

ORDINANCE NO. 106

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO CABLE VISION OF MEXICO BEACH AND ITS ASSIGNS TO LOCATE, CONSTRUCT, OPERATE AND MAINTAIN A COMMUNITY TELEVISION SYSTEM IN THE TOWN OF MEXICO BEACH; AUTHORIZING THE USE, RIGHT, PRIVILEGE, POWER AND AUTHORITY TO CONSTRUCT, MAINTAIN AND OPERATE IN, OVER, ACROSS AND UPON THE PUBLIC STREETS, AVENUES, PARKWAYS, ALLEYS, SIDEWALKS AND PUBLIC GROUNDS, THE NECESSARY EQUIPMENT FOR THE OPERATION OF A CABLE DISTRIBUTION SYSTEM IN THE TOWN OF MEXICO BEACH, FLORIDA; LEVYING A TAX OF 2% OF THE GROSS RECEIPTS OF THE BUSINESS TO BE CONDUCTED PURSUANT TO THIS PERMIT; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF FRANCHISE, PROVIDING FOR REGULATION AND USE OF SAID SYSTEM BY SAID TOWN; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE ARE SEVERABLE; AND RECITING THE EFFECTIVE DATE.

WHEREAS, the Federal Communications Commission has issued rules and regulations setting forth requirements which must be in any franchise granted; and

WHEREAS, the legal, character, financial, technical and other qualifications together with the adequacy of the construction program of Cablevision of Mexico Beach has been approved by the franchising authority as part of a full public proceeding affording due process.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF MEXICO BEACH, FLORIDA.

SECTION 1. Short Title. This Ordinance shall be known and may be cited as the "Mexico Beach Television Franchise Ordinance".

SECTION 2. Definitions. For the purpose 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 words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "Town" is the Town of Mexico Beach.
- (2) "Company" is the grantee of rights under this Ordinance awarding a franchise and is Cablevision of Mexico Beach or assigns.
- (3) "Person" is any person, firm, partnership, association, corporation, company or organization of any kind.
- (4) "System" shall mean the entire installation.
- (5) "FCC" means the Federal Communications Commission.

SECTION 3. Grant Of Authority. This franchise by the Town is in the exercise of its Police Powers. There is hereby granted by the Town to the Company the non-exclusive 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, utility or any other easements now laid out or dedicated, and all extensions or additions of any of same in the Town poles, wires, cables, underground conduits, man-holes and other television conductors and fixtures of any sort necessary or incident to the maintenance and operation in the Town of a community television system for the reception and distribution of television signals, subject to use by the Town of Mexico Beach, and subject to such restrictions as the Town may have been limited to in the acceptance of said easements as rights of way.

SECTION 4. Compliments With Applicable Laws And Ordinances. The Company shall, at all times during the life of this Franchise, be subject to all lawful exercise of the police power by the Town, and to such reasonable regulation as the Town shall hereafter by ordinance provide.

SECTION 5. Company Liability - Indemnification. It is expressly understood by and between the Company and the Town that the Company shall save the Town harmless from all loss sustained by the Town whether by damage or interference with Town services on account of any suit of any nature, including contractual, court costs, attorney fees, judgment, execution, claim or demand whatsoever, resulting from negligence on the part of the Company in the construction, operation, or maintenance of the system described in this Franchise. The Town shall notify the Company's representative in the Town within fifteen (15) days after the presentation of any claim or demand to the Town, either by suit or otherwise, made against the Town on account of any negligence as aforesaid on the part of the Company. The Company shall carry and pay the cost of liability insurance in support of its undertaking to hold the Town harmless from loss sustained on account of the negligence of the Company. Insurance shall be in the amount of \$100.00 per person, and \$300,000.00 per occurrence.

The Company shall comply with all provisions of the Workman's Compensation Law of Florida.

SECTION 6. Service Standards. The Company shall, during the existence of this agreement, furnish reasonable, adequate and efficient community television reception service to the residents of the Town wherever practicable and Company agrees to maintain its system in reasonable repair and working order and to provide adequate facilities

for such maintenance. These requirements may be temporarily suspended by disaster or emergency conditions or other circumstances beyond the reasonable control of the Company. The system will be so designed, engineered and maintained by the Company so as not to interfere with the television reception of residents of the Town who are not subscribed to its services. A complaint procedure shall be established by the Company and all complaints shall receive prompt action within no longer than two (2) days from the receipt of notice by the Company.

SECTION 7. Company Rules. The Company shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary or incident to the exercise by the Company of its rights or as shall be reasonably necessary or incident to the performance by the Company of its obligations under this Franchise, and to assure an uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws or rules of the State of Florida, the County of Bay, the town of Mexico Beach, and the Federal Communications Commission, or the United States.

SECTION 8. Condition On Street Occupancy.

(1) The Company may enter into one or more contracts with the Florida Power Corporation or the owner or lessee of any poles or posts located within the Town to whatever extent such contract or contracts may be expedient and of advantage to the Company in furnishing the service covered by this Franchise to its customers.

(2) The Company system, poles, wires and appurtenances shall be located, erected and maintained so that none of it shall endanger or interfere with the lives of persons, or interfere with any improvements

the Town may deem proper to make or hinder unnecessarily or obstruct the free use of the street, alleys, waterways, bridges, easements or public property, and to cause minimum interference with the rights of property owners who adjoin any of the streets, alleys, waterways, or other public ways or places.

(3) The Company shall not place poles or other fixtures where the same will interfere with any gas, electric or telephone fixtures, water hydrant or main, and all such poles or other fixtures, placed in or on any street or other easement or the Town shall be placed according to the requirements of the power and/or telephone companies and any Town Ordinance and then in such a manner as not to interfere with the usual travel on said streets, alleys and public ways or use of such easements.

(4) The Company shall comply with present and future Town Ordinances regarding installation of utility lines underground in any new subdivision or new developments.

(5) The Town shall have the right to review and approve the plans and specifications of the Company prior to construction, and as-built plans and specifications shall be provided to the Town upon completion of the work. All property shall be restored to its original condition at the cost of the Company.

(6) The Company shall be the authority to trim trees upon and overhanging streets, alleys, sidewalks and public places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company, all trimming to be done under the supervision and direction of the Town and at the expense of the Company.

SECTION 9. Payments To The Town. The Company shall pay to the Town by April 15th of each year, in addition to any and all privilege licenses and ad valorem or other taxes hereafter levied by the Town, a sum equivalent to two percent (2%) of the annual gross operating revenues received by the Company for services rendered to customers within the Town during each year of operation under this Franchise. "Annual gross operating revenues" shall consist of receipts from customers located in the Town for transmission of television signals by the Company under contracts with such customers.

SECTION 10. Rates And Charges. In its rates, charges, service or in any other respect, the Company shall not make or grant any preference or advantage to any person nor subject any person to any prejudice or disadvantage. The Company shall have the right to establish different classifications of service for residential and commercial use and to adopt rate schedules to which any subscriber within those classifications shall be entitled.

The initial schedule or subscriber charges for Mexico Beach will be as follows:

Connection Charges

| | | |
|------------------------|---------|------------------|
| First Outlet | \$15.00 | See Note 1 and 2 |
| Each Additional Outlet | \$10.00 | See Note 1 |

Monthly Charges

| | | |
|--|---------|------------|
| Basic Service | \$ 6.95 | |
| Each Additional Outlet | \$ 2.50 | |
| Basic Service And HBO Or Movie Channel | \$13.90 | See Note 3 |

Miscellaneous

| | | |
|--------------------------|---------|--|
| Reconnect | \$10.00 | |
| Relocate | \$10.00 | |
| Collection And Bad Check | \$ 5.00 | |

Commercial Accounts

Not to exceed residential monthly rates.

To be negotiated on with commercial property owners with separate agreements.

Notes

1. May be waived or reduced during special promotions on a non-discriminatory basis.
2. For normal aerial installation within 150' of cable plant, time and material for non-normal installation.
3. Additional service to be determined by user survey at Company expense.

The Company reserves the right to set rates at it deems appropriate and reasonable, so long as those rates shall not exceed the rates which would result from the application of the cost of living increase that has accrued from the date of enactment of this Ordinance to any date the rates are reset to the initial rates specified above, unless approved by the Town of Mexico Beach. For such computation, the National Consumer Price Index shall be used to represent changes in cost of living. The initial rates as established herein shall remain in effect during the Company's first year of operation and at no time will first outlet rates be changed by less than fifty (50) cents per month.

In cases where Town approval is required, the Company shall make a formal request to the Town, and the Town shall respond to such request within sixty (60) days of the date of said request. Unless notified to the contrary by the Town, the requested rate schedule shall be effective ninety (90) days following the rate increase request.

SECTION 11. Free Connection And Service. The Company shall furnish, upon request, one outlet for each local public school, municipal office building or facility within its service area and not more than 150' from the Company's existing facilities. An initial connection will be

made to each such building free of charge; additional outlets will be done for the cost of time and materials only. There will be no monthly charge for service to such buildings.

SECTION 12. Records And Reports. The Town shall have access at all reasonable hours to all of the Company's plans, contacts and engineering, accounting, financial, statistical, customer and service records relating to the property and the operation of the Company and to all other records required to be kept hereunder. The following records and reports shall be filed with an appropriate Town official and shall be available in the local office of the Company.

(1) Company Rules And Regulations. Copies of such rules, regulations, terms and conditions adopted by the Company for the conduct of its business.

(2) Annual Gross Operating Revenues. An annual certified report showing annual gross operating revenues of Basic service from its operations within the Town during the preceding year and such other information which the Town shall reasonably request with respect to properties and expense related to the Company's services within the Town for such period.

SECTION 13. Term Of Franchise And Renewal Thereof. The Franchise and rights herein granted shall take effect and be in force from and after the final passage hereof as required by law, and shall continue in force and effect for a term of twenty (20) years.

The Company may petition the Town of Mexico Beach for a renewal and renegotiation of this Franchise when not more than two (2) years remain the term of said Franchise and the Town of Mexico Beach shall not arbitrarily refuse to renew said Franchise at such time.

SECTION 14. Construction Of System. Upon grant of this Franchise to construct and maintain a community television system in the Town, the Company must enter into contracts with the Florida Power Corporation, or others for the use of poles and posts necessary for proper installation of the system, obtain right of way permits from appropriate State, County and Federal officials necessary for crossing highways or roads under their respective jurisdictions to supply the main trunk lines from the Company's receiving antennae, suitable to the needs of the system and its subscribers and obtain whatever other permits a Town, County, State or Federal agency may require. In the construction, installation and maintenance of its system the Company will use steel, cable and electronic devices, all of specialized and advanced design and type; in the operation of its system, the Company will employ personnel with training, skill and experience in electronics and communications. The Company shall not be required to construct in areas now in the Town or which may be annexed where there are fewer than 45 homes per mile.

Within sixty (60) days of the effective date of the Franchise, Cablevision of Mexico Beach shall diligently pursue acquisition of all necessary certificates, permits, licenses and agreements which are required to construct a Cablevision system in the Town.

Within ninety (90) days of receipt of such certificates, permits, licenses and agreements, the Company shall commence construction of the Cablevision system. Thereafter, construction shall proceed so as to make service available throughout the the Town at the earliest possible time.

Within one (1) year from the receipt of this valid Franchise, all construction covered by this Franchise shall be complete.

SECTION 15. Comply With FCC Standards. Any modification in the Federal Communications Commission standards applicable to the system shall be automatically incorporated in and become a part of the Franchise granted the Company within one (1) year of the final adoption of any such modification by the Federal Communications Commission.

SECTION 16. Programming. The Company shall make every reasonable effort on a continuing basis to obtain FCC approval for the importation into Mexico Beach, Florida, of non-network signals from at least one (1) television station located in Tallahassee, Florida.

SECTION 17. Extension Of Franchise To Include Areas Annexed. The Company shall within one (1) year of notification by the Town, extend its broad band telecommunications network so as to provide "full network service" to all residents of newly annexed areas of the Town not then served by a broad band telecommunications network where there are at least 45 dwelling units per mile of cable plant.

SECTION 18. Company Acceptance Of Franchise. The Company shall indicate its acceptance of this Franchise by filing its acceptance with the Bay County, Florida, Clerk of the Circuit Court, and Mexico Beach Town Clerk.

SECTION 19. Publication Costs. The Company shall assume the costs of publication of this Ordinance as such publication is required by law. A bill for publication costs shall be presented to the Company by the appropriate Town officials upon the Company's filing of its acceptance of this Franchise and the said publication costs shall be paid at that time by the Company.

SECTION 20. Activities Prohibited. The Company shall not allow its cable or other operations to interfere with television reception of persons not served by the Company, nor shall the system interfere with,

obstruct or hinder in any manner, the operation of the various utilities serving the residents of the Town. The Company shall not perform repair service to television sets and shall not permit any of its employees, installers or servicemen to perform such services on their own or to recommend how or by whom such repair services should be performed.

It is not the intention of the parties that this Franchise shall embrace the area of operation generically known as "Pay TV" except with the regard to the establishment of a mutually agreeable Franchise fee for such service.

SECTION 21. Emergency Use Of The Facilities. Any and all community antenna television system facilities shall, in the area of service, be made available without charge as a public service for use by the Communication Division of the Civil Defense and Disaster Corps of the Town or any other public agency performing civil defense or disaster services.

SECTION 22. Removal Of Facilities Upon Request. Upon termination of service to any subscriber, the Company shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request, restoring the premises, so far as practical, to the condition the same were in prior to the installation of such facilities.

SECTION 23. Transfer Of Permit. This Franchise shall not be transferred or assigned without prior approval of the Town by Ordinance.

SECTION 24. Change Of Control Of Company. Prior approval of the Town Council shall be required where ownership or control of more than 20% of the right of control of Company is acquired by a person or group of persons acting in concert, none of whom already own or control 20% or more of this Franchise. The Company specifically grants and agrees

that any such acquisition occurring without prior approval of the Town Council shall constitute a violation of this Franchise by the Company and subject it to forfeiture.

SECTION 25. Forfeiture Of Franchise - Non-Compliance With Terms And Conditions.

(A) Each right and privilege granted hereunder shall, without the passage of any resolution or ordinance by the Town, be null and void on the failure of the Company to comply with any of or all the terms and conditions specified herein. And no delay or forbearance on the part of the Town shall be deemed a waiver of this right of forfeiture. Company will be given thirty (30) days following receipt of written notice of non-compliance in which to make corrections or take other required actions. In the event of such forfeiture, Company shall also forfeit and surrender to Town all equipment and facilities that may be located along, over, or under any streets, alleys, waterways or other public places within the corporate limits of Town unless such property is removed within sixty (60) days from the date of forfeiture. Prior to the removal of such equipment, Company shall post a performance bond of \$100,000.00 to assure that the streets, alleys, and public places from which such equipment is removed shall be placed in good condition.

(B) On the failure of Company to complete any necessary construction and commence operation of the franchised service within the times provided in Section 14, supra, the rights and authority herein granted shall cease, and all sums or securities paid to Town, deposited with the Town Clerk of the Town of Mexico Beach, Florida, as security for performance by Company of the terms and conditions of the Franchise,

shall be forfeited to Town without action by Town; provided, however, that the Town Council of the Town of Mexico Beach, Florida, may extend the time within which services are to be commenced as it may deem just and equitable.

SECTION 26. Attorney Fees and Costs. In any action taken by any party hereto to enforce its rights under this agreement, the prevailing party in any such litigation shall have and recover from the other party its reasonable and actual attorney's fees, and costs.

SECTION 27. 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 effect the validity of the remaining portions thereof.

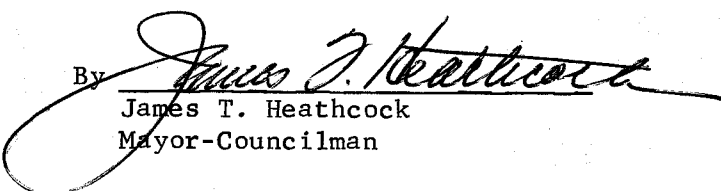
SECTION 28. Ordinances and Resolutions Repealed. All ordinances, resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 29. Effective Date. This Ordinance shall take effect as provided by law.

INTRODUCED at a regular Council meeting of the Town Council on January 13, 1981, and ADOPTED by the Town Council on January 27, 1981.

TOWN OF MEXICO BEACH, FLORIDA

By


James T. Heathcock
Mayor-Councilman

ATTEST:


Town Clerk

MEXICO BEACH
CABLE
VISION

p/o Box 301

Mexico Beach, Florida

904-648-

September 23, 1981

Mrs. Patricia Hutchinson
Town Clerk
Town of Mexico Beach
Mexico Beach, Florida 32410

Dear Mrs, Hutchinson,

Pursuant to the requirements of Section 18 of Ordinance 106 relating to the granting of a Franchise to Cablevision of Mexico Beach (Southern Television & Communications) That the company accepts the Ordinance.

Yours : very truly,


Steve M. Jackson
Manager of System