

RESOLUTION AWARDING A FRANCHISE TO COMCAST
CABLEVISION OF THE SOUTH, INC.; PROVIDING COUNCIL
ACTION; GRANT; TERMS OF THE FRANCHISE; EFFECTIVE DATE
OF FRANCHISE AND SEVERABILITY

RESOLUTION NUMBER 02-25

WHEREAS, an application for a franchise has been submitted by COMCAST CABLEVISION OF THE SOUTH, INC., ("Company") and reviewed by the Town Manager, and a notice of consideration of a cable franchise giving the name of the applicant and proposed service area has been published; and,

WHEREAS, the Town Council adopted Resolution # 02-05 on January 14, 2002, and the time for acceptance has expired; and,

WHEREAS, the notice invited objections to the establishment of a Cable System in the proposed service area and set a time and date certain, at least fourteen (14) days prior to the scheduled meeting date, for the consideration of the application at public hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA:

Section 1. Council Action. The Council after considering the information and criteria required by Ordinance 02-02, and any other information it deemed appropriate in making a determination to issue a franchise made findings regarding the following:

WHETHER -

- (A) the cable operator has substantially complied with the material terms of the existing franchise and with applicable law;
- (B) the quality of the operator's service, including signal quality, response to consumer complaints, and billing practices, but without regard to the mix or quality of cable services or other services provided over the system, has been reasonable in light of community needs;
- (C) the operator has the financial, legal, and technical ability to provide the services, facilities, and equipment as set forth in the operator's proposal; and
- (D) the operator's proposal is reasonable to meet the future cable-related community needs and interests, taking into account the cost of meeting such needs and interests.

Section 2. Grant. Upon acceptance by COMCAST CABLEVISION OF THE SOUTH, INC., within thirty days of the adoption of this resolution, the Town issues a franchise throughout it's jurisdiction to COMCAST CABLEVISION OF THE SOUTH, INC., for a term of fifteen years.

Section 3. Terms of the Franchise. The terms and conditions of the franchise shall be as expressed in Ordinance 02-02, except as follows: (section references below correspond to the relevant sections of Ordinance 02-02):

SECTION II – DEFINITIONS

9. ~~“Cable Service” means the transmission of video or other programming services over a cable system to subscribers together with any subscriber interaction, if any, which is required for the selection or use of such video programming or other cable services. Unless otherwise preempted by applicable law, cable internet services, or other cable services, provided by a Franchisee, its parent, affiliate or subsidiary over the Cable System shall be deemed “cable services” as permitted under Title VI of the Communications Act of 1934, as amended. shall be as defined by the Cable Act.~~

9.5 “Customer” means a Person or user of the Cable System who lawfully receives Cable Service therefrom with the Grantee’s expressed permission.

11.5 “Effective Date” shall be the later of: 30 days after the passage of this Resolution, or the date Grantee files with the Council its written acceptance of the Franchise.

~~15. “Franchise Agreement” or “Agreement” means a contract entered into in accordance with the provisions of this Code between the Town and a Franchisee that sets forth the terms and conditions under which the franchise will be exercised. shall mean this Agreement and any amendments or modifications hereto.~~

~~16 “Franchise Area” means that territory within the Town, as those limits may change from time to time through annexation or contraction, over which the terms of a Franchise Agreement shall extend. means that territory within the Town, as those limits may change from time to time through annexation or contraction, over which the terms of a Franchise Agreement shall extend.~~

16.5 “Franchising Authority” means the Town of Fort Myers Beach, Florida or the lawful successor, transferee, designee, or assignee thereof.

17.5 “Grantee” shall mean Comcast Cablevision of the South, Inc.

~~18. “Gross Revenues” means all revenues taxed under the F.S. Chapter 202, Communications Services Tax Simplification Law. means all revenues derived by the Franchisee and, any Affiliates, subsidiaries or parent of the Franchisee from the operation of the Cable System to provide Cable Services in the Town. Gross Revenues include, but are not limited to, fees charged Subscribers for Basic Service; fees charged Subscribers for any optional, premium, per-channel or per-program service; fees charged Subscribers for any tier of service other than Basic Service; installation, disconnection, reconnection and change in service fees; late fees in excess of five dollars (\$5.00); leased access fees; payments or other consideration from programmers for carriage of programming on the system (excluding marketing support to the extent such funds are not considered revenue under GAAP); revenue from converter, remote, modem or any other equipment rentals; revenues from leases of cable or fiber optic lines and other transmission devices and equipment revenues from cable modem and internet products and services to the extent~~

included under Subsection 10 above; advertising revenues allocable to the Town based on a percentage of Subscriber Base in the Town divided by the Subscriber Base of the system. Such percentage shall then be multiplied by the total advertising revenue of the system to determine the allocable gross revenue stemming from advertising; revenues from home shopping channels or other sources allocable to the Town, provided that where certain home shopping channel or other such revenue is allocable to more than one franchise area due to common zip codes, the Franchisee shall allocate the percentage of revenue to the Town which is equivalent to the percentage of the population of the unincorporated area of the Town divided by the total population for the allocable franchise areas in question. Gross Revenues shall be the basis for computing the franchise fee imposed pursuant to SECTION III (L)(1) hereof. Gross Revenues shall not include revenues directly generated by affiliated programmers for the provision of programming; any taxes on services furnished by the Franchisee which are imposed upon any Subscriber or user by the state or other governmental unit and collected by the Franchisee on behalf of said governmental unit and which the Franchisee passes on in full to the applicable tax authority. In addition, gross revenues shall not include the first Five Dollars (\$5.00) of late fee payments; return check charges; returned equipment charges; or bad debt. However, it is hereby expressly provided that franchise fees shall be included in the calculation of Gross Revenues. Further, franchise fees shall not be paid on Subscriber deposits unless and until said deposits are applied to a customer account for services rendered. Revenue of an Affiliate, subsidiary or parent shall be Gross Revenue under this definition only to the extent such revenue is derived from the operation of the cable system to provide cable service by the Affiliate, subsidiary or parent acting in the capacity of a cable operator and not in the capacity of a television program provider.

SECTION III - FRANCHISING PROVISIONS

C. Franchise Characteristics.

6. Notwithstanding anything to the contrary, in the event that Franchisee, its parent, affiliate or subsidiary elects to offer to subscribers video programming services through any means or method not included within the definition of a Cable System, including but not limited to an "open video system", Franchisee shall remain subject to all terms and conditions of the cable Franchise granted pursuant to this Ordinance, with respect to its operation of the Cable System under the Franchise.

D. Franchise application procedure; information required.

All applications to construct, operate, or maintain Cable system in the Town or to traverse any portion of those areas for the transmitting or conveying of such service elsewhere, shall be filed with the Council or such office of the Town as the Council shall designate. A written application shall be filed with the Town for (a) grant of a new cable franchise or Open Video System; (b) renewal of a franchise, unless in compliance with Section 626 of the Communications Act, 47 U.S.C. 546; (c) modification of a Franchise Agreement; (d) a transfer of a franchise; or (e) any other relief from the Town pursuant to this Ordinance or a Franchise Agreement. To be acceptable for filing, a signed original of the application shall be submitted together with seven (7) copies, be accompanied by the required non-refundable application filing fee as set forth in SECTION III (E) hereof, conform to any applicable request for proposals, and contain all reasonably required

information. Except in the case of an initial application, the Town Manager may waive submission of certain information required herein, upon request of the Franchisee. All applications shall include the names and addresses of persons authorized to act on behalf of the applicant with respect to the application.

1. All applications accepted for filing shall be made available by the Town for public inspection consistent with applicable law.

2. An application for the grant of a new franchise may be filed pursuant to a request for proposals issued by the Town or on an unsolicited basis. The Town, upon receipt of an unsolicited application, may issue a request for proposals. If the Town elects to issue a request for proposals upon receipt of an unsolicited application, the applicant may submit an amended application in response to the request for proposals, or may inform the Town that its unsolicited application should be considered in response to the request for proposals, or may withdraw its unsolicited application. An application, including an unsolicited application which applicant has subsequently designated as responsive, which does not conform to the reasonable requirements of a request for proposals may be considered non-responsive and denied on that basis.

3. An application for the grant, renewal or transfer of a franchise shall contain, at minimum, the following information:

a. Name and address of the applicant and identification of the ownership and control of the applicant, including: the names and addresses of all persons with five percent (5%) or more ownership interest in the applicant, including the names and addresses of parents or subsidiaries holding such ownership interests directly or indirectly; the persons who control the applicant; all officers and directors of the applicant; and any other Cable system ownership or other communication ownership interest of each named person;

b. The names and addresses of any parent or affiliate, of the applicant and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the applicant;

c. An indication of whether the applicant, or any person controlling the applicant, or any officer, or director or person with five percent (5%) or more ownership interest in the applicant, has been adjudged bankrupt, had a cable franchise or license revoked, or been found by any court or administrative agency to have violated a security or antitrust law, or to have committed a felony, or any crime involving moral turpitude; and, if so, identification of any such person and a full explanation of the circumstances;

d. A demonstration of the applicant's technical, legal and financial ability to construct and/or operate the proposed Cable System, including identification of key personnel;

e. A detailed and complete financial statement of the applicant, prepared by a certified public accountant, for the five (5) fiscal years immediately preceding the date of the application hereunder, or a letter or other acceptable evidence in writing from a reasonable lending institution or funding source, addressed to both the applicant and the Town, setting forth a clear statement of its intent as a lending institution or funding source to provide whatever capital shall be required by the applicant to construct and operate the proposed system in the Town. If the corporate or business entity organization of the applicant has not been in existence for a full five (5) years, applicant shall submit a certified financial statement for the period of its existence;

f. A description of the applicant's prior experience in Cable system ownership, construction and operation, and identification of communities in which the applicant or

- any person controlling the applicant or having more than a five percent (5%) ownership interest in applicant has, or has had, a cable franchise or license or any interest therein;
- g. A description of the services and physical facilities proposed, including channel capacity, performance characteristics, headend, and access facilities; upon request, the applicant shall make information on technical design available for inspection;
 - h. A description of the construction of the proposed system, including an estimate of plant mileage and its location, a detailed map, the proposed construction schedule, a description, where appropriate, of how services will be converted from existing facilities to new facilities, and information on the availability of space in conduits including, where appropriate, an estimate of the cost of any necessary rearrangement of existing facilities;
 - i. For informational purposes, the proposed rate structure, including projected charges for each service tier, installation, converters, and other equipment or services, and the applicant's ownership interest in any proposed program services to be delivered over the Cable System;
 - j. A demonstration of how the applicant's proposal will reasonably meet the future cable-related needs and interests of the community, including a description of how the proposal will meet the needs described in any recent community needs assessment conducted by or for the Town and any surveys or other research conducted by Franchisee;
 - k. A description of the applicant's proposal to provide access channels, facilities, equipment, personnel and financing in support of the Town's education and government related activities and a comparison to provisions in other communities within the State of Florida, served by Franchisee, its parent, affiliate or subsidiaries in the State of Florida.
 - l. A description of any cable and non-cable telecommunications services offered or proposed to be offered by the applicant or its parent, affiliates or subsidiaries in the State of Florida and Franchisee's plan with respect to the availability of such services to subscribers in the Town;
 - m. Pro forma financial projections for the first five (5) years of the franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules;
 - n. If an applicant proposes to provide cable service to an area already served by an existing Cable Franchisee, the identification of the area where the overbuild would occur, the potential subscriber density in the area which would encompass the overbuild, and the ability of the Streets to accommodate an additional system;
 - o. If requested, a proposal to provide an I-Net to the Town;
- and
- p. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application and certifying that the proposal meets all federal and state law requirements.
4. An application for modification including, but not limited to expansion of service area, of a Franchise Agreement shall include, at minimum, the following information:
- a. The specific modification requested;
 - b. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved;

- e. A statement whether the modification is sought pursuant to Section 625 of the Communications Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545.
 - d. Any other reasonable information necessary for the Town to make an informed determination on the application for modification; and
 - e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, including those types of applications as defined in SECTION II hereof, and certifying that the application is consistent with all federal and state law requirements.
5. An application for renewal of a franchise shall comply with the requirements of SECTION XXIV hereof.
6. An application for approval of a transfer of a franchise shall comply with the requirements of SECTION XXV hereof.

E. Application Fee:

- 1. To be acceptable for filing, an application shall be accompanied by a non-refundable filing fee in the following amount, as appropriate:
 - a. For a new or initial franchise: \$15,000.00
 - b. For renewal of a franchise: \$2,500.00
 - c. For a transfer of a franchise: \$2,500.00
 - d. For modification of a Franchise \$ 2,500.00
 - e. For any other relief: \$ 2,500.00

The purpose of the filing fee is to defray a portion of the Town's cost in processing an application. Such fee shall be credited against amounts due under section (E)(2) below.

- 2. Franchisee shall reimburse the Town for all costs and expenses incurred by the Town in considering and processing the application, including but not limited to consulting and legal costs, less the amount of the filing fee set pursuant to section (E)(1) above. Within five (5) calendar days prior to the planned date of the resolution approving or denying the Franchise Agreement or renewal or modification or transfer thereof by the Council, the Town shall advise the Franchisee of the amount of the processing fee and its method of calculation. If the processing fee is not paid to the Town within twenty (20) calendar days of the date of the Council resolution approving or denying the Franchise Agreement or a modification or transfer thereof, any approval granted by such resolution will be null and void without further action by Town.

F. Public Hearing on Applications:

- 1. Upon receipt of a completed application for a grant or modification of a franchise, including modifications, submitted under the provisions of this section and within one hundred twenty (120) days, or such extended period of time as the Council may approve upon request by the Town Manager, the Town Manager shall review the application for sufficiency and compliance with sections (d) and (e), hereinabove. If the Town Manager finds that the application is incomplete, he shall return it to the applicant with a letter describing any and all insufficiencies found in the application. The applicant may then reapply for a franchise upon correcting the deficiencies noted by the Town Manager. Upon receipt of the revised and amended application, the Town Manager shall review the application within one hundred twenty (120) day period. Upon review and after a final

finding that the application is complete and in compliance with this section, the Town Manager shall forward said application to the Council for publication of a notice of public hearing in accordance with this Ordinance.

2. Upon receipt of an application for a franchise and after review by the Town Manager, the Council shall publish in a paper of general circulation in the Town a notice of consideration of a cable franchise. Said notice shall name the applicant, describe the proposed service area, invite objections to the establishment of a Cable System in the proposed service area from existing systems and the general public and set a time and date certain, at least fourteen (14) days prior to the scheduled meeting date, for the consideration of the application at public hearing.

3. The initial application and all subsequent applications received prior to the public hearing shall be a matter of public records.

G. Issuance of Franchise

1. The Council may issue one or more franchises from the applications filed and considered at a public hearing. The Council shall, prior to an issuance of a franchise, consider the information and criteria required by this Ordinance, and any other information it deems appropriate in making a determination to issue a franchise. During the public hearing the Town Council shall also consider, investigate, receive input, and make findings regarding the following:

- a. The economic impact upon private property within the franchise area;
- b. The public need for such a franchise, if any;
- c. The capacity of public rights-of-way to accommodate the Cable System;
- d. The present and future use of the Town rights-of-way to be used by the Cable System;
- e. The potential for disruption of future service by competition due to the presence of too many competing companies based on the number of potential subscribers in the proposed service area;
- f. The potential disruption to existing users of the Town to be used by the Cable System and the resultant inconvenience which may occur;
- g. The financial ability of the franchise applicant to perform and to make the necessary investment to erect, operate and maintain the Cable System;
- h. The experience of the applicant in the erection, operation and maintenance of a Cable system including compliance with local government rules, regulations and orders;
- i. The location and type of permanent facilities proposed to be constructed for the Cable System;
- j. The technical quality and completeness of the proposed plan for operation of the Cable System; indirectly but not limited to products and services to be made available and the level of customer service standards to be maintained;
- k. The likelihood that the applicant's proposal will satisfy the future cable related needs and interests of the community;
- l. The requisite legal, character, financial, technical and other qualifications necessary to construct, own and operate a cable television system; and

2. In considering the desirability of an additional or expanded cable franchise, the Town Council shall balance the desirability to promote competition in the cable television industry, so as to promote a diversity of information and the provision of high-quality cable services against the use and unreasonable disruption of private and public property

by multiple cable operations. Furthermore, if the Town grants a franchise to an additional cable operator or expands a current operator's franchise, the Town may impose such conditions as it deems necessary and proper at the time of the grant consistent with applicable federal and state law.

~~3. The Town Council has the authority to retain an expert or consultant to conduct a study at any time, but no more frequently than annually, in order to assess the performance of the incumbent's operations. Any resulting fees or expenses of experts or consultants, incurred to conduct a performance evaluation, as a result of noncompliance with the Ordinance or Franchise Agreement are to be borne by the applicant. However, where the applicant is a current franchisee, the applicant shall be required to pay said costs and fees only in the event of non-compliance with this Ordinance or the Franchise Agreement.~~

~~4. The Council shall vote whether to grant or deny any application and thereafter notify in writing all applicants of its decision within thirty (30) days from the date of said vote. Unless a Franchise Agreement states otherwise, all of the statements and declarations contained in the application shall be incorporated as conditions and material representations of any franchise that is issued by the Council, and the breach of any such conditions and representations shall constitute cause for commencement of termination proceedings of the franchise by the Council.~~

H. Term of Franchise.

No franchise shall be issued for a term not longer than five (5) years. All current cable television-Franchise Agreements lawfully enforceable on the effective date hereof shall remain in effect until their respective date of expiration subject to the lawfully applicable provisions of this Ordinance. However, any Franchisee holding a current Franchise under any previous Ordinance or Franchise Agreement may file for a renewal of its Franchise pursuant to the terms of this Ordinance which shall require adequate notice to the public and opportunity to comment, and may have its franchise renewed for a period not to exceed fifteen (15) years on terms consistent with the provisions of this Ordinance and such other conditions as the Council determines are in the public interest at the time of the grant. The term of the Franchise granted hereunder shall be for an initial term of fifteen (15) years, commencing upon the Effective Date of the Franchise, unless the Franchise is renewed or is lawfully terminated in accordance with the terms of this Franchise Agreement.

J. Business Authorization:

~~Any franchise granted pursuant to the provisions of this Ordinance shall authorize and permit the Franchisee to engage in the business of operating Cable System in the portion of the Town for which application was made and described therein, and for that purpose and that purpose only, subject to the approval of Town staff, to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Public Rights-of-Way or street, such poles, wires, cable, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the Cable System; and in addition, subject to the approval of the Town Manager or his designee, pursuant to generally applicable procedures and requirements, to use, operate, and provide similar facilities or properties~~

~~rented or leased from other persons, including but not limited to any public utility or other franchisee furnished or permitted to do business in the Town.~~

J. Grant of Franchise. The Franchising Authority hereby grants to the Grantee under the Cable Act a nonexclusive Franchise, which authorizes the Grantee to construct, operate and maintain a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Streets or Rights-of-Ways within the Franchise Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Street or Rights-of-Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Franchise shall be construed to prohibit the Grantee from offering any service over its Cable System that is not prohibited by federal, state or local law.

SECTION XI - BONDING REQUIREMENTS

A. Construction Bond:

~~1. The Franchisee shall, within thirty (30) days after the effective date of an initial franchise granted under this ordinance, post with the Town a construction bond or letter of credit equal to the lesser of One Hundred Thousand (\$100,000.00) Dollars or one hundred percent (100%) of the projected cost of construction and installation of the system. Said bond or letter of credit may be returned at the end of twelve (12) months after the system has been completed and approved by the Town, provided that the Franchisee has complied with all terms and conditions of the Franchise Agreement and all provisions of this ordinance as well as the rules and regulations herein required and permitted.~~

~~2. If the Franchisee shall fail to perform the obligations heretofore set out in this section, the Franchisee shall forfeit in total to the Town the hereinabove referenced construction bond or letter of credit.~~

~~3. Said construction bond or letter of credit shall not be in lieu of any other guarantee or indemnification required by this Ordinance and shall be in addition to the performance bond or irrevocable letter of credit required in SECTION XI (B).~~

B. Permanent performance and payment bond:

~~1. The Franchisee shall within thirty (30) days of the effective date of franchise granted under this ordinance or within thirty (30) days of the granting of a renewal or the transfer of a franchise existing prior to the effective date of this ordinance, furnish to the Town a cash deposit, performance bond or an irrevocable letter of credit issued by a Florida bank or a federally insured lending institution in the amount of Two Hundred Thousand (\$200,000.00) Dollars. The deposit performance bond or letter of credit shall be used to guarantee the compliance with performance requirements and payment of all sums which may become due to the Town under this ordinance and/or any Franchise Agreement entered into by the Town and Franchisee. The deposit, performance bond or letter of credit shall be maintained in the full amount specified herein throughout the term of the franchise and for one year after the franchise expires or is terminated, without reduction or allowances for any amounts which are withdrawn or paid pursuant to this order the form of the security, whether cash, bond or guarantee, shall be determined by the Town Manager due expressly described in a Franchise Agreement.~~

2. The rights reserved to the Town with respect to the bond or the letter of credit are in addition to all other rights of the Town.

SECTION XVI - ACCESS CHANNELS AND FACILITIES

A. Applications for an initial grant or renewal of a franchise shall include proposals for the provision of education and government access channels and equipment, facilities and support relating to such channels sufficient to meet community needs as determined by the Town. Any Franchisee granted an initial or renewal Franchise on or after the effective date hereof, shall, at minimum, provide the Town for its exclusive use with two (2) activated education/government access channels for educational and/or governmental use, as determined by the Town.

B. At minimum, said applications shall include proposals to provide the following:

1. The live cablecasting of all Council meetings and certain other events.
2. Studio facilities with adequate space, lighting, audio and video equipment and personnel necessary for on-site videotaping, recording and transmission over the Cable System of educational and governmental programs.
3. Equipment, facilities and support in order to facilitate the Town's operation of educational and government access channels, as determined by the Town.
4. Trained personnel to assist the Town in production of live and video-taped municipal programs at locations, including but not limited to, the Town's studio, or Franchisee's studio as the case may be, or such location as may be designated by the Town.

C. A Franchisee shall provide to the Town access to the system for transmission of emergency messages and alerts in compliance with FCC rules and state law, and shall provide for character generated "crawl" information to be superimposed on all video channels for the hearing impaired. In the case of any emergency or disaster, as determined by the Town, a franchisee shall, upon request of the Town, make the override capacity available to the Town without charge for use during emergency or disaster period.

D. Applications for an initial grant, renewal or transfer of a franchise shall include proposal for the interconnection of Franchisee to any or all other franchised Cable Systems operating within the Town or in areas adjacent to the Town for the purpose of transmitting educational and government programming provided that interconnection is technically feasible and Franchisee and any other affected operator agree upon reasonable interconnection arrangements, including an allocation of the costs of interconnection between Franchisee and such other operator, that is reasonable in light of the relative benefits and burdens, including consideration of support provided for educational and governmental access purposes.

E. Consistent with Section 611(b) and (c) of the Communications Act any franchisee granted an initial franchise or renewal after the effective date hereof may be required to provide to the Town an Institutional Network (I-NET) or equivalent thereto providing bi-directional transmission of data among all government facilities located within the franchise area, as set forth in a franchise agreement. At such time as more than one franchise is granted for any specific area within the Town, the Town shall allow the financial obligation of the cost of the I-NET to be satisfied on a shared basis with obligations imposed in proportion to the number of subscribers served by each franchisee.

~~F. A Franchise Agreement may provide for a financial grant in lieu of some or all of the facilities, equipment, and services provided pursuant to SECTION XVI hereof. However any such grant shall be considered a capital grant for use in support of education and government cable and commission needs pursuant to Section 622(g)(2)(c) of the Communications Act and shall not be included in or otherwise credited against any franchise fee or tax.~~

Grantee shall provide a line to a government building to be designated by the Town for the provision of a live feed for a government channel on which the Town may broadcast Council meetings and other non-commercial content. The actual cost and expense of extending the line to the government building may be passed through to subscribers by Grantee in an amount not to exceed 10 cents per subscriber per month until the full amount is recovered. The government programming shall appear within the Town on the existing government channel currently used by Lee County.

SECTION XVII -CUSTOMER SERVICE REQUIREMENTS

~~J. Franchisee shall cause all of its field employees to wear a picture identification badge indicating employment by Franchisee. This badge shall be clearly visible to the public. All company vehicles shall display the company name and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall display the contractor name, telephone number, and contractor license number, as required by applicable law. Employees of contractors working for Franchisee shall wear a picture identification badge. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty (\$50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred (\$500.00) Dollars.~~

~~K. A Franchisee shall develop written procedures for the investigation and resolution of all Subscriber or Town resident complaints, including, but not limited to, those regarding the quality of service and equipment malfunction, which procedures shall be provided upon request to the Town Manager. The good faith or lack thereof of the Franchisee in attempting to resolve Subscriber and resident complaints in a fair and equitable manner shall be considered in connection with the renewal application of the Franchisee, to the extent consistent with applicable law. Franchisee shall maintain a complete list of all complaints received during the prior twelve (12) months, requiring a service call not resolved within seven (7) days of receipt and the measures taken to resolve those complaints. This list shall be provided to the Town upon request. Franchisee shall also maintain a list of all written complaints received, which list shall be available to the Town upon request. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty (\$50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred (\$500.00) Dollars.~~

M. Franchisee shall abide by the following requirements governing communications with customers, bills and refunds:

~~2. To the extent a Franchisee's billing schedule allows, each Franchisee shall provide written notice in or on its monthly billing, at the request of the Town, of any Town~~

~~meeting regarding requests or applications by the Franchisee for renewal, transfer or modification of its Franchise. The Town shall make such a request in writing, with reasonable notice prior to the mailing of any billing by Franchisee, such that Franchisee's regular billing cycle shall not be interrupted. Said notices shall be made at Franchisee's expense and said expense shall not be considered part of the Franchise fee assessed pursuant to this Ordinance and shall not be considered part of the Franchise fee, as defined in section 622 of the Communications Act, 47 U.S.C. § 542. Franchisee's material failure to comply with this subsection may result in a fine in the amount of Fifty (\$50.00) Dollars per violation, per day or part thereof up to a maximum of Five Hundred (\$500.00) Dollars.~~

O. Billing.

~~2. The billing statement of the Franchisee must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Statements shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits.~~

2. Customer bills shall be designed to comply with the requirements of the FCC Regulations on such statements. The Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(c) of the Cable Act (47 U.S.C. §542(c)).

3. Any balance not received within ten (10) days after the due date may be assessed an administrative charge. However, in no event shall administrative charges for an overdue balance accumulated against any individual subscriber exceed Twenty Five (\$25.00) Dollars. The charge shall appear on the billing statement for the following month. ~~Any administrative charge applied to unpaid bills shall be subject to regulation by the Town consistent with applicable law.~~ Subscribers shall not be charged an administrative fee, a late fee or otherwise penalized for any failure by the Franchisee, its employees, or contractors, including failure to timely or correctly bill the Subscriber, or failure to properly credit the Subscriber for a payment timely made.

~~4. The Franchisee must notify the Subscriber that payment can be remitted in Person at the office of the Franchisee in the Town and inform the Subscriber of the address of that office where payment can be made.~~

S. 1. The fines to which the Franchisee is subject as set forth in this section are to be assessed by the Council on a per violation basis, with each day of a continuing violation constituting a separate violation. Fines shall not begin to accrue until the Grantee has received from the Franchising Authority a written notice of the alleged violation(s) pursuant to Section XXIII of the Ordinance ~~Where a credit required by this section is not possible because service has been terminated, Franchisee shall issue a refund to the former Subscriber for the appropriate amount.~~

SECTION XX - CABLE SYSTEM CONSTRUCTION

~~A. Construction map and schedule. Where applicable, Franchisee shall submit a construction plan or reconstruction plan which shall be incorporated by reference and made a part of the Franchise Agreement. The plan shall include Cable System design details, equipment specifications, and design performance criteria. The plan shall also include a map of the entire franchise area and shall clearly delineate the following:~~

- ~~1. Areas within the franchise area where the Cable System will be initially available to subscribers including a schedule of construction for six month that construction or reconstruction is proposed; and~~
- ~~2. Areas within the franchise area where extension the Cable System cannot reasonably be done due to lack of present or planned development or other similar reasons, with the areas and the reasons for not serving them clearly identified on the map.~~
- ~~3. A Franchisee shall provide to the Town, a detailed explanation, with proper notice including a detailed explanation of any delay of greater than twenty one (21) days.~~

~~B. Early construction and extension. Nothing in this section shall prevent the Franchisee from constructing or reconstructing the Cable System earlier than planned. However, any delay in the Cable System construction beyond the times specified in the plan report timetable shall require application to and consent by the Council.~~

~~C. Delay in construction timetable. Any delay beyond the terms of construction or reconstruction timetable, unless approved by, the Council, will be considered a violation of this Ordinance for which the provisions of SECTION XXIII shall apply as determined by the Council.~~

~~D. Commencement of construction or reconstruction. Construction or reconstruction in accordance with the plan submitted by Franchisee shall commence as soon after the grant and acceptance of a franchise as is reasonably possible. Failure to proceed expeditiously shall be grounds for revocation of a franchise. Failure to proceed expeditiously shall be presumed in the event construction or reconstruction is not commenced within twelve (12) months of the grant and acceptance of a franchise.~~

~~E. Prior approval by Town. Except for individual service drops, the Franchisee shall not erect any pole, run any line, make any attachment, nor shall any construction of any kind be commenced without the prior approval of the Town. Prior to the issuance of such approval, the Franchisee shall submit to the Town, upon request:~~

- ~~1. Strand maps of the system authorized by the proposed franchise showing plant routing, utility company poles to which the system facilities are to be attached; and~~
- ~~2. True copies of authorization given to the Franchisee with United Telephone Company or its successors and Florida Power and Light Company and any other utility or company to which an attachment is to be made.~~

J. Location/relocation of facilities/use of streets.

4. The Franchisee, upon notice to the Town of not less than seven (7) business days, emergency situations excepted, shall have the authority to trim trees upon or overhanging streets, alleys, sidewalks and public ways and places of the Town so as to prevent the branches of such trees from coming in contact with the wires and cables of the Franchisee, in a manner approved by and acceptable to the Town. At the option of the Town, such trimming may be done by the Town or under its supervision and direction at the expense of the Franchisee, if prior notification has been given to the Franchisee and Franchisee thereafter failed to respond.

SECTION XXII - REPORTS AND RECORDS

A. Within six (6) months of the close of its fiscal year, a Franchisee shall provide the Town an annual report that, at minimum, includes the following information:

~~6. Upon any change, if the Franchisee is a corporation, a list of officers and members of the board of directors; the officers and members of the board of directors of any parent corporation; and if the Franchisee or its parent corporation's stock or ownership interests are publicly traded, a copy of its most recent annual report.~~

~~7. Upon any change, if the Franchisee is a partnership, a list of the partners, including any limited partners, and their addresses; and if the general partner is a corporation, a list of officers and members of the board of directors or the corporate general partner, and the officers and directors of any parent corporation; and where the general partner or its parent corporation's ownership interests are publicly traded, a copy of its most recent annual report.~~

~~8. Upon any change, a list of all persons holding five percent (5%) or more ownership or otherwise cognizable interest in the Franchisee pursuant to 47 C.F.R. 76.501.~~

6. Throughout the term of this Franchise Agreement, the Grantee agrees that the Franchising Authority, upon reasonable prior written notice to the Grantee, may review such of the Grantee's records regarding the operation of the Cable System and the provision of Cable Service in the Franchise Area that are required to be maintained by the Grantee under the Cable Act and FCC Regulations, to monitor Grantee's compliance with the provisions of this Franchise Agreement, at the Grantee's business office, during normal business hours and without unreasonably interfering with Grantee's business operations. In the event the Florida Communications Services Tax is repealed or otherwise expires, allowing the Franchising Authority to collect franchise fees, Grantee will make available upon reasonable notice on an annual basis those financial statements necessary to audit franchise fee payments.

B. Upon written request by the Town, a Franchisee shall provide, on an annual basis, the following documents to the Town as received or filed, without regard to whether the documents are filed by the Franchisee or an affiliate:

1. Annual report of the Franchisee or its parent or any affiliate of Franchisee which controls Franchisee and issues an annual report;
2. Applicable FCC Forms and filings

3. Any and all pleadings, petitions, applications, communications, reports and documents (collectively referred to as “filings”) submitted by or on behalf of the Franchisee to the FCC, SEC or any state or federal agency, regulatory court or regulatory commission which filings may impact the Franchisee’s operation of the Franchisee’s Cable System in the Town or that may impact the Town’s rights or obligations under this Ordinance or the Franchise Agreement issued pursuant to this Ordinance and any and all responses, if any, to the above mentioned filings.

4. Any and all notices of deficiency, forfeiture, or documents instituting any investigation, civil or criminal proceeding issued by any state or federal agency regarding the system, Franchisee, or any Affiliate of Franchisee, provided, however, that any such notice or documents relating to an Affiliate of Franchisee need be provided only to the extent the same may concern Franchisee’s operations in the Town. For example, a notice that an Affiliate which has a management contract for the Town’s system was not in compliance with FCC EEO requirements with respect to its activities in the Town would be deemed to affect or bear on operations in the Town.

5. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

6. Notwithstanding anything to the contrary, the Franchisee agrees to provide the Town, within thirty (30) days of filing or receipt of such, any document filed with or received from a governmental agency that may adversely impact Franchisee’s obligations under its Franchise with respect to the construction, operation or maintenance of the Franchisee’s Cable System or the Town’s rights with respect thereto.

Pursuant to the Florida Simplified Communications Tax (“Florida Tax Law”), Sections III(L) and XXII(A)(2) of the Franchise Ordinance shall not apply to this Franchise. If the Florida Tax Law is amended or repealed to allow the Franchising Authority to collect Franchise Fees, then Section III(L) of the Franchise Ordinance will become effective with respect to this Franchise Agreement thirty (30) days after the effective date of such statutory amendment or repeal of the Florida Tax Law.

~~D. Any materials requested by the Town which are deemed proprietary and confidential under applicable law shall be made available to the Town for review and inspection (but not copying or removal), but shall not be required to be filed with the Town unless such filing is required by applicable law. To the extent consistent with applicable law, the Town shall maintain the confidentiality of information provided by Franchisee, when designated as proprietary and confidential by Franchisee.~~ Throughout the term of this Franchise Agreement, the Grantee shall maintain at its business office, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC’s rules and regulations. The Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents of the Franchising Authority that have a need to know in order to enforce this Franchise Agreement and who agree to maintain the confidentiality of all such information. The Grantee shall not be required to provide Customer information in violation of Section 631 of the Cable Act. For purposes of this Section the terms “proprietary or confidential” include, but are not limited to, information relating to the Cable System design, customer

lists, marketing plans, financial information unrelated to the calculation of franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by the Grantee to be competitively sensitive.

SECTION XXIII - ENFORCEMENT REMEDIES

~~A. In addition to any other remedies available at law or equity or provided herein, the Town may apply any one or combination of the following remedies in the event a Franchisee violates this Ordinance, its franchise agreement, applicable state or federal law, or applicable local law or order:~~

~~1. Impose damages in such amount, whether on a per-diem, per-incident, or other measure of violation, as provided in this Ordinance or in a Franchise Agreement. Payment of liquidated damages by the Franchisee will not relieve the Franchisee of its obligation to comply with the franchise agreement and the requirements of this Ordinance.~~

~~2. Impose a fine in an amount not less than Three Hundred (\$300.00) Dollars per day for failure to obtain a Franchise Agreement from the Town pursuant to this Ordinance.~~

~~3. Impose a fine in the amount of Three Hundred Fifty (\$350.00) Dollars per day per violation for material failure to comply with any provision of this Ordinance, except as otherwise provided for herein or as otherwise provided for in a Franchise Agreement.~~

The Franchising Authority shall give Grantee official, written notice of any alleged violation of this Franchise Agreement or the Franchise Ordinance. Grantee shall have forty-five (45) days from the receipt of the Franchising Authority's notice described in Section XXIII(A)(5) of the Franchise Ordinance: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance or default, or (B) to cure such default, or (C) in the event that, by nature of the default, such default cannot be cured within the forty-five (45) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. In the event the Grantee fails to respond to the Franchising Authority's notice described in the foregoing sentence, or in the event that the alleged default is not remedied within forty-five (45) days or the date projected pursuant to the foregoing sentence, the Franchising Authority shall schedule a public hearing to investigate the default. Such public hearing shall be held at the next regularly scheduled meeting of the Franchising Authority that is scheduled at a time that is no less than ten (10) business days therefrom. The Franchising Authority shall notify the Grantee in writing of the time and place of such meeting and provide the Grantee with a reasonable opportunity to be heard.

Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

1. Seek specific performance of any provision, which reasonably lends itself to such remedy or seek other equitable relief; or

2. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked in accordance with the following:

(i) The Franchising Authority shall give written notice to the Grantee of its intent to revoke the Franchise on the basis of a pattern of noncompliance by the Grantee, including one or more instances of substantial noncompliance with a material provision of the Franchise. The notice shall set forth with specificity the exact nature of the noncompliance. The Grantee shall have ninety (90) days from the receipt of such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least ten (10) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to request termination of the Franchise.

(ii) At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Grantee within ten (10) business days. The decision of the Franchising Authority shall be in writing and shall be delivered to the Grantee via certified mail. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority “de novo” and to modify or reverse such decision as justice may require. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

Technical Violation. The Franchising Authority agrees that it is not its intention to subject the Grantee to revocation of the Franchise for so-called “technical” breach(es) or violation(s) of the Franchise, which shall include, but not be limited, to the following:

1. In instances or for matters where a violation or a breach of the Franchise by the Grantee was good faith error that resulted in no or minimal negative impact on the Customers within the Franchise Area; or

2. Where there existed circumstances reasonably beyond the control of the Grantee and which precipitated a violation by the Grantee of the Franchise, or which were deemed to have prevented the Grantee from complying with a term or condition of the Franchise.

SECTION XXIV - RENEWAL OF FRANCHISE

Renewal shall be conducted in a manner consistent with SECTION 626 of the Communications Act, 47 USC. § 546. Any renewal of this Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended.

SECTION XXV - TRANSFERS

B. An application for a transfer of a franchise shall meet the requirements of SECTION III hereof, and provide complete information on the proposed transaction, including details on the legal, financial, technical and other qualifications of the transferee, and on the potential impact of the transfer on subscriber rates and service. The application shall provide, at a minimum, the information required in SECTION III with

respect to the proposed transferee. The information required in SECTION III shall also be provided whenever the proposed transferee expects material changes to occur in those areas. Neither the Grantee nor any other Person may transfer the Cable System or the Franchise without the prior written consent of the Franchising Authority, which consent shall not be unreasonably withheld or delayed. No such consent shall be required, however, for (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, or (ii) a transfer of the Franchise or Cable System to any entity controlling, controlled by or under common control with the Grantee. The Franchising Authority shall have 30 days to notify Grantee if the transfer application is inaccurate and to make reasonable requests for additional information necessary to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not formally approved or denied the Grantee's request for approval of the transfer within one hundred twenty (120) days after receiving such request, consent to the transfer shall be deemed given.

SECTION XXVIII - RATES

C. The Town's regulation of rates as permitted under applicable law, shall be consistent with Federal Communications Commission cable rate regulation standards or other applicable law in effect at the time. A Franchisee shall notify the Town of any changes in rates or service no less than thirty (30) days prior to the effective date of such change. ~~Unless otherwise prohibited by applicable law, the Town may require the Franchisee to notify each subscriber, by placing an announcement of not less than one quarter page in a newspaper of general circulation and/or via the Cable System, or by written notice to the Subscriber, or such other reasonable means consistent with applicable law, of the proposed rate change.~~ At any hearing conducted by the Town in the exercise of any rate regulatory authority, the Franchisee and members of the public will be given an opportunity to present their respective views on the proposed rates. Upon conclusion of the public hearing, the Council shall decide the matter by majority vote and adopt a Resolution taking such action and providing such relief as is appropriate and authorized by Federal Communications Commission rate regulation standards or other applicable law. The resolution shall set forth complete findings of fact and conclusions regarding all of the basic elements considered in the Council's determination.

Section 4. Miscellaneous Provisions of this Franchise

The following provisions are in addition to those terms and conditions of Ordinance 02-02 as modified herein:

1. System Capacity. During the term of this Agreement the Grantee's Cable System shall be at least 750 MHz, or the equivalent, and shall be capable of providing a minimum of 78 channels of video programming with satisfactory reception available to its customers in the Franchise Area. Section XIV of the Franchise Ordinance governs the minimum facilities and services to be provided.

2. Technical Standards. The Grantee shall comply with all applicable technical standards of the FCC as published in subpart K of 47 C.F.R. § 76. To the extent those standards are altered, modified, or amended during the term of this Franchise, the Grantee shall comply with such altered, modified or amended standards within a reasonable period after such standards become effective. The Franchising Authority shall have, upon written request, the right to obtain a copy of tests and records required to be performed pursuant to the FCC's rules.

3. General Service Obligation. The Grantee shall make Cable Service available to every residential dwelling unit within the Franchise Area where the minimum density is at least twenty-five (25) dwelling units per mile. Subject to the density requirement specified in Section XIV(B) of the Franchise Ordinance, Grantee shall offer Cable Service to all new homes or previously unserved homes located within 125 feet of the Grantee's distribution cable.

The Grantee may elect to provide Cable Service to areas not meeting the above density standards. The Grantee may impose an additional charge in excess of its regular installation charge for any service installation requiring a drop in or line extension in excess of the above standards. Any such additional charge shall be computed on a time plus materials basis to be calculated on that portion of the installation which exceeds the 125 foot standard set forth above.

4. Programming. The Grantee shall offer to all Customers a diversity of video programming services.

5. New Developments. The Franchising Authority shall provide the Grantee with written notice of the issuance of building or development permits for planned developments within the Franchise Area requiring undergrounding of cable facilities. The Franchising Authority agrees to require the developer, as a condition of issuing the permit, to give the Grantee access to open trenches for deployment of cable facilities and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its cable facilities.

6. New Grades or Lines. If the grades or lines of any Public Way within the Franchise Area are lawfully changed at any time during the term of this Franchise Agreement, then the Grantee shall, upon reasonable advance written notice from the Franchising Authority (which shall not be less than ten (10) business days) and at its own cost and expense, protect or promptly alter or relocate the Cable System, or any part thereof, so as to conform with any such new grades or lines. If public funds are available to any Person using such street or public right-of-way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall upon written request of the Grantee make application for such funds on behalf of the Grantee. The actual costs and expenses of altering or relocating any portion of the Cable System due to a beautification project may

be passed through by the Grantee to subscribers in an amount not to exceed 15 cents per subscriber per month until fully recovered.

7. Aerial and Underground Construction. If all of the transmission and distribution facilities of all of the respective public or municipal utilities in any area of the Franchise Area are underground, the Grantee shall place its Cable Systems' transmission and distribution facilities underground; provided that such facilities are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality. In any region(s) of the Franchise Area where the transmission or distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing in this Section shall be construed to require the Grantee to construct, operate, or maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals, or other related equipment.

8. Prohibition against Reselling Service. No Person shall resell, without the express prior written consent of the Grantee, any Cable Service, program or signal transmitted over the Cable System by the Grantee.

9. Competitive Equity. The Grantee acknowledges and agrees that the Franchising Authority reserves the right to grant one or more additional franchises to provide Cable Service within the Franchise Area; provided, however, that no such franchise agreement shall contain terms or conditions more favorable or less burdensome to the competitive entity than the material terms or conditions more favorable or less burdensome to the competitive entity than the material terms and conditions herein, including, but not limited to, franchise fees; insurance; system build-out requirements; performance bonds or similar instruments; public, education and government access channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure. If any such additional and/or competitive franchise is granted by the Franchising Authority which, in the reasonable opinion of the Grantee, contains more favorable or less burdensome terms or conditions than this Franchise Agreement, the Franchising Authority agrees that it shall amend this Franchise Agreement to include any more favorable or less burdensome terms or conditions.

In the event an application for a new cable television franchise is filed with the Franchising Authority proposing to serve the Franchising Area, in whole or in part, the Franchising Authority shall serve a copy of such application upon any existing Grantee or incumbent cable operator by registered or certified mail or via nationally recognized overnight courier service.

10. Oversight of Franchise. In accordance with applicable law, the Franchising Authority shall have the right to oversee and, on reasonable prior written notice, periodically inspect the construction, operation and maintenance of the Cable System in the Franchise Area, and all parts thereof, as necessary to monitor Grantee's compliance with the provisions of this Franchise Agreement.

11. Reservation of Authority. Nothing in this Franchise Agreement shall (A) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (B) be construed as a waiver of any codes or ordinances of general applicability promulgated by the Franchising Authority, or (C) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets.

12. Notice. All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery, first class mail, registered or certified, return receipt requested, postage prepaid, or by reputable overnight courier service and addressed as follows:

<u> The Franchising Authority:</u>	<u>Town of Fort Myers Beach</u> <u>2523 Estero Blvd.</u> <u>Fort Myers Beach, FL 33931</u> <u>Attn: Town Manager</u>
<u> The Grantee:</u>	<u>Comcast Cablevision of the South, Inc.</u> <u>301 Tower Road</u> <u>Naples, FL 34113</u> <u>Attn: General Manager</u>
<u> with a copy to:</u>	<u>Comcast Cable Communications, Inc.</u> <u>1500 Market Street</u> <u>Philadelphia, PA 19102</u> <u>Attn.: Legal Department</u>

13. Modification. No provision of this Franchise Agreement shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Grantee, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution or order by the Franchising Authority, as required by applicable law.

14. Entire Agreement. This Franchise Agreement and the Franchise Ordinance as modified herein embodies the entire understanding and agreement of the Franchising Authority and the Grantee with respect to the subject matter hereof and supersedes all prior understandings, agreements and communications, whether written or oral. All ordinances or parts of ordinances that are in conflict with the provisions of this Franchise Agreement are superseded by this Franchise Agreement.

Section 5. Effective Date of Franchise.

Within thirty (30) calendar days after the adoption of this Resolution awarding of a franchise, or within such extended period of time as the Council in its discretion may authorize, the Franchisee shall file with the Council its written acceptance of the franchise, together with the insurance policies required by section X of Ordinance 02-02, and its agreement to be bound by and to comply with all requirements pursuant to the

provisions of the Ordinance and the franchise. Such acceptance and agreement shall be acknowledged by the Franchisee before a notary public.

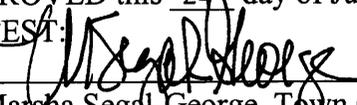
Section 6. Severability. If any part, section, subsection, or other portion of this resolution or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Resolution, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The Town declares that no invalid or prescribed provision or application was an inducement to the enactment of this resolution, and that it would have enacted this resolution regardless of the invalid or prescribed provision or application.

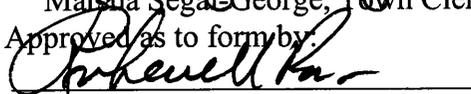
The foregoing resolution was adopted by the Fort Myers Beach Town Council upon being put to a vote, the result was as follows:

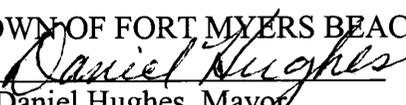
Howard Rynearson	<u>aye</u>
Daniel Hughes	<u>aye</u>
Bill Thomas	<u>aye</u>
W. H. "Bill" Van Duzer	<u>aye</u>
Terry Cain	<u>aye</u>

APPROVED this 24 day of June, 2002.

ATTEST:

By: 
Marsha Segal-George, Town Clerk

Approved as to form by:

Richard V.S. Roosa, Town Attorney

TOWN OF FORT MYERS BEACH
By: 
Daniel Hughes, Mayor