

ORDINANCE NO. 223

AN ORDINANCE RELATING TO GRANTING A NON-EXCLUSIVE, REVOCABLE FRANCHISE TO ACT OF MEXICO BEACH, INC., TO OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE SAID CITY; AUTHORIZING THE USE, RIGHT, PRIVILEGE, POWER AND AUTHORITY TO CONSTRUCT, MAINTAIN, AND OPERATE IN, OVER, ACROSS, AND UPON THE PUBLIC STREETS, AS DEFINED IN THE ORDINANCE, THE NECESSARY EQUIPMENT FOR THE OPERATION OF A CABLE TELEVISION SYSTEM; SETTING FORTH CONDITIONS ACCOMPANYING THE GRANTING OF THE FRANCHISE, PROVIDING FOR CITY REGULATION AND ADMINISTRATION OF THE CABLE TELEVISION SYSTEM; PRESCRIBING DAMAGES AND ALTERNATIVE RELIEF FOR VIOLATION OF FRANCHISE PROVISIONS; IMPOSING A FRANCHISE FEE OF THREE PERCENT (3%) OF THE GROSS RECEIPTS OF THE BUSINESS TO BE CONDUCTED PURSUANT TO THE FRANCHISE; PROVIDING THAT THE PROVISIONS OF THIS ORDINANCE ARE SEVERABLE; REPEALING ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE WITH CERTAIN PROVISIONS FOR AUTOMATIC TERMINATION.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE PEOPLE OF THE CITY OF MEXICO BEACH:

**SECTION 1. DEFINITIONS.**

(1) "Cable Communications System" or "System" also referred to as "Cable Television System," "Cable System," "CATV System," or "Community Antenna TV System," shall mean a system of antennae, cables, wires, lines, towers, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio video and other forms of electronic or electrical signals within the City.

(2) "Franchise" shall mean the non-exclusive right granted through a contractual agreement between the City and Grantee by which the City authorizes Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Television System in the City.

(3) "Grantee" shall mean ACT OF MEXICO BEACH, INC., its agents, employees, lawful successors, transferees or assignees.

(4) "Franchise fees" means any tax, fee or assessment of any kind imposed by the City on a Grantee solely because of its status as such. The term "franchise fee" does not include:

- (a) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee or assessment which is unduly discriminatory against Grantee;
- (b) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance indemnification, penalties, or liquidated damages; or
- (c) Any fee imposed under the United States Code.

(5) "Gross Revenues" shall mean all cash credits, property of any kind or nature or other consideration derived directly or indirectly by Grantee, its affiliates, subsidiaries, parents, and any other person or entity in which the Grantee has a financial interest or which has a financial interest in the Grantee, arising from or attributable to operation of the Cable Television System, including but not limited to:

- (a) revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including Leased Access fees and pay-per-view charges);
- (b) revenue from all charges for the insertion of commercial advertisements upon the Cable Television system;
- (c) revenue from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the Cable Television System and the provision of subscriber and other services; and

- (d) the sale, exchange or use or cablecast of any programming developed for community use or institutional users.

For purposes of the gross revenue calculation required by this Franchise, the phrase "financial interest" as used in this subsection shall include but not be limited to:

- (a) Any contract in which the Grantee or any named owner thereof is to receive a percentage of the gross revenues and/or a percentage of the net income of the other party to the transaction by reason of the activities encompassed by said contract;
- (b) Any debt relationship in which the Grantee or any named owner thereof as debtor borrows funds at a rate more advantageous than that generally available to similarly situated entities of similar credit worthiness;
- (c) Any debt relationship in which the Grantee or any named owner thereof as creditor receives a rate of interest exceeding that which would otherwise be paid by a similarly situated debtor of similar credit worthiness;
- (d) Any option or warrant to purchase the stock or other equity interest in an entity or entity related to an entity which generates revenues arising from or attributable to the operation of the System;
- (e) Any debt relationship which has conversion privileges to a form of equity of the nature described in the preceding subsection.

(6) For purposes of the gross revenue calculation required by this Franchise, the phrase "arising from or attributable to operation of the cable television system" as used in this subsection shall include but not be limited to:

- (a) Any activity, product or service which generates revenue of any type whatsoever and which is offered to the subscribers of the system by means of the system or any related service;

- (b) Any activity, product or service which is revenue producing and is offered to the subscribers of the system by any medium other than the system including but not limited to direct mail and home delivery if the system's subscriber list or any portion thereof is utilized for purposes of solicitation;
- (c) Any activity, product or service in the production or provision of which any of the assets of the system including but not limited to cable, production facilities, and administrative facilities, are included, unless reasonable consideration is paid to the system for such utilization;
- (d) Any television programming or other services offered to the citizens of Mexico Beach within the term of the Franchise by any means of delivery whatsoever where such programming or services are or could be offered by means of the system.

"Gross Revenues" shall include, value at retail price levels, the value of any goods, services, or other remuneration in non-monetary form, received by the Grantee or others described above in consideration for performance by a Grantee or others described above of any advertising or other service in connection with the Cable Television System.

(7) "Leased Access" shall mean the use on a fee-for-service basis of the Cable Television System by business enterprises (whether profit, nonprofit or governmental) to render services to the citizens of the City and shall include without limitation all use pursuant to Section 612 of the Cable Communications Policy Act of 1984 (47 USC 521 et. seq.).

(8) "Paved Street" means a street which, on the effective date of this ordinance, is paved with an asphaltic, concrete, or other durable surface.

(9) "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

(10) "Subscriber" means any person who legally receives any one or more of the services provided by the Cable Communications System.

(11) "Street" shall mean the surface of and the space above and below any public street, road, highway, avenue, freeway, easement, lane, path, alley, court, sidewalk, parkway, or driveway now or hereafter existing as such within the City.

## SECTION 2. POLICE POWERS.

Nothing in this Franchise shall be construed as a limitation or abrogation by the City of any of its police powers.

## SECTION 3. PLANS AND REPORTS.

Prior to construction of the cable system or any subsequent alteration, Grantee shall in each case file plans with appropriate city agencies and utility companies. Grantee shall provide a monthly progress report to the City during initial construction or any subsequent alteration, and shall file with the City complete and accurate as-built plans upon the completion of construction or any subsequent alteration.

## SECTION 4. CONDITIONS ON USE OF STREETS.

(1) All transmission and distribution structures, lines, and equipment erected by Grantee within the City shall be so located as to cause minimum interference with the proper use of Streets and other public ways and places, and to cause minimum interference with the rights and reasonable convenience of (i) persons owning or occupying property which joins any of the said Streets or other public ways and places, and (ii) public or private parties currently or hereafter lawfully using any of the said Streets or other public ways and places including, without limitation, other utility companies.

(2) In the case of disturbance of any Street, sidewalk, public way, or paved area, Grantee shall promptly, at its own cost and expense, and in a manner approved by the City, replace and restore such Street, sidewalk, public way, or paved area in as good a condition as before the work involving such disturbance was done.

(3) Grantee shall not disturb (except to the extent lawfully authorized) or in any way interfere with or damage the property of others lawfully upon the Streets or other public ways and places.

(4) The Grantee shall not, and shall prohibit any officer, agent, employee, contractor, or subcontractor which it retains, from removing or trimming any tree or portion thereof (either above, at, or below ground level) which is located in whole or in part within a Street or other public way or place, without the prior written approval of the City. Such approval may be given or withheld upon such terms and conditions as the City may deem appropriate. Grantee shall be responsible for, and shall indemnify, defend, and hold harmless the City and its officers, agents, and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of, or injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors, or subcontractors.

#### SECTION 5. USE AND ERECTION OF POLES.

Grantee, in the location, construction, maintenance and operation of the Cable Communication System shall do so by means of the existing poles of the Florida Power Corporation and St. Joseph Telephone and Telegraph Company, or such replacement poles as may be agreed upon between the Grantee, Florida Power Corporation and St. Joseph Telephone and Telegraph Company, or other existing poles upon the public ways of the City, and Grantee shall not install any additional pole or poles without the prior written consent of the City. Such consent shall be given upon such terms and conditions as the City Council in its sole discretion may prescribe, which shall include a requirement that the Grantee perform, at its sole expense, all tree trimming required to maintain the new poles and lines strung therefrom clear of obstruction. Use of existing poles shall be subject to the consent of the owners of such poles.

With respect to any poles or wireholding structures which Grantee may construct and install within the Streets or other public ways, the public or private utilities serving the City may, if denied the privilege of utilizing such poles or wireholding structures by the Grantee, apply for such permission to the City Council. If the City Council finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's operations, the City Council may authorize such use subject to such terms and conditions as it deems appropriate. Such authorization shall include the condition that the public or private utility pay to the Grantee a reasonable rental for such use.

#### **SECTION 6. OVERHEAD CONSTRUCTION.**

Except as hereinafter provided, in all areas of the City where cables and wires are to be placed, this construction will be overhead, suspended above the ground from poles in such a size, design and manner so as not to be construed as unsightly or unsafe. In any area of the City where it has been deemed in the City's best interest to designate underground utilities then so will the Grantee comply by distributing the cable lines underground to a depth that will insure the survivability of the cable from inadvertent cutting or damage.

#### **SECTION 7. RELOCATION.**

If during the term of this Franchise the City, a public utility district, a public water district, a public sanitation district, a public drainage district, or any other similar, special, public district elects to alter, repair, realign, abandon, improve, vacate, reroute, or change the grade of any street or to replace, repair, install, maintain or otherwise alter any above ground or under ground cable, wire conduit, pipe, line, pole, wire holding structure, structure, or other facility utilized for the provision of utility or other services or the transportation of drainage, sewer or other liquids, the Grantee shall, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduit, manholes and any other facilities which it has installed.

#### **SECTION 8. MOVEMENT OF BUILDINGS.**

Grantee shall, upon request by any person holding a building permit, franchise or other approval issued by the City or State of Florida, temporarily remove, raise or lower its wire to permit the movement of buildings or large items. The expense of such removal, raising or lowering, shall be paid by the person requesting same, and Grantee shall be authorized to require such payment in advance. Grantee shall be given not less than forty-eight (48) hours oral or written notice to arrange for temporary wire changes.

#### **SECTION 9. COMPLETION.**

(1) A final order of completion ("Final Order of Completion") shall be issued by the City Council when:

- (a) All of the cable television services described in Section 12, infra, have been made available to all property owners within the City of Mexico Beach.
- (b) Complete and accurate "as built" plans have been filed by the Grantee with the City; and
- (c) A Notice of Completion has been filed by the Grantee as hereinafter provided.

(2) For purposes of this section, cable television service shall be deemed to be made available to a parcel of property when all the cable television services hereinafter specified in the description of Grantee's System are offered on a non-discriminatory basis for immediate provision to the owner or legal representative of the owner of such property.

(3) When Grantee asserts completion, it shall file with the City Council a written notice of completion ("Notice of Completion") certifying completion as defined in the first paragraph in this section. Neither the Notice of Completion nor the statements, assertions or certifications contained therein shall be deemed to be binding upon the City.

(4) The City Council shall issue a final Order of Completion or deny same with reasons therefor in writing within sixty (60) days after receipt of the Notice of Completion.

#### **SECTION 10. REMOVAL.**

(1) Upon expiration or termination of the franchise, if the franchise is not renewed and if neither the City nor an assignee purchase the Cable Television System, the Grantee may remove any underground cable which has been installed in such a manner that it can be removed without trenching or other opening of the streets or ground along the extension of cable to be removed. The Grantee shall not remove any underground cable or conduit which requires trenching or other opening of the streets or ground along the extension of cable to be removed, except as hereinafter provided. The Grantee shall remove, at its sole cost and expense, any underground cable or conduit by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City Council based upon a determination, in the sole discretion of the Council, that removal is required in order to eliminate or prevent a hazardous condition or promote future utilization of the streets for public purposes. Any order by the City Council



to remove cable or conduit shall be mailed to the Grantee not later than thirty (30) calendar days following the date of expiration of the franchise. A Grantee shall file written notice with the City Clerk not later than thirty (30) calendar days following the date of expiration or termination of the franchise of its intention to remove cable intended to be removed and a schedule for removal by location. The schedule and timing of removal shall be subject to approval and regulation by the City. Removal shall be completed not later than twelve (12) months following the date of expiration of the franchise. Underground cable and conduit in the streets which is not removed shall be deemed abandoned and title thereto shall be vested in the City.

(2) Upon expiration or termination of a franchise, if the franchise is not renewed and if neither the City nor an assignee purchase the System, the Grantee, at its sole expense, shall, unless relieved of the obligation by the City remove from the streets all above ground elements of the Cable Television System, including but not limited to amplifier boxes, pedestal mounted terminal boxes, and cable attached to or suspended from poles, which are not purchased by the City or its assignee. The work of removal shall be completed not later than one (1) year following the date of expiration of the franchise.

(3) The grantee shall apply for and obtain such encroachment permits, licenses, authorizations or other approvals and pay such fees and deposit such security as required by applicable ordinance of the City, shall conduct and complete the work of removal in compliance with all such applicable ordinance, and shall restore the streets to the same condition they were in before the work of removal commenced.

(4) In the event Grantee does not remove its facilities and equipment within the time provided in this Section, the City may do so, the removal cost to be borne in any event by the Grantee.

#### **SECTION 11. UNIVERSAL SERVICE.**

Any Cable Television System Franchise pursuant to the provisions of this ordinance shall provide equal and uniform cable television service. No dwelling within the City shall be excluded from service when the system is completed.

## SECTION 12. DESCRIPTION OF GRANTEE'S SYSTEM.

Grantee has promised, and this Franchise is granted upon the several and independently material conditions that Grantee's Cable Television System shall, at a minimum:

- (1) Relay to subscriber terminals those broadcast signals required by the FCC;
- (2) Distribute in color all television signals which it receives in color.
- (3) Make available upon request by any subscribers receiving channels showing premium services and pay-per-view events, a lock-out device which prevents the unauthorized viewing of such channels;
- (4) Make available to subscribers, at subscriber's expense, upon request, an RF switch (an A-B switch) permitting conversion from cable to antenna reception;
- (5) Have a present, activated capacity of four hundred fifty (450) megahertz with appropriately designed and constructed amplifier cascades, providing twenty-four (24) basic channels included in the base subscription price, five (5) premium channels severally available for additional charges, and two-way pay-per-view services.
- (6) Be completed by Grantee so as to obtain from the City a Final Order of Completion within twelve (12) months from the date of this ordinance. Failure to comply will automatically constitute a revocation of Grantee's non-exclusive franchise unless special circumstances and City Council approval warrant an extension of final construction date;
- (7) Include equipment capable of providing standby powering for headend, transportation and truck amplifiers for a minimum of two (2) hours. The equipment shall be so constructed as to automatically notify the cable office when it is in operation and to automatically revert to the standby mode when the AC power returns. The system shall incorporate safeguards necessary to prevent injury to lineman resulting from a standby generator powering a "dead" utility line.

### SECTION 13. OVERRIDE CAPABILITY AND INTERCONNECTION

(1) Grantee's Cable Television System shall include an "Emergency Alert Capability" which will permit the City, in times of emergency, to override the audio of all channels making it possible to provide Civil Defense, Disaster and Emergency messages to subscribers within the City of Mexico Beach.

### SECTION 14. TRANSFERS.

(1) The financial strength and technical expertise of Frank Briggs, Lee Daniel and Jimmy Morris were represented to the City in Grantee's application hearing, and are a material inducement to the City's granting this over-build franchise. Accordingly, for a period of thirty-six (36) months after the effective date of this ordinance, neither this Franchise nor any part or element of the Cable Television System established pursuant to this Franchise, or any other real or personal property which is a part of said Cable Television System, shall be sold, transferred, assigned, mortgaged, pledged, leased, sublet, or otherwise encumbered for any purpose whatsoever, nor shall title thereto, either legal or equitable, or any right or interest therein, pass to or vest in any party, excepting only an entity in which Frank Briggs, Lee Daniel and Jimmy Morris, together, hold and enjoy no less than fifty percent (50%) of the outstanding interests or maintain operational control of the franchise pursuant to a shareholders' agreement.

Notwithstanding the foregoing, Grantee may with written consent of the City, transfer in trust, mortgage, or hypothecate as a whole or in part the Cable Television System established pursuant to this franchise to secure an indebtedness incurred to finance construction of said system.

Any sale, transfer, assignment, mortgage, pledge, lease, sublease or other transfer, encumbrance of whatever kind or nature made in violation of the provisions of this section shall be void and the attempt shall constitute a default under this Franchise.

(2) After thirty-six (36) months from the effective date of this ordinance, this Franchise shall not be sold, assigned, or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person without the prior written consent of the City, which shall be granted if the proposed assignee demonstrates appropriate and sufficient technical ability, financial capability, legal

qualifications and general character qualifications as determined by the City, and agrees to comply with all provisions of the franchise and such conditions as may be prescribed by resolution of the City Council.

No such consent shall be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness, unless such hypothecation shall exceed fifty percent (50%) of the market value of the property used by the Grantee in conducting the business of the franchise. Such consent shall not be withheld unreasonably.

(3) The Grantee shall promptly notify the City of any actual or proposed change in, or transfer of, or acquisition by any other party of the System, or control of the Grantee. The word "control" as used herein is not limited to majority stockholder status but includes actual working control in whatever manner exercised. Every change, transfer, or acquisition of the System or of control of the Grantee shall make this Franchise subject to cancellation unless and until the City shall have consented thereto, which consent shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, the City may inquire to the qualifications of the prospective transferee or controlling party and the Grantee shall assist the City in any such inquiry.

(4) The City reserves the right of "first refusal" to purchase the System at the market value price if and when it is placed on the market for sale.

(5) In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory to this Franchise Agreement, and the City reserves the right to not release the transferor from any obligation under this Franchise.

(6) In no event shall an increase in cable subscriber rates be imposed by the Grantee without first giving prior notification to the City Council of Mexico Beach while sitting in full session. Said notification will occur a minimum of ninety days prior to rate increase implementation and should denote the reasons with which the increase is necessitated. Further, it is understood by the governing body that a municipality may neither approve of, or deny, a rate increase. This requirement is merely a means to make the subscribing public aware of the facts which necessitate said increase.

**SECTION 15. BOND.**

(1) Before commencing physical construction of the System authorized by this Franchise, Grantee shall file with the City, and maintain in full force and effect at all times thereafter, an acceptable corporate surety bond in the amount of One Hundred Thousand Dollars (\$100,000) issued by a surety licensed therefor in the State of Florida, and conditioned upon the Grantee's compliance with all the provisions of this Franchise, regardless of whether the Franchise is terminated, and payment of all damages, liquidated damages, delinquent franchise fees, compensation, and costs of repairing or completing the Cable Television System, and compensation, and, at the alternative option of the City, the cost of removal or abandonment of the System and repair of Streets and other public or private improvements; said condition being a continuing obligation of the surety until the issuance by the City of a Final Order of Completion, at which time the amount of the corporate surety bond shall be reduced to the amount of Fifty Thousand Dollars (\$50,000) and maintained at such amount at all times thereafter during the operation of Cable Television System authorized by this Franchise.

(2) Neither the provisions of this section, any bond accepted pursuant thereto, or any damages recovered thereunder, shall be construed to excuse the faithful performance and observance by Grantee of all the terms and conditions herein, or to limit the liability of the Grantee under this Franchise.

(3) The corporate surety bond shall expressly state that it may not be cancelled by the surety during the term of the Franchise, whether for failure to pay premium or otherwise, without thirty (30) calendar days advance written notice mailed by the surety to the City of Mexico Beach. The form of the bond and surety shall be subject to reasonable approval by the City Council.

**SECTION 16. INDEMNIFICATION BY GRANTEE.**

(1) Grantee shall, at its sole expense, fully indemnify, defend and hold harmless the City, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability and judgements for damages or otherwise:

(a) For actual or alleged injury to persons or property, including loss of use of property due to

an occurrence, whether or not such property is physically damaged or destroyed, in any way arising out of or through or alleged to arise out of or through the acts or omissions of the Grantee or its officers, agents, employees, or contractors or to which the Grantee's or its officers, agents, employees or contractors acts or omissions in any way contribute;

- (b) Arising out of or alleged to arise out of any claim for damages for invasion of the right of privacy, defamation of any person, firm or corporation, tortious interference with contract, or the violation or infringement of any copyright, trademark, tradename, service mark or patent, or of any other right of any person, firm or corporation; and
- (c) Arising out of or alleged to arise out of Grantee's failure to comply with the provisions of any statute, regulation or ordinance of the United States, State of Florida, or any local agency applicable to the Grantee in its business.

Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel. Such participation shall not under any circumstances relieve the Grantee from its duty of defense against liability, including attorney's fees, or of paying any judgement entered against such party.

#### **SECTION 17. GRANTEE INSURANCE.**

(1) As part of the indemnification provided herein, but without limiting the same, each Grantee shall file with the City before commencing physical construction of the System authorized by this Franchise, and at all times thereafter maintain in full force and effect at its sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance, products/completed operations liability, personal injury liability, owners and contractors protective liability, broad form property damage, contractual liability, automobile liability (owned; nonowned and hired automobiles), workers compensation and employer liability. The policy or policies shall name as primary insured the City, and in their capacity as such, the officers, agents and employees of the City. All

liability policies of insurance shall be in the minimum single limit amount of One Million Dollars (\$1,000,000) per occurrence, and shall provide contractual liability insurance naming the Grantee, and shall insure against the types of liabilities covered by the indemnification and hold harmless provisions of this Franchise.

(2) Each insurer shall be authorized by the State of Florida to write the required insurance, and shall be subject to the reasonable approval of the City based upon reputation, financial strength, and claims experience.

(3) The policy or policies of insurance shall be maintained by the Grantee in full force and effect during the entire term of the franchise. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Grantee or for other reasons, except that thirty (30) calendar days advance written notice mailed by the insurer to the City of Mexico Beach, postage pre-paid, return receipt requested.

#### **SECTION 18. REMEDIES FOR DEFAULT.**

(1) In the event the Grantee should default in the performance or observance, or violate any of the terms of this Franchise, or any federal, state, or local law regulation, or any of the rules and regulations as may hereafter be from time to time lawfully adopted, the City may, but shall not be obligated to, give the Grantee fifteen (15) days written notice of the violation, breach, default, or non-compliance. The Grantee shall with fifteen (15) days of receipt of written notice from the City, substantially undertake to promptly correct such default, breach, violation, or non-compliance, and certify to the City the completion of same or efforts made to that end. In the event the Grantee fails to substantially undertake such corrective action within fifteen (15) days of receipt of such written notice and diligently pursue same, the City may:

- (a) Make such correction itself and charge the cost thereof to the Grantee; or
- (b) In the case of a material breach of this Franchise, declare the Grantee in default and terminate the Franchise and Grantee's rights hereunder.

Notwithstanding anything to the contrary in this Franchise, the City shall not impose any penalty upon the Grantee where either the violation or failure to cure the same result from force majeure, labor dispute, declaration of war, or other hostilities, act of God, or any other reasons beyond the control of the Grantee.

(2) No provision of this ordinance, including without limitation the provision for actual damages, shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in said ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages (except where actual damages are otherwise prescribed) for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

#### **SECTION 19. NON-WAIVER.**

Grantee shall not be relieved of any obligation to comply with any of the provisions of this franchise, or any rule, regulation, requirement or directive promulgated thereunder, by reason of any failure of the City or its officers, agents, or employees, to enforce prompt compliance. Not waiver of or failure to enforce any right or remedy by the City shall be deemed to constitute a modification of this Franchise or an estoppel against the City as a representative of the public. No waiver of a particular right by the City shall be deemed to be a subsequent waiver of the same or any other right.

#### **SECTION 20. FRANCHISE FEE.**

(1) Grantee shall pay to the City, not later than the 10th day of each and every month, the sum equal to three percent (3%) of Grantee's Gross Revenue for the preceding month. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Franchise.



(2) Any Franchise Fee remaining unpaid after the date due shall be delinquent and thereafter accrue interest until paid at the maximum legal rate, now twelve percent (12%) per annum.

(3) Not less than annually, Grantee shall provide the City with an unqualified certification of an independent certified public accountant certifying the accuracy of the monthly franchise fee payments paid within the preceding twelve (12) months, prepared in accordance with generally accepted accounting standards. The City may, from time to time, during the term of this Franchise, review and audit the books and records of Grantee upon reasonable notice.

#### **SECTION 21. TERM.**

The term of this Franchise shall be the period from the effective date hereof through January 27, 2001, expiring contemporaneously with the existing franchise issued by the City pursuant to Ordinance .

#### **SECTION 22. TECHNICAL STANDARDS.**

(1) Grantee shall construct, install and maintain its Cable Television System in compliance with all applicable state, federal and local laws, ordinances, construction standards, construction and safety codes, and governmental requirements. In addition, Grantee's system shall meet or exceed the technical standards equivalent to those established by the FCC, and Grantee shall provide to the City Council, upon request, written reports of the Grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

(2) Construction, installation and maintenance of the Cable Television System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the City following accepted construction procedures and practices.

#### **SECTION 23. FREE CONNECTION AND SERVICE**

The Cable Company shall furnish outlets for the City municipal office building or facility free of any charge. There will be no monthly charge for service to such building. Such service rendered is for the purpose of informing City officials of any activity connected with disaster preparedness news media releases.

SECTION 24. SEVERABILITY

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 25. ORDINANCES REPEALED

All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict.

SECTION 26. EFFECTIVE DATE

This ordinance shall take effect immediately upon passage, provided that if Grantee does not accept in writing this Franchise within thirty (30) days after adoption, or if physical construction of the system is not lawfully commenced within ninety (90) days after adoption, this Franchise shall automatically terminate and expire.


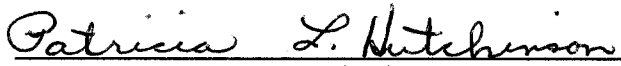
INTRODUCED at the regular meeting of the City Council on October 11, 1988, and ADOPTED by the City Council on December 13, 1988.

CITY OF MEXICO BEACH, FLORIDA



Tom Hudson  
Mayor/Councilman

ATTEST:

  
  
City Clerk