

ORDINANCE NO. 18

AN ORDINANCE PROVIDING FOR THE GRANTING OF A FRANCHISE TO COMCAST CABLEVISION CORPORATION OF MOBILE, INC., ITS SUCCESSORS AND ASSIGNS, A RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE TELEVISION SYSTEM IN THE TOWN OF DAUPHIN ISLAND, ALABAMA SETTING FORTH CONDITIONS ACCOMPANYING THE GRANT OF SAID FRANCHISE; PROVIDING OPERATIONAL SAFETY STANDARDS; PROVIDING FRANCHISEE SERVICE POLICIES; PROVIDING FOR A LINE EXTENSION FORMULA IN THE FRANCHISEE AREA; PROVIDING OPERATION STANDARDS; PROVIDING FRANCHISEE RATE REGULATIONS PROVIDING FOR REVENUES AND INDEMNIFICATION TO TOWN PROVIDING PROCEDURES FOR TOWN INVESTIGATIONS OF FRANCHISEE, FRANCHISE TERMINATION AND FRANCHISE TRANSFERS; PROVIDING PUBLIC SERVICE OUTLETS AND EMERGENCY ASSISTANCE BY FRANCHISEE; PROVIDING A LISTING OF VIOLATIONS AND PENALTIES THEREFOR; INCORPORATING FEDERAL REGULATIONS; AND PROVIDING FOR EFFECTIVE DATE. .

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAUPHIN ISLAND, ALABAMA, AS FOLLOWS:

SECTION 1. SHORT TITLE. This ordinance shall be known and may be cited as the "Comcast Cable TV ordinance".

SECTION 2. DEFINITIONS. For the purpose of this ordinance the following terms, phrases, words, abbreviations, and their derivations shall have the meaning herein given. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

(a) "City" or "Town" shall mean the Town of Dauphin Island, Alabama.

(b) "Council" shall mean the governing body of the Town.

(c) "Company" shall mean Comcast Cablevision Corporation of Mobile, Inc., as grantee of rights under this ordinance, or its successors and assigns as permitted by the terms of this ordinance.

(d) "Person" shall mean any natural person, and any firm, partnership, association, corporation, company or organization of any kind.

(e) "Franchise area" shall mean the entire incorporated area of the Town, as the same may from time to time exist.

(f) "Street" shall mean the surface of and the space above and below any public street, right-of-way; road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, communications, or utility easement, now or hereafter existing as such within the franchise area.

(g) "Property of Company" shall mean. all property owned, installed or used by the Company in the conduct of a CATV business in the Town.

(h) "CATV System" shall mean a cable television system as hereinafter defined.

(i) "Cable Television System" shall mean a system composed of, without limitation, antennae, cables, wires, lines, towers, amplifiers, wave guides, or any other conductors, converters, equipment or facilities, designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave or other means, television, electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

(j) "Basic CATV Service" shall mean the distribution of Any tier of service that includes broadcast television signals.

(k) "Expanded CATV Service" shall mean any communications service in addition to Basic CATV Service provided by the Company either directly or as a carrier for their subsidiaries, affiliates or any other person engaged in communication service, including but not by way of limitation, pay TV, satellite delivered programming, burglar alarm service, data or other electronic transmission services, facsimile reproduction services, meter reading services and home shopping services.

(l) "Subscriber" shall mean any person lawfully receiving Basic CATV Service.

(m) "Gross Annual Basic Subscriber Revenues" shall mean any and all compensation and other consideration derived directly by the Company from subscribers for regularly furnished Basic CATV Service. Gross annual basic subscriber revenue shall not include revenues derived from Expanded CATV Service, advertising revenues, installation charges, or any taxes on services furnished by the Company imposed directly on any subscriber or user by any city, state or other governmental unit and collected by the Company for such governmental unit.

(n) "Public Way" shall mean any public street, public way and public place, now laid out or dedicated and all extensions thereof and additions thereto in the franchise area.

SECTION 3. GRANT OF AUTHORITY. The City hereby grants to the Company the right and privilege to engage in the business of operating a CATV system in the City for the purpose of providing Basic CATV Service and such aspects of Expanded CATV

Service, if any, as the Company may from time to time deem advisable; provided that the service is within the definition of Basic or Expanded CATV Service as defined herein and is permissible under the laws, rules, and regulations of the Federal Communications Commission (F.C.C.). Such grant shall give to the Company the right and privilege to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any Public Way, such poles, wires, cables, conductors, ducts, conduit vaults, manholes, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, firms or corporations, including but not limited to any public utility or other grantee franchised or permitted to do business in the City.

SECTION 4. NON-EXCLUSIVE GRANT The right granted under Section 3 hereof to use and occupancy of said streets, and other public ways for the purpose herein set forth, shall not be exclusive, and the City reserves the right to grant a similar use in said streets to any other person.

SECTION 5. TERM OF FRANCHISE. The franchise and rights granted hereunder shall take effect and be in force on the first day of the calendar month next succeeding the date of the adoption and publication of this ordinance, and shall continue in force and effect for a term not to exceed twenty (20) years

after the effective date. The Company shall have the option to renew and extend this franchise for one additional term of ten (10) years by giving written notice of its option to extend at any time prior to the expiration of the original term of this franchise.

SECTION 6. CONDITIONS OF STREET OCCUPANCY.

(a) All transmission and distribution structures, lines, and equipment erected by the Company within the franchise area shall be so located as to cause minimum interference with the proper use of Public Ways and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said Public Ways. The CATV system shall be constructed and operated in compliance with all applicable City, State and federal laws, ordinances and regulations. The Company shall install and maintain its wires, cables, fixtures and other equipment in such manner that they will not interfere with any installations or facilities of the City or of a public utility serving the City.

(b) In case of disturbance of any Public Ways as a result of the operations of the Company, the Company shall, at its own cost and expense and in a manner approved by the City, replace and restore such Public Way as nearly as possible to as good a condition as before the work involving such disturbance was done.

(c) Any poles or other fixtures placed in any Public Way by the Company shall be placed in such manner as not to interfere with the usual travel thereon.

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

(e) The Company shall have the authority to trim trees upon and overhanging Public Ways so as to prevent the branches of such trees from coming in contact with the wires and cables of the Company.

(f) If at any time during the term of the franchise the cables, wires, or other like facilities of all public utilities are required by the City to be placed underground, the Company shall, at that time, place its cables, wires, or other like facilities underground to the maximum extent that existing technology reasonably permits the Company to do so.

(g) The Company shall protect, support, temporarily disconnect, relocate in the same Public Way, or remove from the Public Way (all such activity of the Company being herein referred to as "relocation") any property of the company when

reasonably required by the City by reason of traffic conditions, public safety, street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements by public agencies; provided, however, that the Company shall be entitled to reimbursement for the costs incurred by it in connection with such relocation; and provided further that if such reimbursement is not sought from the City but from a private contractor who is performing the work necessitating such relocation, the Company shall have the right to insist upon receiving appropriate security from the contractor for the relocation expenses anticipated to be incurred by it prior to effecting such relocation.

SECTION 7. SAFETY REQUIREMENT.

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

(b) All structures and all lines, equipment and connections in, over, under and upon the Public Ways wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

SECTION 8. SERVICE POLICIES. The Company shall adhere to the following service policies.

(a) System Expansion, New or Existing Developments,
Overhead Cable Construction.

(i) The Company shall extend cable television services to any existing development or group of residences at the standard rate if:

- (A) The existing development or group of residences to be served has a density of at least one hundred (100) occupied residences per strand mile of continuous trunk line cable installed from existing plant; and
- (B) Fifty-seven (57%) percent of the occupied residences within the development or group residences to be served have in writing requested service and have agreed to subscribe for a period of at least six {6} months.

(ii) Any development or group of residences not meeting the above requirements may be served at the Company's discretion.

(b) System Expansion, New Or Existing Underground Developments.

The Company may, at its option, extend energized or unenergized cable, or conduit, to all new residential developments as they are constructed. Costs of trenching, conduit, pedestals and/or vaults and laterals as well as easements therefor required to bring service to the development

shall be borne by the developer and/or landowner. All installations and construction by developer and/or landowner shall be to the specifications of the Company. The Company need not provide cable television services to such a development until fifty-seven (57%) percent of the residential dwelling units to be served have agreed in writing to subscribe to receive cable services for a period of not less than six (6) months.

(c) System Expansion Limitation.

(i) Anything herein to the contrary, no provision of this ordinance shall require the Company to extend in any twelve (12) month period, trunk, and/or distribution lines to more than twenty-five (25%) percent of the residences in the franchise area. Should the Company elect to extend the system in excess of this limitation, credit for such excess extensions shall be made against the foregoing extension requirements during the next twelve (12) month period.

(ii) Upon petition by the Company, the City may defer or indefinitely suspend any expansion required by this ordinance after a showing by the Company that such expansion would cause unreasonable financial hardship to the Company.

Such a showing shall be made by the Company at a public hearing. The City shall publish a notice of any such hearing setting forth a time and place when and where any persons having any interest therein may appear before the Council and be heard, at least fifteen (15) days prior to the hearing in a

newspaper of general circulation within the City. The City shall also cause a copy of such notice to be mailed to the Company at least fifteen (15) days prior to the bearing.

(d) Undergrounding of System.

For any system expansion in existing developments the Company shall place the cable system underground in localities where both telephone and power lines are underground. For existing facilities, the Company shall replace aerial, facilities with underground facilities concurrently and in cooperation with similar programs of the telephone and power utilities. At no time shall the cable system be the only aerial facility. Where undergrounding is required, the Company shall have the option of sharing or not sharing utility trenches.

SECTION 9. OPERATIONAL STANDARDS. The Company shall operate and maintain its cable television system in full compliance with the standards set forth by the Federal Communications Commission.

SECTION 10. RATES. Rates charged for Basic or Expanded CATV Service as may from time to time be offered by the Company shall not be regulated by the City.

SECTION 11. FRANCHISE PAYMENTS. The Company shall pay to the City, on or before April 15 of each year (an annual franchise fee not to exceed the maximum allowable fee under the laws, rules and regulations of the Federal Communications Commission. The amount of this fee is hereby stipulated to be

three (3%) percent of the Gross Annual Basic Subscriber Revenues received by the Company for cable television operations in the City during the preceding calendar year. No other fee, charge or consideration shall be imposed. At the time of each payment due hereunder, the Company shall provide to the City an annual summary report showing Gross annual Basic subscriber Revenues received during the preceding year.

SECTION 12. INDEMNIFICATION OF CITY.

(a) The Company shall at all times protect and hold harmless the City from all claims, actions, suits, liability, loss, expense or damages of every kind and description (herein collectively referred to as "claims") including investigation costs, court costs and attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of the Company in the ownership, construction, installation, repair, replacement, maintenance and operation of the cable television system. The City shall give the Company prompt notice of any such claims filed against it.

(b) The Company shall maintain in full force and effect during the life of this franchise, public liability insurance in a solvent insurance company authorized to do business in the State of Alabama, in at least the following amounts:

- (i) \$50,000 property damage in anyone accident;
- (ii) \$100,000 for personal injury to anyone person;

(iii) \$300,000 for personal injury in anyone
accident;

provided, however, that all such insurance may be carried in
blanket coverage and may contain reasonable deductible and
self-insuring provisions not to exceed \$5,000.00 for any type
of coverage.

SECTION 13. PROCEDURES.

(a) Any inquiry, proceeding, investigation or other
action to be taken or proposed to be taken by the City in
regard to the operation of the Company's cable television
system shall be taken only after

(i) the minimum legally required public notice of
such action or proposed action is published in a local daily or
weekly newspaper having general circulation in the City (and in
the absence of any such legal requirement, the notice shall be
published at least seven (7) days prior to the date of the
proposed action);

(ii). a copy of such action or proposed action is
served directly on the Company at least fifteen (15) days prior
to the proposed action;

(iii) The Company has been given an opportunity to
respond in writing and/or at hearings as may be specified by
the City.

(b) The public notice required by this section shall
state clearly the action or proposed action to be taken, the
time provided for response and the person or persons in

authority to whom such responses should be addressed; and such other procedures as may be specified by the City. If a hearing is to be held, the public notice shall give the date and time of such hearing, whether public participation will be allowed, and the procedures by which such participation may be obtained. The Company shall be an indispensable party to any hearing conducted in regard to its operations.

SECTION 14. PROCEDURE UPON TERMINATION. : Upon expiration of the franchise granted hereunder if the Company shall not have effected an extension or renewal thereof, the Company may enter upon the Public Ways of the County, for the purpose of removing its property. In so removing said property the Company shall at its own expense, refill any excavation that shall be made by it, and, insofar as possible shall leave said Public Ways in the same condition prevailing prior to the Company's removal of its property.

SECTION 15. NEW DEVELOPMENTS. It shall be the policy of the City to amend this franchise liberally upon application of the Company, when necessary to enable the Company to take advantage of any developments in the field of transmission of television and radio signals which will afford it an Opportunity to more effectively, efficiently or economically serve its customers.

SECTION 16. APPROVAL OF TRANSFER. Without Council approval the Company shall not sell or transfer its CATV system or any of its rights under this franchise to another, except to

a parent company or a company with similar stockholders, except as security for moneys borrowed. Such Council approval shall not be unreasonably withheld.

SECTION 17. LOCAL OFFICE. The Company shall maintain in Mobile County a local business office, or agent, which subscribers may telephone or contact personally during regular business hours so that cable television maintenance service shall be promptly available.

SECTION 18. MISCELLANEOUS PROVISIONS.

(a) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the Council.

(b) The Company shall provide without charge one outlet for one television set to the exterior of each governmental office building, fire station, police station, and public and private school building that is passed by its cable.

(c) The Company will provide such facilities and channels for public access cable casting as are required by the rules and regulations of the Federal Communications Commission.

(d) At the request of the City, the Company shall cooperate with the City, to the extent determined by the Company to be feasible under the circumstances, assisting the City during times of public emergency or disaster.

(e) The Company shall furnish to the City such reasonable information concerning its operations and services under its franchise as the City may request.

SECTION 19. COMPLIANCE WITH APPLICABLE LAWS AND

ORDINANCES. The Company shall at all times during the life of this franchise be subject to all City ordinances and regulations and lawful exercise thereof which shall be reasonable and not in derogation of the rights granted to the Company herein.

SECTION 20. VIOLATIONS.

(a) It shall be unlawful for any person, firm or corporation to make any unauthorized connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of the Company's Cable Television System within the City for the purpose of enabling himself or others to receive any television signal radio signal, picture, program or sound, without payment to the Company.

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

SECTION 21. PENALTIES. Any person violating any of the provisions of Section 20 of this ordinance shall be guilty of a misdemeanor and shall upon conviction be fined not more than \$100.00 or sentenced to not more than ninety (90), days imprisonment in the city jail, or both each day of violation shall constitute a separate offense.

SECTION 22. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Chapter of this ordinance is

for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any. portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of or to the Company. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

ADOPTED THIS 15TH DAY OF AUGUST, 1989.

Doris Anderson, Mayor

ATTEST:

W. E. Yerkes, Town Clerk

TOWN OF DAUPHIN ISLAND, ALABAMA

Certificate of Publication

This is to certify that Ordinance Number 18 Town of Dauphin Island,
Alabama was published by posting on at least three (3)

Bulletin Boards in the Town from August 17, 1989 to August 25, 1989.

W. E. Yerkes, Town Clerk
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