the rights and obligations hereunder.

Section 18. Compliance With Federal Rules and Regulations.

All rules and regulations, both present and future of any federal agency or body having jurisdiction over cable television shall be complied with.

Section 19. Filings and Communications With Regulatory Agencies.

Copies of all petitions, applications and communications submitted by the Grantee to the Federal Communication Commission, Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction in respect to this franchise shall be maintained by the Grantee and, upon request, be submitted to the City Council.

Section 20. Powers Retained by the City.

This franchise is subject to all franchises and permits heretofore granted by the Council to use the streets, alleys, lanes and public places of the City by public utility

or public service corporations. It is not intended by the grant of this franchise to abridge the exercise of the police power of the City. The grant of this franchise is subject to all Ordinances and Resolutions of the Council of the City as the same now exist or may be hereafter amended, revised or modified.

Section 21. City Rights in Franchise.

(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; provided, that such regulations, by Ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted.

(b) The City shall have the right to inspect the books, records, maps, plans, income tax returns and other like materials of the Grantee upon reasonable notice and at any time during normal business hours.

(c) The City shall have the right to inspect and enforce compliance of all construction or installation work performed subject to the provisions of this franchise and make such inspections as it shall find necessary to insure compliance with the terms of this franchise and other pertinent provisions of law.

(d) At the expiration of the stated term of this franchise, the Grantee shall be given an opportunity to obtain another franchise and to continue in business. The City agrees that Grantee may apply for a new franchise within ninety (90) days of the seventeenth anniversary of this franchise.

If a new franchise is not granted to and accepted by this Grantee or if this franchise is terminated at any time, then the rights of the parties shall be as follows:

(1) Grantee may continue to operate the system until a sale is closed to a valid Grantee. The City shall have the right of first refusal to purchase the system at fair market value as a going concern which sale value shall be determined consistent with generally accepted appraisal and accounting principals. Fair market value as a going concern shall be established by the average appraisal evaluation of three appraisals of whom one appraiser shall be chosen by the City, one by the Grantee and one by the two designated appraisers.

(2) If the City elects not to purchase the system, then Grantee shall have the right and privilege to continue operating the system pursuant to their franchise

agreement on the same terms and conditions therein for a period of three years during which time Grantee shall use all reasonable effort to find a bonafide purchaser for the system at fair market value as a going concern; Said purchaser to be approved by the City and have in hand a franchise prior to closing.

Grantee shall furnish evidence to the City at intervals of not less than ninety (90) days of its effort to negotiate a sale.

Section 22. Rights of the Grantee.

(a) The Grantee shall have the right to construct, erect, operate and maintain, in, on, along, across, above, over and under the streets, alleys, lanes and public places of the City, poles, wires, cables, underground conduits, manholes and other conductors and fixtures necessary for the maintenance and operation in the City of a cable television system at such locations as are reasonably suitable and convenient for the purposes of the Grantee and the City.

(b) The Grantee shall have the right to maintain and operate, subject to the provisions, terms, conditions and limitations prescribed in this franchise, a cable television system as hereinbefore and hereinafter defined.

(c) The Grantee shall have the right to remove, trim, cut and keep clear of its poles, wires or cables, the trees in and along the streets, alleys, lanes and other public places of the City, but in the exercise of such right, the Grantee shall not cut or otherwise injure said trees to any greater extent than is reasonably necessary for the continued integrity of its poles, wires or cables.

(d) The Grantee in exercise of any right granted to it by this franchise, shall reconstruct, replace, restore or repair any street, alley, lane or public place, and any sewer, gas or water main, or pipe, or electric, fire alarm, police communication or traffic control facility of the City, which may be damaged, distributed or destroyed by the exercise of any such right, in a manner, with such materials, and to the satisfaction of the City as shall be designated by the Commissioners. The City shall reserve the right to determine whether the Grantee has properly complied with the provisions of this paragraph and in the event it is determined that the Grantee has failed to do so, the City shall have the right to carry out such provisions, and the Grantee shall reimburse the City in full for all expenses incurred by the City in carrying out all or part of such provision.

(e) The Grantee agrees that the provisions, terms, conditions, and limitations prescribed in this franchise

shall be applicable in all respects to the use of streets, alleys, lanes and public places situated in any territory annexed to the City or which may otherwise become a part of the City through extension of its corporate boundaries, and to the acquisition, erection, maintenance and use for the said purpose of the Grantee; of poles, towers, wires, appliances, conduits, subways, manholes, cable fixtures, facilities and appurtenances of the Grantee in such streets, alleys and public places and the Grantee shall have the same rights and privileges with respect thereto as are granted by this franchise for the use of streets, alleys, lanes and public places of the City, regardless of the provisions of any franchise or other authority, public or private granted by any county or other city, town or by any deed or other instrument, and regardless of any limitations upon the expiration thereof fixed in such franchise, authority, deed or instrument; and the right and privilege to use such streets, alleys, lanes and public places and to acquire, erect, maintain and use such property in such streets, alleys, lanes and public places shall expire or terminate with the expiration or termination of this franchise.

(f) Grantee shall at all times be the full and complete owner of all facilities and property, real and personal, of the CATV business and Grantee shall have the right to prescribe regulations for the conduct of its business not inconsistent with the provisions of this ordinance.

Section 23. Maps, Plats and Reports.

(a) The Grantee shall provide maps and plats of the system to the City upon reasonable request and at the cost of production.

(b) Within sixty (60) days after the expiration of Grantee's fiscal year, the Grantee shall file with the City a financial statement prepared by a Certified Public Accountant, or other person satisfactory to the Commissioners, showing in detail the gross receipts, as defined herein, of the Grantee during that fiscal year.

Section 24. Payments to the City.

The CATV Grantee shall pay the following costs and fees to the City.

(a) An annual fee of three percent (3%) of the gross receipts.

The above fee schedule shall be effective upon the award of the franchise and shall remain in effect during the term of the franchise unless superseded by actions of federal, state or other regulator agencies.

Section 25. Franchise Term, Renewal and Termination. *Amended 1986.1*

(a) The term of this franchise shall be for a period of Twenty (20) years from the date of this ordinance. Upon expiration, the existing Grantee will have priority consideration over all other applicants providing that his operations have well served the public interest.

(b) The City may terminate this franchise in the event of willful failure, refusal or neglect of the Grantee upon due notice, to accomplish or comply with the material requirements, regulations or limitations of this ordinance or of any other valid authority. The Grantee must comply within sixty (60) days after the date of notice.

(c) The City reserves the right to terminate this franchise based upon any of the following. Should the Grantee:

(1) Fail to implement the provisions or responsibilities of this Ordinance, or practice fraud or deceit upon the City.

(2) Fail to have service available to 95 percent of the homes in the areas of the County served by Grantee having at least twenty-five homes per cable mile measured from Grantee's trunk line within two years of start of construction.

Section 26. City Right of Intervention.

The Grantee agrees not to oppose intervention by the City in any suit or proceeding to which the Grantee is a party.

Section 27. Further Agreement and Waiver by Grantee.

The Grantee agrees to abide by all provisions of this franchise, and further agrees that it will not at any future time set up as against the City or the City Council the claim that the provisions of this franchise are unreasonable, arbitrary or void.

Section 28. Duration and Acceptance.

The franchise, right and privilege is hereby granted to establish, maintain and operate in the City, a cable television system upon the condition that within sixty (60) days after the date of the passage of this ordinance the Grantee shall file with the City Clerk its unconditional

acceptance of this franchise and promise to comply with and abide by its provisions, terms and conditions. Such acceptance and promise 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; provided, however, that should the Grantee fail to comply with the latter prescribed filing of acceptance, the Grantee shall acquire no right, privileges or authority under this franchise whatever.

Section 29. Erection, Removal and Common Use of Poles.

(a) No location of any pole or wire-holding structure of the Grantee shall be a vested interest and such poles or structures shall be removed or modified by the Grantee at its own expense whenever the City determines that the public convenience would be enhanced thereby.

(b) Where poles or other wire-holding structures already existing for use in serving the City are available for use by the Grantee, but it does not make arrangements for such use, the City may require the Grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the City shall require the owner of said poles, located upon the City rights-of-way to allow the use of said poles by the Grantee upon reasonable terms.

(c) Where the City or a public utility serving the City desires to make use of the poles or otherwise holding structures of the Grantee but agreement therefor with the Grantee cannot be reached, the City may require the Grantee to permit such use for such consideration and upon such terms as the Council shall determine to be just and reasonable, if the City determines that the use would enhance the public convenience and would not unduly interfere with the Grantee's operations.

Section 30. Rates.

(a) The rates and charges for cable television service distributed hereunder shall be fair, reasonable and nondiscriminatory.

(b) Unless and until otherwise changed, the monthly rates for services hereunder shall be as follows:

Basic service \$14.95, each pay service \$10.95, installation \$20.00, change in service \$15.00, remote control \$3.95 each extra set \$4.95.

Section 31. Publication Costs

The Grantee shall assume the cost of publication of this franchise as such publication is required by law and such is payable upon the Grantee's filing of acceptance of this franchise.

Section 32. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of 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.

Section 33. Ordinances Repealed.

All ordinances or parts of ordinances in conflict with provisions of this ordinance are hereby repealed.

Section 34. Effective Date.

This ordinance shall take effect upon its passage and approval.

Section 35. Unauthorized Use:

(a) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, acoustically, inductively or otherwise, with any part of a franchised CATV system within the City for the purpose of taking or receiving television signals, radio signals, pictures, programs or sound.

(b) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, acoustically, inductively or otherwise, with any part of a franchised cable system within the City for the purpose of enabling himself or others to receive any television signal, picture, program or sound, without payment to the owner of said system at prevailing rates.

(c) It shall be unlawful for any person, without the consent of the owner, to willfully tamper with, remove or injure any cables, wires, or equipment used for distribution of television signals, pictures, programs or sound.

(d) Any person, firm or corporation who shall violate this provision shall be guilty of a misdemeanor and shall be fined not more than FIFTY DOLLARS (\$50.00) or imprisoned for not more than thirty (30) days.

APPROVED: _____, 1986.

M. F. Bennett

Mayor

ATTEST:

City Clerk